

ASSEMBLY BILL NO. 235—ASSEMBLYMEN MONROE-MORENO,
COHEN, OHRENSCHALL, WATKINS, CARRILLO; JAUREGUI
AND YEAGER

FEBRUARY 24, 2017

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Judiciary

SUMMARY—Enacts the Uniform Commercial Real Estate
Receivership Act. (BDR 3-714)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to receiverships; enacting the Uniform
Commercial Real Estate Receivership Act; and providing
other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a court to appoint a receiver in certain cases and under certain circumstances. (NRS 32.010, 32.015) This bill enacts the Uniform Commercial Real Estate Receivership Act to establish provisions governing the appointment and powers of a receiver for real property that is used for certain commercial purposes and any personal property related to or used in operating that real property.

Section 29 of this bill sets forth the circumstances under which a court is authorized to appoint a receiver for such property. Under **section 29**, a court is authorized to appoint a receiver: (1) before judgment if the property is subjected to or is in danger of waste, loss, dissipation or impairment or has been or is about to be subject to a voidable transaction; (2) to carry a judgment into effect or preserve property pending an appeal or when an owner of the property refuses to apply the property in satisfaction of the judgment; (3) when the court determines that equitable grounds establish the need for a receiver; or (4) to preserve property that has been sold in an execution or foreclosure sale during the period that the property may be redeemed by the debtor. **Section 29** further provides that a mortgagee under a mortgage for certain commercial real property is entitled to the appointment of a receiver under certain circumstances.

Section 30 of this bill establishes the circumstances under which a person is disqualified from appointment as a receiver because the person has certain conflicts



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of interest. Under **section 30**, a court is prohibited from appointing a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified from such appointment. **Section 31** of this bill requires a receiver to post a bond or alternative security with the court appointing the receiver.

Sections 32-37 of this bill enact provisions setting forth the effect of the appointment of a receiver. **Section 32** provides that a receiver has the status and priority of a lien creditor with respect to the receivership property. Under **section 33**, the appointment of a receiver does not affect the validity of any security interest granted before the appointment of the receiver, and any property acquired by a receiver is subject to a security interest granted under an agreement entered into before the appointment of the receiver. **Section 34** requires a person who possesses property for which a receiver has been appointed to turn over the property to the receiver on demand by the receiver. **Section 35** sets forth the powers and duties of a receiver with respect to the receivership property, including, without limitation, the authority to manage and protect receivership property, operate a business constituting receivership property, pay expenses and assert the rights, claims and defenses of the owner of the property. **Section 36** sets forth the duties of the owner of property for which a receiver has been appointed, including, without limitation, a requirement to assist and cooperate with the receiver, preserve and turn over to the receiver receivership property in the owner's possession or control and making available to the receiver certain records. **Section 37** provides that the appointment of a receiver automatically stays certain actions and proceedings involving receivership property and allows a person whose action or proceeding is stayed to apply to the court for relief from the stay.

Sections 38-46 of this bill enact provisions governing the administration of the receivership. **Section 38** authorizes the receiver to hire and pay certain professionals to assist in the administration of the receivership upon approval of the court. **Section 39** authorizes a receiver to dispose of receivership property outside of the ordinary court of business with the approval of the court. **Sections 39 and 43** further provide that: (1) such a disposition of receivership property is free and clear of junior liens unless the agreement for the disposition provides otherwise; and (2) secured creditors are entitled to receive the proceeds of such a disposition according to the priority established by existing law. **Section 40** authorizes a receiver to adopt or reject contracts under which a party has an unperformed obligation upon approval of the court and establishes the procedures for doing so. **Section 41** provides immunity to a receiver and requires the approval of the appointing court before a receiver may be sued personally for an act or omission in administering receivership property. **Section 43** requires a receiver to notify certain creditors of the appointment of the receiver and requires creditors to file claims with the receiver to obtain a distribution of or proceeds from receivership property. **Sections 42 and 46** require a receiver to file certain reports with the court.

Under **section 47** of this bill, when the court of another state has appointed a person as receiver, a court in this State may appoint that person as an ancillary receiver for the purpose of obtaining possession and control of receivership property located in this State. **Section 47** further authorizes the court to enter any order necessary to effectuate an order of a court in another state appointing or directing a receiver.

