

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

714.04 Scope; exclusions.-

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

(2) This chapter does not apply to:

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

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

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

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

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

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

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

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

supplement this chapter.

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

714.06 Appointment of receiver.—

(1) The court may appoint a receiver:

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

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

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

(b) After judgment:

1. To carry the judgment into effect; or

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

(c) In an action in which a receiver for real property may be appointed on equitable grounds, subject to the requirements of paragraphs (a) and (b); or

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

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

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

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

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

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

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

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

(3) The court may condition the appointment of a receiver without prior notice or hearing under s. 714.03 on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified and the order of appointment of the receiver becomes final and no longer subject to appeal, the court shall release the bond or other security. ~~When any order appointing a receiver or providing for injunctive relief is issued on the pleading of a municipality or the state, or any officer, agency, or political subdivision thereof, the court may require or dispense with a bond, with or without surety, and conditioned in the same manner, having due regard for the public interest.~~

(4) A party adversely affected by an order appointing a receiver may move to dissolve or modify the order at any time. If a party moves to dissolve or modify the order, the motion ~~shall~~ must be heard within 5 days, ~~or~~ after the movant applies for a hearing on the motion or at such time as the court determines is reasonable and appropriate under the circumstances, ~~after the movant applies for a hearing on the motion. The court,~~ after the movant applies for a hearing on the motion. After notice and a hearing, the court may grant

relief for cause shown.

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

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

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

(a) Is an affiliate of a party;

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

(c) Has a material financial interest in the outcome of the
action, other than compensation the court may allow the
receiver;

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

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

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

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

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

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

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

714.08 Receiver's bond; alternative security.-

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

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

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

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

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

(2) The court may approve the receiver posting an alternative security with the court, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver upon the receiver's discharge.

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

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

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

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

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

714.10 Security agreement covering after-acquired property.—Except as otherwise provided by law other than this chapter, property that a receiver or an owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the

court had not appointed the receiver.

714.11 Collection and turnover of receivership property.-

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

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

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

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

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

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

714.12 Powers and duties of receiver.-

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

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

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

(c) In the ordinary course of business, incur unsecured

debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

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

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

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

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

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

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

(2) With court approval, a receiver may:

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

(b) Make improvements to receivership property;

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

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

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

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

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

(3) A receiver shall:

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

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

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

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

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

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

714.13 Duties of owner.-

(1) An owner shall:

(a) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

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

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

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

the receivership property or the receivership; and

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

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

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

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

(b) Sanction the failure as civil contempt.

714.14 Stay; injunction.-

(1) Except as otherwise provided in subsection (45), after notice and opportunity for a hearing, the court may enter an order providing for a stay, applicable to all persons, of any act, action, or proceeding:

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

(b) To enforce a lien against all or a portion of the receivership property to the extent the lien secures a claim against the owner which arose before entry of the order.

The court shall include in its order a specific description of the receivership property subject to the stay, and shall include the following language in the title of the order: "Order Staying Certain Actions to Enforce Claims against Receivership Property."

(2) Except as otherwise provided in subsection (45), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect against misappropriation of, or waste relating directly to, the receivership property.

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

(4) A person whose act, action, or proceeding is stayed or enjoined under this section, or who is otherwise adversely affected by such stay or injunction, may apply to the court for relief from the stay or injunction. If a person moves for such relief, the motion shall must be heard within 5 days, or after the movant applies for a hearing on the motion or at such time as the court determines is reasonable and appropriate under the circumstances, after the movant applies for a hearing on the motion. The court, after the movant applies for a hearing on the motion. After notice and a hearing, the court may grant relief for cause shown.

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

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

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

(c) Commencement or continuation of a criminal proceeding;

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

(e) Establishment by a governmental unit of a tax liability

against the receivership property or the owner of such receivership property, or an appeal of any such liability.

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

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

(8) In connection with the entry of an order under subsection (1) or subsection (2), the court shall determine whether an additional bond or alternative security will be required as a condition to entry of the stay or injunction and, if required, direct the party requesting the stay or injunction to post a bond or alternative security as a condition for the stay or injunction to become effective.

714.15 Engagement and compensation of professional.-

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

- (a) The identity and qualifications of the professional;
- (b) The scope and nature of the proposed engagement;
- (c) Any potential conflict of interest; and
- (d) The proposed compensation.

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

(3) A receiver or professional engaged under subsection (1) shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that

performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

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

(1) For the purposes of this section, the term “good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

(a) After the commencement of the action in which the receiver is appointed, expressly consents in writing, ~~including by electronic means,~~ to the receiver’s proposed use or transfer of the receivership property, and the receiver notes the property owner’s express consent in the motion to approve the proposed use or transfer; or

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

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

~~lien holders~~lienholder, as provided in s. 655.0201. If service cannot be effectuated in such manner, upon authorization by court order, the receiver may effect service of notice on the ~~non-party lien holder~~nonparty lienholder pursuant to chapter 49 or as otherwise ordered by the court.

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