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1 A bill to be entitled
2 An act relating to the Uniform Commercial Real Estate
3 Receivership Act; creating chapter 714, F.S., relating
4 to the Uniform Commercial Real Estate Receivership
5 Act; providing a short title; defining terms;
6 prohibiting a court from issuing certain orders unless
7 certain requirements are met; providing requirements
8 for certain court orders; authorizing certain parties
9 to move to dissolve or modify certain orders;
10 requiring that such motions be heard within a
11 specified timeframe; providing construction and
12 applicability; specifying that a court has exclusive
13 jurisdiction to direct receivers and determine
14 controversies under certain circumstances; providing
15 requirements and authorizations relating to the
16 appointment of a receiver; specifying when a person is
17 or is not disqualified from appointment as a receiver;
18 authorizing certain persons to nominate someone to
19 serve as a receiver; specifying the court is not bound
20 by such nomination; requiring a receiver to post a
21 bond with the court which meets certain requirements;
22 providing an exception; prohibiting a claim against a
23 receiver's bond or alternative security from being
24 made after a certain time; providing that an appointed
25 receiver has certain statuses of a lien creditor;
26 providing that certain property is subject to
27 specified security agreements; providing requirements
28 relating to the collection and turnover of
29 receivership property; providing for powers and duties

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30 of a receiver; authorizing the court to expand,
31 modify, or limit such powers and duties; providing for
32 duties of an owner; authorizing a court to take
33 certain actions if a person knowingly fails to perform
34 a duty; authorizing a court to take certain actions
35 relating to stays and injunctions; authorizing certain
36 persons to apply for relief from a stay or injunction;
37 specifying when an order does not operate as a stay or
38 injunction; authorizing receivers to engage and
39 compensate certain professionals under certain
40 circumstances; requiring certain persons to file an
41 itemized statement with the court; requiring a
42 receiver to pay an amount approved by the court;
43 defining the term "good faith"; authorizing a receiver
44 to use or transfer receivership property other than in
45 the ordinary course of business under certain
46 circumstances; providing for the service of notice to
47 lien holders who are not parties to the action;
48 defining the term "timeshare interest"; authorizing a
49 receiver to adopt or reject an executory contract of
50 the owner relating to receivership property under
51 certain circumstances; requiring that a claim of
52 damages for rejection of a contract be submitted
53 within a specified timeframe; authorizing a purchaser
54 to take certain actions if a receiver rejects an
55 executory contract under certain circumstances;
56 prohibiting a receiver from rejecting unexpired leases
57 of certain property under certain circumstances;
58 providing for defenses and immunities of a receiver;

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59 providing requirements for interim reports filed by a
60 receiver; providing requirements relating to notices
61 of appointment; authorizing the court to enter certain
62 orders if the court concludes that receivership
63 property is likely to be insufficient to satisfy
64 certain claims; providing requirements for certain
65 distributions of receivership property; authorizing a
66 court to award fees and expenses; authorizing a court
67 to order certain persons to pay fees and expenses;
68 providing for the removal and replacement of a
69 receiver and the termination of a court's
70 administration of the receivership property under
71 certain circumstances; requiring a receiver to file a
72 final report containing certain information upon
73 completion of the receiver's duties; specifying that a
74 receiver is discharged if certain requirements are
75 met; authorizing a court to appoint ancillary
76 receivers under certain circumstances; providing for
77 rights, powers, and duties of an ancillary receiver;
78 specifying that certain requests, appointments, and
79 applications by a mortgagee do not have certain
80 effects; providing construction and applicability;
81 providing an effective date.

82

83 Be It Enacted by the Legislature of the State of Florida:

84

85 Section 1. Chapter 714, Florida Statutes, consisting of
86 sections 714.01-714.28, is created to read:

87

CHAPTER 714

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UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

714.01 Short title.—This chapter may be cited as the
Uniform Commercial Real Estate Receivership Act.

714.02 Definitions.—For the purposes of this chapter, the
term:

(1) "Affiliate" means:

(a) With respect to an individual:

1. A companion of the individual;

2. A lineal ancestor or descendent, whether by blood or
adoption, of:

a. The individual; or

b. A companion of the individual;

3. A companion of an ancestor or descendent as described in
subparagraph 2.;

4. A sibling, aunt, uncle, great aunt, great uncle, first
cousin, niece, nephew, grandniece, or grandnephew of the
individual, whether related by the whole or the half blood or
adoption, or a companion of any of them; or

5. Any other person occupying the residence of the
individual; and

(b) With respect to a person other than an individual:

1. Another person who directly or indirectly controls, is
controlled by, or is under common control with the person;

2. An officer, director, manager, member, partner,
employee, or trustee or other fiduciary of the person; or

3. A companion of an individual or an individual occupying
the residence of an individual.

(2) "Companion" means:

(a) The spouse of an individual;

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117 (b) The registered domestic partner of an individual; or

118 (c) Another individual in a civil union with an individual.

119 (3) "Court" means the court of general equity jurisdiction
120 in this state.

121 (4) "Executory contract" means a contract, including a
122 lease, under which each party has an unperformed obligation and
123 the failure of a party to complete performance would constitute
124 a material breach.