Section 48 of this bill sets forth certain effects of the appointment of a receiver upon the request of a mortgagee or assignee of rents.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 32 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 50, inclusive, of this act.

Sec. 2. *Sections 2 to 50, inclusive, of this act may be cited as the Uniform Commercial Real Estate Receivership Act.*

Sec. 3. *As used in sections 2 to 50, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 4 to 25, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Affiliate" means:*

1. With respect to an individual:

(a) A companion of the individual;

(b) A lineal ancestor or descendant, whether by blood or adoption, of:

(1) The individual; or

(2) A companion of the individual;

(c) A companion of an ancestor or descendant described in paragraph (b);

(d) 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

(e) Any other individual occupying the residence of the individual; and

2. With respect to a person other than an individual:

(a) Another person that directly or indirectly controls, is controlled by or is under common control with the person;

(b) An officer, director, manager, member, partner, employee or trustee or other fiduciary of the person; or

(c) A companion of, or an individual occupying the residence of, an individual described in paragraph (a) or (b).

Sec. 5. *"Companion" means:*

1. The spouse of an individual;

2. The registered domestic partner of an individual; or

3. Another individual in a civil union with an individual.

Sec. 6. *"Court" means a district court of this State.*

Sec. 7. *"Executory contract" means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.*



1 **Sec. 8.** *“Governmental unit” means an office, department,*
2 *division, bureau, board, commission or other agency of this State*
3 *or a subdivision of this State.*

4 **Sec. 9.** *“Lien” means an interest in property which secures*
5 *payment or performance of an obligation.*

6 **Sec. 10.** *“Mortgage” means a record, however denominated,*
7 *that creates or provides for a consensual lien on real property or*
8 *rents, even if it also creates or provides for a lien on personal*
9 *property.*

10 **Sec. 11.** *“Mortgagee” means a person entitled to enforce an*
11 *obligation secured by a mortgage.*

12 **Sec. 12.** *“Mortgagor” means a person that grants a mortgage*
13 *or a successor in ownership of the real property described in the*
14 *mortgage.*

15 **Sec. 13.** *“Owner” means the person for whose property a*
16 *receiver is appointed.*

17 **Sec. 14.** *“Person” means an individual, estate, business or*
18 *nonprofit entity, public corporation, government or governmental*
19 *subdivision, agency or instrumentality, or other legal entity.*

20 **Sec. 15.** *“Proceeds” means the following property:*

21 1. *Whatever is acquired on the sale, lease, license, exchange*
22 *or other disposition of receivership property;*

23 2. *Whatever is collected on, or distributed on account of,*
24 *receivership property;*

25 3. *Rights arising out of receivership property;*

26 4. *To the extent of the value of receivership property, claims*
27 *arising out of the loss, nonconformity or interference with the use*
28 *of, defects or infringement of rights in or damage to the property;*
29 *or*

30 5. *To the extent of the value of receivership property and to*
31 *the extent payable to the owner or mortgagee, insurance payable*
32 *by reason of the loss or nonconformity of, defects or infringement*
33 *of rights in or damage to the property.*

34 **Sec. 16.** *“Property” means all of a person’s right, title and*
35 *interest, both legal and equitable, in real and personal property,*
36 *tangible and intangible, wherever located and however acquired.*
37 *The term includes proceeds, products, offspring, rents or profits of*
38 *or from the property.*

39 **Sec. 17.** *“Receiver” means a person appointed by the court*
40 *as the court’s agent, and subject to the court’s direction, to take*
41 *possession of, manage and, if authorized by sections 2 to 50,*
42 *inclusive, of this act or court order, transfer, sell, lease, license,*
43 *exchange, collect or otherwise dispose of receivership property.*

44 **Sec. 18.** *“Receivership” means a proceeding in which a*
45 *receiver is appointed.*



1 **Sec. 19.** *“Receivership property” means the property of an*
2 *owner that is described in the order appointing a receiver or a*
3 *subsequent order. The term includes any proceeds, products,*
4 *offspring, rents or profits of or from the property.*