125 (5) "Governmental unit" means an office, department,
126 division, bureau, board, commission, or other agency of this
127 state or a subdivision of this state.

128 (6) "Lien" means an interest in property which secures
129 payment or performance of an obligation.

130 (7) "Mortgage" means a record, however denominated, that
131 creates or provides for a consensual lien on real property or
132 rents, even if the record also creates or provides for a lien on
133 personal property.

134 (8) "Mortgagee" means a person entitled to enforce an
135 obligation secured by a mortgage.

136 (9) "Mortgagor" means a person who grants a mortgage or a
137 successor in ownership of the real property described in the
138 mortgage.

139 (10) "Owner" means the person for whose property a receiver
140 is appointed.

141 (11) "Person" means an individual, estate, business or
142 nonprofit entity, public corporation, government or governmental
143 subdivision, agency, or instrumentality or other legal entity.

144 (12) "Proceeds" means any of the following property:

145 (a) Whatever is acquired on the sale, lease, license,

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146 exchange, or other disposition of receivership property.

147 (b) Whatever is collected on, or distributed on account of,
148 receivership property.

149 (c) Rights arising out of receivership property.

150 (d) To the extent of the value of receivership property,
151 claims arising out of the loss, nonconformity, or interference
152 with the use of, defects or infringement of rights in, or damage
153 to the property.

154 (e) To the extent of the value of receivership property and
155 to the extent payable to the owner or mortgagee, insurance
156 payable by reason of the loss or nonconformity of, defects or
157 infringement of rights in, or damage to the property.

158 (13) "Property" means all of a person's right, title, and
159 interest, both legal and equitable, in real and personal
160 property, tangible and intangible, wherever located and however
161 acquired. The term includes proceeds, products, offspring,
162 rents, or profits of or from the property.

163 (14) "Receiver" means a person appointed by the court as
164 the court's agent, and subject to the court's direction, to take
165 possession of, manage, and, if authorized by this chapter or
166 court order, transfer, sell, lease, license, exchange, collect,
167 or otherwise dispose of receivership property.

168 (15) "Receivership" means a proceeding in which a receiver
169 is appointed.

170 (16) "Receivership property" means the property of an owner
171 which is described in the order appointing a receiver or a
172 subsequent order. The term includes any proceeds, products,
173 offspring, rents, or profits of or from the property.

174 (17) "Record," if used as a noun, means information that is

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175 inscribed on a tangible medium or that is stored on an
176 electronic or other medium and is retrievable in perceivable
177 form.

178 (18) "Rents" means:

179 (a) Sums payable for the right to possess or occupy, or for
180 the actual possession or occupation of, real property of another
181 person;

182 (b) Sums payable to a mortgagor under a policy of rental-
183 interruption insurance covering real property;

184 (c) Claims arising out of a default in the payment of sums
185 payable for the right to possess or occupy real property of
186 another person;

187 (d) Sums payable to terminate an agreement to possess or
188 occupy real property of another person;

189 (e) Sums payable to a mortgagor for payment or
190 reimbursement of expenses incurred in owning, operating, and
191 maintaining real property or constructing or installing
192 improvements on real property; or

193 (f) Other sums payable under an agreement relating to the
194 real property of another person which constitute rents under the
195 laws of this state other than this act.

196 (19) "Secured obligation" means an obligation the payment
197 or performance of which is secured by a security agreement.

198 (20) "Security agreement" means an agreement that creates
199 or provides for a lien.

200 (21) "Sign" means, with present intent to authenticate or
201 adopt a record:

202 (a) To execute or adopt a tangible symbol; or

203 (b) To attach to or logically associate with the record an

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204 electronic sound, symbol, or process.

205 (22) "State" means a state of the United States, the
206 District of Columbia, Puerto Rico, the United States Virgin
207 Islands, or any territory or insular possession subject to the
208 jurisdiction of the United States.

209 714.03 Notice and opportunity for hearing.-

210 (1) Except as otherwise provided in subsection (2), the
211 court may issue an order under this chapter only after notice
212 and opportunity for a hearing appropriate under the
213 circumstances.

214 (2) The court may issue an order under this chapter without
215 written or oral notice to the adverse party only if:

216 (a) It appears from the specific facts shown by affidavit
217 or verified pleading or motion that immediate and irreparable
218 injury, loss, or damage will result to the movant or that waste,
219 dissipation, impairment, or substantial diminution in value will
220 result to the subject real estate before any adverse party can
221 be heard in opposition; and

222 (b) The movant's attorney certifies in writing all efforts
223 that have been made to give notice to all known adverse parties,
224 or the reasons why such notice should not be required.

225 (3) Only an affidavit, a declaration or a verified
226 pleading, or a motion may be used to support the application for
227 the appointment of a receiver, unless the adverse party appears
228 at the hearing or has received reasonable prior notice of the
229 hearing. Every order appointing a receiver without notice must
230 be endorsed with the date and hour of entry, must be filed
231 forthwith in the clerk's office, must define the injury, must
232 state findings by the court as to why the injury may be

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233 irreparable, and must give the reasons why the order was granted
234 without notice if notice was not given. The order appointing a
235 receiver shall remain in effect until the further order of the
236 court.

237 (4) This chapter does not displace any existing rule of
238 procedural or judicial administration of this state governing
239 service or notice, including, without limitation, Rule 1.070,
240 Florida Rules of Civil Procedure and Rule 2.525, Florida Rules
241 of Judicial Administration, which shall remain in full force and
242 effect.

243 714.04 Scope; exclusions.-

244 (1) This chapter applies to a receivership initiated in a
245 court of this state for an interest in real property and any
246 incidental personal property related to or used in operating the
247 real property.

248 (2) This chapter does not apply to:

249 (a) Actions in which a state agency or officer is expressly
250 authorized by statute to seek or obtain the appointment of a
251 receiver;

252 (b) Actions authorized by or commenced under federal law;

253 (c) Real property improved by one or two dwelling units
254 which includes the homestead of an individual owner or an
255 affiliate of an individual owner;

256 (d) Property of an individual exempt from forced sale,
257 execution, or seizure under the laws of this state; or

258 (e) Personal property of an individual which is used
259 primarily for personal, family, or household purposes.

260 (3) This chapter does not limit the authority of a court to
261 appoint a receiver under the laws of this state other than this

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262 chapter.

263 (4) This chapter does not limit an individual's homestead
264 rights under the laws of this state or federal law.

265 (5) Unless displaced by a particular provision of this
266 chapter, the principles of law and equity, including the law
267 relative to capacity to contract, principal and agent, estoppel,
268 laches, fraud, misrepresentation, duress, coercion, mistake,
269 bankruptcy, or other validating or invalidating cause,
270 supplement this chapter.

271 714.05 Power of the court.—The court that appoints a
272 receiver under this chapter has exclusive jurisdiction to direct
273 the receiver and determine any controversy related to the
274 receivership or receivership property.

275 714.06 Appointment of receiver.—

276 (1) The court may appoint a receiver:

277 (a) Before judgment, to protect a party that demonstrates
278 an apparent right, title, or interest in real property that is
279 the subject of the action, if the property or its revenue-
280 producing potential:

281 1. Is being subjected to or is in danger of waste, loss,
282 substantial diminution in value, dissipation, or impairment; or

283 2. Has been or is about to be the subject of a voidable
284 transaction;

285 (b) After judgment:

286 1. To carry the judgment into effect; or

287 2. To preserve nonexempt real property pending appeal or
288 when an execution has been returned unsatisfied and the owner
289 refuses to apply the property in satisfaction of the judgment;

290 (c) In an action in which a receiver for real property may

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291 be appointed on equitable grounds, subject to the requirements
292 of paragraphs (a) and (b); or

293 (d) During the time allowed for redemption, to preserve
294 real property sold in an execution or foreclosure sale and
295 secure its rents to the person entitled to the rents.

296 (2) In connection with the foreclosure or other enforcement
297 of a mortgage, the court shall consider the following facts and
298 circumstances, together with any other relevant facts, in
299 deciding whether to appoint a receiver for the mortgaged
300 property:

301 (a) Appointment is necessary to protect the property from
302 waste, loss, substantial diminution in value, transfer,
303 dissipation, or impairment;

304 (b) The mortgagor agreed in a signed record to the
305 appointment of a receiver on default;

306 (c) The owner agreed, after default and in a signed record,
307 to appointment of a receiver;

308 (d) The property and any other collateral held by the
309 mortgagee are not sufficient to satisfy the secured obligation;

310 (e) The owner fails to turn over to the mortgagee proceeds
311 or rents the mortgagee was entitled to collect; or

312 (f) The holder of a subordinate lien obtains appointment of
313 a receiver for the property.

314 (3) The court may condition the appointment of a receiver
315 without prior notice or hearing under s. 714.03 on the giving of
316 security by the person seeking the appointment for the payment
317 of damages, reasonable attorney fees, and costs incurred or
318 suffered by any person if the court later concludes that the
319 appointment was not justified. If the court later concludes that

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320 the appointment was justified and the order of appointment of
321 the receiver becomes final and no longer subject to appeal, the
322 court shall release the bond or other security. When any order
323 appointing a receiver or providing for injunctive relief is
324 issued on the pleading of a municipality or the state, or any
325 officer, agency, or political subdivision thereof, the court may
326 require or dispense with a bond, with or without surety, and
327 conditioned in the same manner, having due regard for the public
328 interest.

329 (4) A party adversely affected by an order appointing
330 receiver may move to dissolve or modify the order at any time.
331 If a party moves to dissolve or modify the order, the motion
332 must be heard within 5 days after the movant applies for a
333 hearing on the motion or at such time as the court determines
334 is reasonable and appropriate under the circumstances, after the
335 movant applies for a hearing on the motion. After notice and a
336 hearing, the Court may grant relief for cause shown.

337 714.07 Disqualification from appointment as receiver;
338 disclosure of interest.-

339 (1) The court may not appoint a person as receiver unless
340 the person submits to the court a statement under penalty of
341 perjury that the person is not disqualified.

342 (2) Except as otherwise provided in subsection (3), a
343 person is disqualified from appointment as receiver if the
344 person:

345 (a) Is an affiliate of a party;

346 (b) Has an interest materially adverse to an interest of a
347 party;

348 (c) Has a material financial interest in the outcome of the

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349 action, other than compensation the court may allow the
350 receiver;

351 (d) Has a debtor-creditor relationship with a party; or

352 (e) Holds an equity interest in a party, other than a
353 noncontrolling interest in a publicly traded company.