5 **Sec. 20.** *“Record,” used as a noun, means information that*
6 *is inscribed on a tangible medium or that is stored on an electronic*
7 *or other medium and is retrievable in perceivable form.*

8 **Sec. 21.** *“Rents” means:*

9 1. *Sums payable for the right to possess or occupy, or for the*
10 *actual possession or occupation of, real property of another*
11 *person;*

12 2. *Sums payable to a mortgagor under a policy of rental-*
13 *interruption insurance covering real property;*

14 3. *Claims arising out of a default in the payment of sums*
15 *payable for the right to possess or occupy real property of another*
16 *person;*

17 4. *Sums payable to terminate an agreement to possess or*
18 *occupy real property of another person;*

19 5. *Sums payable to a mortgagor for payment or*
20 *reimbursement of expenses incurred in owning, operating and*
21 *maintaining real property or constructing or installing*
22 *improvements on real property; or*

23 6. *Other sums payable under an agreement relating to the*
24 *real property of another person that constitute rents under law of*
25 *this State other than sections 2 to 50, inclusive, of this act.*

26 **Sec. 22.** *“Secured obligation” means an obligation the*
27 *payment or performance of which is secured by a security*
28 *agreement.*

29 **Sec. 23.** *“Security agreement” means an agreement that*
30 *creates or provides for a lien.*

31 **Sec. 24.** *“Sign” means, with present intent to authenticate or*
32 *adopt a record, to:*

33 1. *Execute or adopt a tangible symbol; or*

34 2. *Attach to or logically associate with the record an*
35 *electronic sound, symbol or process.*

36 **Sec. 25.** *“State” means a state of the United States, the*
37 *District of Columbia, Puerto Rico, the United States Virgin*
38 *Islands or any territory or insular possession subject to the*
39 *jurisdiction of the United States.*

40 **Sec. 26.** 1. *Except as otherwise provided in subsection 2,*
41 *the court may issue an order under sections 2 to 50, inclusive, of*
42 *this act only after notice and opportunity for a hearing appropriate*
43 *in the circumstances.*

44 2. *The court may issue an order under sections 2 to 50,*
45 *inclusive, of this act:*



1 (a) Without prior notice if the circumstances require issuance
2 of an order before notice is given;

3 (b) After notice and without a prior hearing if the
4 circumstances require issuance of an order before a hearing is
5 held; or

6 (c) After notice and without a hearing if no interested party
7 timely requests a hearing.

8 **Sec. 27.** 1. Except as otherwise provided in subsection 2 or
9 3, sections 2 to 50, inclusive, of this act apply to a receivership for
10 an interest in real property and any personal property related to or
11 used in operating the real property.

12 2. Sections 2 to 50, inclusive, of this act do not apply to a
13 receivership for an interest in real property improved by one to
14 four dwelling units unless:

15 (a) The interest is used for agricultural, commercial, industrial
16 or mineral-extraction purposes, other than incidental uses by an
17 owner occupying the property as the owner's primary residence;

18 (b) The interest secures an obligation incurred at a time when
19 the property was used or planned for use for agricultural,
20 commercial, industrial or mineral-extraction purposes;

21 (c) The owner planned or is planning to develop the property
22 into one or more dwelling units to be sold or leased in the ordinary
23 course of the owner's business; or

24 (d) The owner is collecting or has the right to collect rents or
25 other income from the property from a person other than an
26 affiliate of the owner.

27 3. Sections 2 to 50, inclusive, of this act do not apply to a
28 receivership authorized by law of this State other than sections 2
29 to 50, inclusive, of this act in which the receiver is a governmental
30 unit or an individual acting in an official capacity on behalf of the
31 unit except to the extent provided by the other law.

32 4. Sections 2 to 50, inclusive, of this act do not limit the
33 authority of a court to appoint a receiver under law of this State
34 other than sections 2 to 50, inclusive, of this act.

35 5. Unless displaced by a particular provision of sections 2 to
36 50, inclusive, of this act, the principles of law and equity
37 supplement the provisions of sections 2 to 50, inclusive, of this act.