354 (3) A person is not disqualified from appointment as
355 receiver solely because the person:

356 (a) Was appointed receiver or is owed compensation in an
357 unrelated matter involving a party or was engaged by a party in
358 a matter unrelated to the receivership;

359 (b) Is an individual obligated to a party on a debt that is
360 not in default and was incurred primarily for personal, family,
361 or household purposes; or

362 (c) Maintains with a party a deposit account, as defined in
363 s. 679.1021.

364 (4) A person seeking appointment of a receiver may nominate
365 a person to serve as receiver, but the court is not bound by the
366 nomination.

367 714.08 Receiver's bond; alternative security.—

368 (1) Except as otherwise provided in subsection (2), a
369 receiver shall post with the court a bond that:

370 (a) Is conditioned on the faithful discharge of the
371 receiver's duties;

372 (b) Has one or more sureties approved by the court;

373 (c) Is in an amount the court specifies; and

374 (d) Is effective as of the date of the receiver's
375 appointment.

376 (2) The court may approve the receiver posting an
377 alternative security with the court, such as a letter of credit

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378 or deposit of funds. The receiver may not use receivership
379 property as alternative security. Interest that accrues on
380 deposited funds must be paid to the receiver upon the receiver's
381 discharge.

382 (3) The court may authorize a receiver to act before the
383 receiver posts the bond or alternative security required by this
384 section if the action is necessary to prevent or mitigate
385 immediate injury, loss, or damage to the party who sought the
386 appointment of the receiver, or immediate waste, dissipation,
387 impairment, or substantial diminution in value to the
388 receivership property.

389 (4) A claim against a receiver's bond or alternative
390 security must be made not later than 1 year after the date the
391 receiver is discharged.

392 714.09 Status of receiver as lien creditor.—Upon
393 appointment of a receiver, the receiver has the status of a lien
394 creditor under:

395 (1) Chapter 679 as to receivership property or fixtures;
396 and

397 (2) Chapter 695 as to receivership property that is real
398 property.

399 714.10 Security agreement covering after-acquired
400 property.—Except as otherwise provided by law other than this
401 chapter, property that a receiver or an owner acquires after
402 appointment of the receiver is subject to a security agreement
403 entered into before the appointment to the same extent as if the
404 court had not appointed the receiver.

405 714.11 Collection and turnover of receivership property.—

406 (1) Unless the court orders otherwise, on demand by a

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407 receiver:

408 (a) A person that owes a debt that is receivership property
409 and is matured or payable on demand or on order shall pay the
410 debt to or on the order of the receiver, except to the extent
411 the debt is subject to setoff or recoupment; and

412 (b) Subject to subsection (3), a person that has
413 possession, custody, or control of receivership property shall
414 turn the property over to the receiver.

415 (2) A person that has notice of the appointment of a
416 receiver and owes a debt that is receivership property may not
417 satisfy the debt by payment to the owner.

418 (3) If a creditor has possession, custody, or control of
419 receivership property and the validity, perfection, or priority
420 of the creditor's lien on the property depends on the creditor's
421 possession, custody, or control, the creditor may retain
422 possession, custody, or control until the court orders adequate
423 protection of the creditor's lien.

424 (4) Unless a bona fide dispute exists about a receiver's
425 right to possession, custody, or control of receivership
426 property, the court may sanction as civil contempt a person's
427 failure to turn the property over when required by this section.

428 714.12 Powers and duties of receiver.—

429 (1) Except as limited by court order or the laws of this
430 state other than this chapter, a receiver may:

431 (a) Collect, control, manage, conserve, and protect
432 receivership property;

433 (b) Operate a business constituting receivership property,
434 including preservation, use, sale, lease, license, exchange,
435 collection, or disposition of the property in the ordinary

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436 course of business;

437 (c) In the ordinary course of business, incur unsecured
438 debt and pay expenses incidental to the receiver's preservation,
439 use, sale, lease, license, exchange, collection, or disposition
440 of receivership property;

441 (d) Assert a right, claim, cause of action, or defense of
442 the owner which relates to receivership property;

443 (e) Seek and obtain instruction from the court concerning
444 receivership property, exercise of the receiver's powers, and
445 performance of the receiver's duties;

446 (f) Upon subpoena, compel a person to submit to examination
447 under oath, or to produce and permit inspection and copying of
448 designated records or tangible things, with respect to
449 receivership property or any other matter that may affect
450 administration of the receivership;

451 (g) Engage a professional pursuant to s. 714.15;

452 (h) Apply to a court of another state for appointment as
453 ancillary receiver with respect to receivership property located
454 in that state; and

455 (i) Exercise any power conferred by court order, this
456 chapter, or the laws of this state other than this chapter.

457 (2) With court approval, a receiver may:

458 (a) Incur debt for the use or benefit of receivership
459 property other than in the ordinary course of business;

460 (b) Make improvements to receivership property;

461 (c) Use or transfer receivership property other than in the
462 ordinary course of business pursuant to s. 714.16;

463 (d) Adopt or reject an executory contract of the owner
464 pursuant to s. 714.17;

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465 (e) Pay compensation to the receiver pursuant to s. 714.21,
466 and to each professional engaged by the receiver under s.
467 714.15;

468 (f) Recommend allowance or disallowance of a claim of a
469 creditor pursuant to s. 714.20; and

470 (g) Make a distribution of receivership property pursuant
471 to s. 714.20.

472 (3) A receiver shall:

473 (a) Prepare and retain appropriate business records,
474 including a record of each receipt, disbursement, and
475 disposition of receivership property;

476 (b) Account for receivership property, including the
477 proceeds of a sale, lease, license, exchange, collection, or
478 other disposition of the property;

479 (c) File with the recording office of the county in which
480 the real property is located a copy of the order appointing the
481 receiver and, if a legal description of the real property is not
482 included in the order, the legal description;

483 (d) Disclose to the court any fact arising during the
484 receivership which would disqualify the receiver under s.
485 714.07; and

486 (e) Perform any duty imposed by court order, this chapter,
487 or the laws of this state other than this chapter.

488 (4) The powers and duties of a receiver may be expanded,
489 modified, or limited by court order.

490 714.13 Duties of owner.—

491 (1) An owner shall:

492 (a) Assist and cooperate with the receiver in the
493 administration of the receivership and the discharge of the

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494 receiver's duties;

495 (b) Preserve and turn over to the receiver all receivership
496 property in the owner's possession, custody, or control;

497 (c) Identify all records and other information relating to
498 the receivership property, including a password, authorization,
499 or other information needed to obtain or maintain access to or
500 control of the receivership property, and make available to the
501 receiver the records and information in the owner's possession,
502 custody, or control;

503 (d) Upon subpoena, submit to examination under oath by the
504 receiver concerning the acts, conduct, property, liabilities,
505 and financial condition of the owner or any matter relating to
506 the receivership property or the receivership; and

507 (e) Perform any duty imposed by court order, this chapter,
508 or the laws of this state other than this chapter.

509 (2) If an owner is a person other than an individual, this
510 section applies to each officer, director, manager, member,
511 partner, trustee, or other person exercising or having the power
512 to exercise control over the affairs of the owner.

513 (3) If a person knowingly fails to perform a duty imposed
514 by this section, the court may:

515 (a) Award the receiver actual damages caused by the
516 person's failure, reasonable attorney fees, and costs; and

517 (b) Sanction the failure as civil contempt.

518 714.14 Stay; injunction.-

519 (1) Except as otherwise provided in subsection (5), after
520 notice and opportunity for a hearing, the court may enter an
521 order providing for a stay, applicable to all persons, of any
522 act, action, or proceeding:

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523 (a) To obtain possession of, exercise control over, or
524 enforce a judgment against all or a portion of the receivership
525 property as defined in the order creating the stay; and

526 (b) To enforce a lien against all or a portion of the
527 receivership property to the extent the lien secures a claim
528 against the owner which arose before entry of the order. The
529 court shall include in its order a specific description of the
530 receivership property subject to the stay, and shall include the
531 following language in the title of the order: "Order Staying
532 Certain Actions to Enforce Claims against Receivership
533 Property."

534 (2) Except as otherwise provided in subsection (5), the
535 court may enjoin an act, action, or proceeding against or
536 relating to receivership property if the injunction is necessary
537 to protect against misappropriation of, or waste relating
538 directly to, the receivership property.

539 (3) If the court grants injunctive relief, the injunction
540 must specify the reasons for entry and must describe in
541 reasonable detail the act or acts restrained without reference
542 to a pleading or other document. The injunction is binding on
543 the parties to the action; on the parties' officers, agents,
544 servants, employees, and attorneys; and on any person who
545 receives actual notice of the injunction and is in active
546 concert or participation with the parties.

547 (4) A person whose act, action, or proceeding is stayed or
548 enjoined under this section, or who is otherwise adversely
549 affected by such stay or injunction, may apply to the court for
550 relief from the stay or injunction. If a person moves for such
551 relief, the motion must be heard within 5 days after the movant

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552 applies for a hearing on the motion or at such time as the court
553 determines is reasonable and appropriate under the
554 circumstances, after the movant applies for a hearing on the
555 motion. After notice and a hearing, the court may grant relief
556 for cause shown.

557 (5) An order under subsection (1) or subsection (2) does
558 not operate as a stay or injunction of:

559 (a) Any act, action, or proceeding to foreclose or
560 otherwise enforce a mortgage by the person seeking appointment
561 of the receiver;

562 (b) Any act, action, or proceeding to perfect, or maintain
563 or continue the perfection of, an interest in receivership
564 property;

565 (c) Commencement or continuation of a criminal proceeding;

566 (d) Commencement or continuation of an action or
567 proceeding, or enforcement of a judgment other than a money
568 judgment, in an action or proceeding by a governmental unit to
569 enforce its police or regulatory power; or

570 (e) Establishment by a governmental unit of a tax liability
571 against the receivership property or the owner of such
572 receivership property, or an appeal of any such liability.

573 (6) The court may void an act that violates a stay or
574 injunction under this section.

575 (7) The scope of the receivership property subject to the
576 stay under subsection (1) may be modified upon request of the
577 receiver or other person, after notice and opportunity for a
578 hearing.