38 **Sec. 28.** The court that appoints a receiver under sections 2
39 to 50, inclusive, of this act has exclusive jurisdiction to direct the
40 receiver and determine any controversy related to the receivership
41 or receivership property.

42 **Sec. 29.** 1. The court may appoint a receiver:

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



(1) Is being subjected to or is in danger of waste, loss, 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; 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, a mortgagee is entitled to appointment of a receiver for the mortgaged property if:

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

(b) The mortgagor agreed in a signed record to 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 appointment of a receiver without prior notice under paragraph (a) of subsection 2 of section 26 of this act or without a prior hearing under paragraph (b) of subsection 2 of section 26 of this act on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's 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, the court shall release the security.

Sec. 30. 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;



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

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

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

6 3. A person is not disqualified from appointment as receiver
7 solely because the person:

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

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

14 (c) Maintains with a party a deposit account as defined in
15 paragraph (cc) of subsection 1 of NRS 104.9102.

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

19 **Sec. 31.** 1. Except as otherwise provided in subsection 2, a
20 receiver shall post with the court a bond that:

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

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

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

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

26 2. The court may approve the posting by a receiver with the
27 court of alternative security, such as a letter of credit or deposit of
28 funds. The receiver may not use receivership property as
29 alternative security. Interest that accrues on deposited funds must
30 be paid to the receiver on the receiver's discharge.

31 3. The court may authorize a receiver to act before the
32 receiver posts the bond or alternative security required by this
33 section.

34 4. A claim against a receiver's bond or alternative security
35 must be made not later than 6 months after the date the receiver is
36 discharged.

37 **Sec. 32.** On appointment of a receiver, the receiver has the
38 status of a lien creditor under:

39 1. NRS 104.9101 to 104.9717, inclusive, as to receivership
40 property that is personal property or fixtures; and

41 2. NRS 111.310 to 111.365, inclusive, as to receivership
42 property that is real property.

43 **Sec. 33.** Except as otherwise provided by law of this State
44 other than sections 2 to 50, inclusive, of this act, property that a
45 receiver or owner acquires after appointment of the receiver is



1 *subject to a security agreement entered into before the*
2 *appointment to the same extent as if the court had not appointed*
3 *the receiver.*

4 **Sec. 34. 1. Unless the court orders otherwise, on demand**
5 **by a receiver:**

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

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

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

16 3. *If a creditor has possession, custody or control of*
17 *receivership property and the validity, perfection or priority of the*
18 *creditor's lien on the property depends on the creditor's*
19 *possession, custody or control, the creditor may retain possession,*
20 *custody or control until the court orders adequate protection of the*
21 *creditor's lien.*

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

26 **Sec. 35. 1. Except as limited by court order or law of this**
27 **State other than sections 2 to 50, inclusive, of this act, a receiver**
28 **may:**

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

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

35 (c) *In the ordinary course of business, incur unsecured debt*
36 *and pay expenses incidental to the receiver's preservation, use,*
37 *sale, lease, license, exchange, collection or disposition of*
38 *receivership property;*

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

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

44 (f) *On subpoena, compel a person to submit to examination*
45 *under oath, or to produce and permit inspection and copying of*



1 *designated records or tangible things, with respect to receivership*
2 *property or any other matter that may affect administration of the*
3 *receivership;*

4 *(g) Engage a professional as provided in section 38 of this act;*

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

8 *(i) Exercise any power conferred by court order, sections 2 to*
9 *50, inclusive, of this act or law of this State other than sections 2*
10 *to 50, inclusive, of this act.*

11 *2. With court approval, a receiver may:*

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

14 *(b) Make improvements to receivership property;*

15 *(c) Use or transfer receivership property other than in the*
16 *ordinary course of business as provided in section 39 of this*
17 *act;*

18 *(d) Adopt or reject an executory contract of the owner as*
19 *provided in section 40 of this act;*

20 *(e) Pay compensation to the receiver as provided in section 44*
21 *of this act, and to each professional engaged by the receiver as*
22 *provided in section 38 of this act;*

23 *(f) Recommend allowance or disallowance of a claim of a*
24 *creditor as provided in section 43 of this act; and*