579 (8) In connection with the entry of an order under
580 subsection (1) or subsection (2), the court shall determine

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581 whether an additional bond or alternative security will be
582 required as a condition to entry of the stay or injunction and,
583 if required, direct the party requesting the stay or injunction
584 to post a bond or alternative security as a condition for the
585 stay or injunction to become effective.

586 714.15 Engagement and compensation of professional.—

587 (1) With court approval, a receiver may engage an attorney,
588 an accountant, an appraiser, an auctioneer, a broker, or another
589 professional to assist the receiver in performing a duty or
590 exercising a power of the receiver. The receiver shall disclose
591 to the court:

592 (a) The identity and qualifications of the professional;

593 (b) The scope and nature of the proposed engagement;

594 (c) Any potential conflict of interest; and

595 (d) The proposed compensation.

596 (2) A person is not disqualified from engagement under this
597 section solely because of the person's engagement by,
598 representation of, or other relationship with the receiver, a
599 creditor, or a party. This chapter does not prevent the receiver
600 from serving in the receivership as an attorney, an accountant,
601 an auctioneer, or a broker when authorized by law.

602 (3) A receiver or professional engaged under subsection (1)
603 shall file with the court an itemized statement of the time
604 spent, work performed, and billing rate of each person that
605 performed the work and an itemized list of expenses. The
606 receiver shall pay the amount approved by the court.

607 714.16 Use or transfer of receivership property not in
608 ordinary course of business.—

609 (1) For the purposes of this section, the term "good faith"

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610 means honesty in fact and the observance of reasonable
611 commercial standards of fair dealing.

612 (2) Before judgment is entered with respect to the
613 receivership property in the action in which the receiver is
614 appointed, with court approval after notice to all parties with
615 an interest in the property, including all lienholders, and a
616 hearing, a receiver may use or transfer by sale, lease, license,
617 exchange, or other disposition receivership property other than
618 in the ordinary course of business only if the owner of the
619 property:

620 (a) After the commencement of the action in which the
621 receiver is appointed, expressly consents in writing to the
622 receiver's proposed use or transfer of the receivership
623 property, and the receiver notes the property owner's express
624 consent in the motion to approve the proposed use or transfer;
625 or

626 (b) Before or at the hearing on the receiver's motion to
627 approve the use or transfer of the receivership property, fails
628 to object thereto after the receiver in good faith has provided
629 reasonable advance written notice to the property owner of the
630 proposed use or transfer, and the receiver demonstrates in the
631 motion that the proposed use or transfer is necessary to prevent
632 waste, loss, substantial diminution in value, dissipation, or
633 impairment of the property or its revenue-producing potential or
634 to prevent a voidable transaction involving the property.

635
636 Service of notice to lienholders who are not parties to the
637 action must be made as provided in chapter 48 for service of
638 original process or, in the case of a financial institution

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639 lienholder, as provided in s. 655.0201. If service cannot be
640 effectuated in such manner, upon authorization by court order,
641 the receiver may effect service of notice on the nonparty
642 lienholder pursuant to chapter 49 or as otherwise ordered by the
643 court.

644 (3) After judgment is entered against the property owner
645 and with court approval in the action in which the receiver is
646 appointed, a receiver may use or transfer receivership property
647 other than in the ordinary course of business to carry the
648 judgment into effect or to preserve nonexempt real property
649 pending appeal or when an execution has been returned
650 unsatisfied and the owner refuses to apply the property in
651 satisfaction of the judgment.

652 (4) The court may order that a transfer of receivership
653 property under this section is free and clear of any liens on
654 the property at the time of the transfer. In such case, any
655 liens on the property, which were valid at the time of the
656 transfer but extinguished by the transfer, attach to the
657 proceeds of the transfer with the same validity, perfection, and
658 priority the liens had on the property immediately before the
659 transfer, even if the proceeds are not sufficient to satisfy all
660 obligations secured by the liens.

661 (5) A transfer under subsection (3) may occur by means
662 other than a public auction sale. A creditor holding a valid
663 lien on the property to be transferred may purchase the property
664 and offset against the purchase price part or all of the allowed
665 amount secured by the lien if the creditor tenders funds
666 sufficient to satisfy in full the reasonable expenses of
667 transfer and the obligation secured by any senior lien

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668 extinguished by the transfer.

669 (6) A reversal or modification of an order approving a
670 transfer under subsection (3) does not affect the validity of
671 the transfer to a person that acquired the property in good
672 faith or revive against the person any lien extinguished by the
673 transfer, whether the person knew before the transfer of the
674 request for reversal or modification, unless the court stayed
675 the order before the transfer.

676 714.17 Executory contract.—

677 (1) For the purposes of this section, the term "timeshare
678 interest" has the same meaning as in s. 721.05(36).

679 (2) Except as otherwise provided in subsection (8), with
680 court approval, a receiver may adopt or reject an executory
681 contract of the owner relating to receivership property. The
682 court may condition the receiver's adoption and continued
683 performance of the contract on terms appropriate under the
684 circumstances. If the receiver does not request court approval
685 to adopt or reject the contract within a reasonable time after
686 the receiver's appointment, the receiver is deemed to have
687 rejected the contract.