25 *(g) Make a distribution of receivership property as provided in*
26 *section 43 of this act.*

27 *3. A receiver shall:*

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

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

34 *(c) File in the office of the county recorder a copy of the order*
35 *appointing the receiver and, if a legal description of the real*
36 *property is not included in the order, the legal description;*

37 *(d) Disclose to the court any fact arising during the*
38 *receivership which would disqualify the receiver under section 30*
39 *of this act; and*

40 *(e) Perform any duty imposed by court order, sections 2 to 50,*
41 *inclusive, of this act or law of this State other than sections 2 to*
42 *50, inclusive, of this act.*

43 *4. The powers and duties of a receiver may be expanded,*
44 *modified or limited by court order.*



Sec. 36. 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) On 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, sections 2 to 50, inclusive, of this act or law of this State other than sections 2 to 50, inclusive, of this act.

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's fees and costs; and

(b) Sanction the failure as civil contempt.

Sec. 37. 1. Except as otherwise provided in subsection 4 or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action or proceeding:

(a) To obtain possession of, exercise control over or enforce a judgment against receivership property; and

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

2. Except as otherwise provided in subsection 4, the court may enjoin an act, action or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

3. A person whose act, action or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

4. An order under subsection 1 or 2 does not operate as a stay or injunction of:



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

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

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

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

11 (e) Establishment by a governmental unit of a tax liability
12 against the owner or receivership property or an appeal of the
13 liability.

14 5. The court may void an act that violates a stay or injunction
15 under this section.

16 6. If a person knowingly violates a stay or injunction under
17 this section, the court may:

18 (a) Award actual damages caused by the violation, reasonable
19 attorney's fees and costs; and

20 (b) Sanction the violation as civil contempt.

21 **Sec. 38. 1.** With court approval, a receiver may engage an
22 attorney, accountant, appraiser, auctioneer, broker or other
23 professional to assist the receiver in performing a duty or
24 exercising a power of the receiver. The receiver shall disclose to
25 the court:

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

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

28 (c) Any potential conflict of interest; and

29 (d) The proposed compensation.

30 2. A person is not disqualified from engagement under this
31 section solely because of the person's engagement by,
32 representation of or other relationship with the receiver, a creditor
33 or a party. Sections 2 to 50, inclusive, of this act do not prevent the
34 receiver from serving in the receivership as an attorney,
35 accountant, auctioneer or broker when authorized by law.

36 3. A receiver or professional engaged under subsection 1
37 shall file with the court an itemized statement of the time spent,
38 work performed and billing rate of each person that performed the
39 work and an itemized list of expenses. The receiver shall pay the
40 amount approved by the court.

41 **Sec. 39. 1.** With court approval, a receiver may use
42 receivership property other than in the ordinary course of
43 business.

44 2. With court approval, a receiver may transfer receivership
45 property other than in the ordinary course of business by sale,



1 *lease, license, exchange or other disposition. Unless the agreement*
2 *of sale provides otherwise, a sale under this section is free and*
3 *clear of a lien of the person that obtained appointment of the*
4 *receiver, any subordinate lien and any right of redemption but is*
5 *subject to a senior lien.*

6 3. *A lien on receivership property which is extinguished by a*
7 *transfer under subsection 2 attaches to the proceeds of the transfer*
8 *with the same validity, perfection and priority the lien had on the*
9 *property immediately before the transfer, even if the proceeds are*
10 *not sufficient to satisfy all obligations secured by the lien.*

11 4. *A transfer under subsection 2 may occur by means other*
12 *than a public auction sale. A creditor holding a valid lien on the*
13 *property to be transferred may purchase the property and offset*
14 *against the purchase price part or all of the allowed amount*
15 *secured by the lien, if the creditor tenders funds sufficient to*
16 *satisfy in full the reasonable expenses of transfer and the*
17 *obligation secured by any senior lien extinguished by the transfer.*

18 5. *A reversal or modification of an order approving a transfer*
19 *under subsection 2 does not affect the validity of the transfer to a*
20 *person that acquired the property in good faith or revive against*
21 *the person any lien extinguished by the transfer, whether the*
22 *person knew before the transfer of the request for reversal or*
23 *modification, unless the court stayed the order before the transfer.*

24 6. *As used in this section, “good faith” means honesty in fact*
25 *and the observance of reasonable commercial standards of fair*
26 *dealing.*

27 **Sec. 40. 1.** *Except as otherwise provided in subsection 7,*
28 *with court approval, a receiver may adopt or reject an executory*
29 *contract of the owner relating to receivership property. The court*
30 *may condition the receiver’s adoption and continued performance*
31 *of the contract on terms appropriate under the circumstances. If*
32 *the receiver does not request court approval to adopt or reject the*
33 *contract within a reasonable time after the receiver’s appointment,*
34 *the receiver is deemed to have rejected the contract.*

35 2. *A receiver’s performance of an executory contract before*
36 *court approval under subsection 1 of its adoption or rejection is*
37 *not an adoption of the contract and does not preclude the receiver*
38 *from seeking approval to reject the contract.*

39 3. *A provision in an executory contract which requires or*
40 *permits a forfeiture, modification or termination of the contract*
41 *because of the appointment of a receiver or the financial condition*
42 *of the owner does not affect a receiver’s power under subsection 1*
43 *to adopt the contract.*

44 4. *A receiver’s right to possess or use receivership property*
45 *pursuant to an executory contract terminates on rejection of the*



1 *contract under subsection 1. Rejection is a breach of the contract*
2 *effective immediately before appointment of the receiver. A claim*
3 *for damages for rejection of the contract must be submitted by the*
4 *later of:*

5 *(a) The time set for submitting a claim in the receivership; or*

6 *(b) Thirty days after the court approves the rejection.*

7 *5. If, at the time a receiver is appointed, the owner has the*
8 *right to assign an executory contract relating to receivership*
9 *property under law of this State other than sections 2 to 50,*
10 *inclusive, of this act, the receiver may assign the contract with*
11 *court approval.*

12 *6. If a receiver rejects under subsection 1 an executory*
13 *contract for the sale of receivership property that is real property*
14 *in possession of the purchaser or a real-property timeshare*
15 *interest, the purchaser may:*

16 *(a) Treat the rejection as a termination of the contract, and in*
17 *that case the purchaser has a lien on the property for the recovery*
18 *of any part of the purchase price the purchaser paid; or*

19 *(b) Retain the purchaser's right to possession under the*
20 *contract, and in that case the purchaser shall continue to perform*
21 *all obligations arising under the contract and may offset any*
22 *damages caused by nonperformance of an obligation of the owner*
23 *after the date of the rejection, but the purchaser has no right or*
24 *claim against other receivership property or the receiver on*
25 *account of the damages.*

26 *7. A receiver may not reject an unexpired lease of real*
27 *property under which the owner is the landlord if:*

28 *(a) The tenant occupies the leased premises as the tenant's*
29 *primary residence;*

30 *(b) The receiver was appointed at the request of a person other*
31 *than a mortgagee; or*

32 *(c) The receiver was appointed at the request of a mortgagee*
33 *and:*

34 *(1) The lease is superior to the lien of the mortgage;*

35 *(2) The tenant has an enforceable agreement with the*
36 *mortgagee or the holder of a senior lien under which the tenant's*
37 *occupancy will not be disturbed as long as the tenant performs its*
38 *obligations under the lease;*

39 *(3) The mortgagee has consented to the lease, either in a*
40 *signed record or by its failure timely to object that the lease*
41 *violated the mortgage; or*

42 *(4) The terms of the lease were commercially reasonable at*
43 *the time the lease was agreed to and the tenant did not know or*
44 *have reason to know that the lease violated the mortgage.*



1 8. As used in this section, "timeshare interest" means an
2 interest having a duration of more than 3 years which grants its
3 holder the right to use and occupy an accommodation, facility or
4 recreational site, whether improved or not, for a specific period
5 less than a full year during any given year.

6 **Sec. 41.** 1. A receiver is entitled to all defenses and
7 immunities provided by law of this State other than sections 2 to
8 50, inclusive, of this act for an act or omission within the scope of
9 the receiver's appointment.

10 2. A receiver may be sued personally for an act or omission in
11 administering receivership property only with approval of the
12 court that appointed the receiver.