688 (3) A receiver's performance of an executory contract
689 before court approval under subsection (2) of its adoption or
690 rejection is not an adoption of the contract and does not
691 preclude the receiver from seeking approval to reject the
692 contract.

693 (4) A provision in an executory contract which requires or
694 permits a forfeiture, modification, or termination of the
695 contract because of the appointment of a receiver or the
696 financial condition of the owner does not affect a receiver's

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697 power under subsection (2) to adopt the contract.

698 (5) A receiver's right to possess or use receivership
699 property pursuant to an executory contract terminates on
700 rejection of the contract under subsection (2). Rejection is a
701 breach of the contract effective immediately before appointment
702 of the receiver. A claim for damages for rejection of the
703 contract must be submitted by the later of:

704 (a) The time set for submitting a claim in the
705 receivership; or

706 (b) Thirty days after the court approves the rejection.

707 (6) If at the time a receiver is appointed, the owner has
708 the right to assign an executory contract relating to
709 receivership property under the laws of this state other than
710 this chapter, the receiver may assign the contract with court
711 approval.

712 (7) If a receiver rejects an executory contract for the
713 sale of receivership property that is real property in
714 possession of the purchaser or a real-property timeshare
715 interest pursuant to subsection (2), the purchaser may:

716 (a) Treat the rejection as a termination of the contract,
717 and in that case the purchaser has a lien on the property for
718 the recovery of any part of the purchase price the purchaser
719 paid; or

720 (b) Retain the purchaser's right to possession under the
721 contract. If the purchaser retains his or her right to
722 possession pursuant to this paragraph, the purchaser must
723 continue to perform all obligations arising under the contract
724 and may offset any damages caused by nonperformance of an
725 obligation of the owner after the date of the rejection, but the

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726 purchaser does not have a right or claim against other
727 receivership property or the receiver on account of the damages.

728 (8) A receiver may not reject an unexpired lease of real
729 property under which the owner is the landlord if:

730 (a) The tenant occupies the leased premises as the tenant's
731 primary residence;

732 (b) The receiver was appointed at the request of a person
733 other than a mortgagee; or

734 (c) The receiver was appointed at the request of a
735 mortgagee and:

736 1. The lease is superior to the lien of the mortgage;

737 2. The tenant has an enforceable agreement with the
738 mortgagee or the holder of a senior lien under which the
739 tenant's occupancy will not be disturbed as long as the tenant
740 performs its obligations under the lease;

741 3. The mortgagee has consented to the lease, either in a
742 signed record or by its failure to timely object that the lease
743 violated the mortgage; or

744 4. The terms of the lease were commercially reasonable at
745 the time the lease was agreed to and the tenant did not know or
746 have reason to know that the lease violated the mortgage.

747 714.18 Defenses and immunities of receiver.-

748 (1) A receiver is entitled to all defenses and immunities
749 provided by the laws of this state other than this chapter for
750 an act or omission within the scope of the receiver's
751 appointment.

752 (2) A receiver may be sued personally for an act or
753 omission in administering receivership property only with
754 approval of the court that appointed the receiver.

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755 714.19 Interim report of receiver.—A receiver may file or,
756 if ordered by the court, shall file an interim report that
757 includes:

758 (1) The activities of the receiver since appointment or a
759 previous report;

760 (2) Receipts and disbursements, including a payment made or
761 proposed to be made to a professional engaged by the receiver;

762 (3) Receipts and dispositions of receivership property;

763 (4) Fees and expenses of the receiver and, if not filed
764 separately, a request for approval of payment of the fees and
765 expenses; and

766 (5) Any other information required by the court.

767 714.20 Notice of appointment; claim against receivership;
768 distribution to creditors.—

769 (1) Except as otherwise provided in subsection (6), a
770 receiver shall give notice of appointment of the receiver to
771 creditors of the owner by:

772 (a) Deposit for delivery through first-class mail or other
773 commercially reasonable delivery method to the last known
774 address of each creditor; and

775 (b) Publication as directed by the court.

776 (2) Except as otherwise provided in subsection (6), the
777 notice required under subsection (1) must specify the date by
778 which each creditor holding a claim against the owner which
779 arose before appointment of the receiver must submit the claim
780 to the receiver. The date specified must be at least 90 days
781 after the later of notice under paragraph (1)(a) or last
782 publication under paragraph (1)(b). The court may extend the
783 period for submitting the claim. Unless the court orders

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784 otherwise, a claim that is not timely submitted is not entitled
785 to a distribution from the receivership.

786 (3) A claim submitted by a creditor under this section
787 must:

788 (a) State the name and address of the creditor;

789 (b) State the amount and basis of the claim;

790 (c) Identify any property securing the claim;

791 (d) Be signed by the creditor under penalty of perjury; and

792 (e) Include a copy of any record on which the claim is
793 based.

794 (4) An assignment by a creditor of a claim against the
795 owner is effective against the receiver only if the assignee
796 gives timely notice of the assignment to the receiver in a
797 signed record.

798 (5) At any time before entry of an order approving a
799 receiver's final report, the receiver may file with the court an
800 objection to a claim of a creditor, stating the basis for the
801 objection. The court shall allow or disallow the claim according
802 to the laws of this state other than this chapter.

803 (6) If the court concludes that receivership property is
804 likely to be insufficient to satisfy claims of each creditor
805 holding a perfected lien on the property, the court may order
806 that:

807 (a) The receiver need not give notice under subsection (1)
808 of the appointment to all creditors of the owner, but only such
809 creditors as the court directs; and

810 (b) Unsecured creditors need not submit claims under this
811 section.

812 (7) Subject to s. 714.21:

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813 (a) A distribution of receivership property to a creditor
814 holding a perfected lien on the property must be made in
815 accordance with the creditor's priority under the laws of this
816 state other than this chapter; and

817 (b) A distribution of receivership property to a creditor
818 with an allowed unsecured claim must be made as the court
819 directs according to the laws of this state other than this
820 chapter.

821 714.21 Fees and expenses.—

822 (1) The court may award a receiver from receivership
823 property the reasonable and necessary fees and expenses of
824 performing the duties of the receiver and exercising the powers
825 of the receiver.

826 (2) The court may order one or more of the following to pay
827 the reasonable and necessary fees and expenses of the
828 receivership, including reasonable attorney fees and costs:

829 (a) A person that requested the appointment of the
830 receiver, if the receivership does not produce sufficient funds
831 to pay the fees and expenses; or

832 (b) A person whose conduct justified or would have
833 justified the appointment of the receiver under s. 714.06(1)(a).

834 714.22 Removal of receiver; replacement; termination of
835 receivership.—

836 (1) The court may remove a receiver for cause.

837 (2) The court shall replace a receiver that dies, resigns,
838 or is removed.

839 (3) If the court finds that a receiver that resigns or is
840 removed, or the representative of a receiver that is deceased,
841 has accounted fully for and turned over to the successor

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842 receiver all receivership property and has filed a report of all
843 receipts and disbursements during the service of the replaced
844 receiver, the replaced receiver is discharged.

845 (4) The court may discharge a receiver and terminate the
846 court's administration of the receivership property if the court
847 finds that appointment of the receiver was improvident or that
848 the circumstances no longer warrant continuation of the
849 receivership. If the court finds that the appointment was sought
850 wrongfully or in bad faith, the court may assess against the
851 person that sought the appointment:

852 (a) The fees and expenses of the receivership, including
853 reasonable attorney fees and costs; and

854 (b) Actual damages caused by the appointment, including
855 reasonable attorney fees and costs.

856 714.23 Final report of receiver; discharge.-

857 (1) Upon completion of a receiver's duties, the receiver
858 shall file a final report including:

859 (a) A description of the activities of the receiver in the
860 conduct of the receivership;

861 (b) A list of receivership property at the commencement of
862 the receivership and any receivership property received during
863 the receivership;

864 (c) A list of disbursements, including payments to
865 professionals engaged by the receiver;

866 (d) A list of dispositions of receivership property;

867 (e) A list of distributions made or proposed to be made
868 from the receivership for creditor claims;

869 (f) If not filed separately, a request for approval of the
870 payment of fees and expenses of the receiver; and

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871 (g) Any other information required by the court.

872 (2) If the court approves a final report filed under
873 subsection (1) and the receiver distributes all receivership
874 property, the receiver is discharged.

875 714.24 Receivership in another state; ancillary
876 proceeding.-

877 (1) The court may appoint a receiver appointed in another
878 state, or that person's nominee, as an ancillary receiver with
879 respect to property located in this state or subject to the
880 jurisdiction of the court for which a receiver could be
881 appointed under this chapter, if:

882 (a) The person or nominee would be eligible to serve as
883 receiver under s. 714.07; and

884 (b) The appointment furthers the person's possession,
885 custody, control, or disposition of property subject to the
886 receivership in the other state.

887 (2) The court may issue an order that gives effect to an
888 order entered in another state appointing or directing a
889 receiver.

890 (3) Unless the court orders otherwise, an ancillary
891 receiver appointed under subsection (1) has the rights, powers,
892 and duties of a receiver appointed under this chapter.

893 714.25 Effect of enforcement by mortgagee.-A request by a
894 mortgagee for the appointment of a receiver, the appointment of
895 a receiver, or the application by a mortgagee of receivership
896 property or proceeds to the secured obligation does not:

897 (1) Make the mortgagee a mortgagee in possession of the
898 real property;

899 (2) Make the mortgagee an agent of the owner;

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900 (3) Constitute an election of remedies which precludes a
901 later action to enforce the secured obligation;

902 (4) Make the secured obligation unenforceable;

903 (5) Limit any right available to the mortgagee with respect
904 to the secured obligation; or

905 (6) Constitute an action under chapter 702.

906 714.26 Uniformity of application and construction.—In
907 applying and construing this chapter, consideration must be
908 given to the need to promote uniformity of the law with respect
909 to its subject matter among states that have enacted a similar
910 law.

911 714.27 Relation to electronic signatures in global and
912 national commerce act.—This act modifies, limits, or supersedes
913 the Electronic Signatures in Global and National Commerce Act,
914 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
915 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
916 authorize electronic delivery of any of the notices described in
917 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

918 714.28 Transition.—This chapter does not apply to a
919 receivership for which the receiver was appointed before July 1,
920 2020.

921 Section 2. This act shall take effect July 1, 2020.