13 **Sec. 42.** A receiver may file or, if ordered by the court, shall
14 file an interim report that includes:

15 1. The activities of the receiver since appointment or a
16 previous report;

17 2. Receipts and disbursements, including a payment made or
18 proposed to be made to a professional engaged by the receiver;

19 3. Receipts and dispositions of receivership property;

20 4. Fees and expenses of the receiver and, if not filed
21 separately, a request for approval of payment of the fees and
22 expenses; and

23 5. Any other information required by the court.

24 **Sec. 43.** 1. Except as otherwise provided in subsection 6, a
25 receiver shall give notice of appointment of the receiver to
26 creditors of the owner by:

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

30 (b) Publication as directed by the court.

31 2. Except as otherwise provided in subsection 6, the notice
32 required by subsection 1 must specify the date by which each
33 creditor holding a claim against the owner which arose before
34 appointment of the receiver must submit the claim to the receiver.
35 The date specified must be at least 90 days after the later of notice
36 under paragraph (a) of subsection 1 or last publication under
37 paragraph (b) of subsection 1. The court may extend the period for
38 submitting the claim. Unless the court orders otherwise, a claim
39 that is not submitted timely is not entitled to a distribution from the
40 receivership.

41 3. A claim submitted by a creditor under this section must:

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

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

44 (c) Identify any property securing the claim;

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



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

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

5. At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow the claim according to law of this State other than sections 2 to 50, inclusive, of this act.

6. If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

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

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

7. Subject to section 44 of this act:

(a) A distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under law of this State other than sections 2 to 50, inclusive, of this act; and

(b) A distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to law of this State other than sections 2 to 50, inclusive, of this act.

Sec. 44. 1. The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

2. The court may order one or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs:

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

(b) A person whose conduct justified or would have justified the appointment of the receiver under paragraph (a) of subsection 1 of section 29 of this act.

Sec. 45. 1. The court may remove a receiver for cause.

2. The court shall replace a receiver that dies, resigns or is removed.

3. If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership



1 *property and has filed a report of all receipts and disbursements*
2 *during the service of the replaced receiver, the replaced receiver is*
3 *discharged.*

4 *4. The court may discharge a receiver and terminate the*
5 *court's administration of the receivership property if the court*
6 *finds that appointment of the receiver was improvident or that the*
7 *circumstances no longer warrant continuation of the receivership.*
8 *If the court finds that the appointment was sought wrongfully or*
9 *in bad faith, the court may assess against the person that sought*
10 *the appointment:*

11 *(a) The fees and expenses of the receivership, including*
12 *reasonable attorney's fees and costs; and*

13 *(b) Actual damages caused by the appointment, including*
14 *reasonable attorney's fees and costs.*

15 **Sec. 46. 1. On completion of a receiver's duties, the**
16 **receiver shall file a final report including:**

17 *(a) A description of the activities of the receiver in the conduct*
18 *of the receivership;*

19 *(b) A list of receivership property at the commencement of the*
20 *receivership and any receivership property received during the*
21 *receivership;*

22 *(c) A list of disbursements, including payments to*
23 *professionals engaged by the receiver;*

24 *(d) A list of dispositions of receivership property;*

25 *(e) A list of distributions made or proposed to be made from*
26 *the receivership for creditor claims;*

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

29 *(g) Any other information required by the court.*

30 **2. If the court approves a final report filed under subsection 1**
31 **and the receiver distributes all receivership property, the receiver**
32 **is discharged.**

33 **Sec. 47. 1. The court may appoint a receiver appointed in**
34 **another state, or that person's nominee, as an ancillary receiver**
35 **with respect to property located in this State or subject to the**
36 **jurisdiction of the court for which a receiver could be appointed**
37 **under sections 2 to 50, inclusive, of this act if:**

38 *(a) The person or nominee would be eligible to serve as*
39 *receiver under section 30 of this act; and*

40 *(b) The appointment furthers the person's possession, custody,*
41 *control or disposition of property subject to the receivership in the*
42 *other state.*

43 **2. The court may issue an order that gives effect to an order**
44 **entered in another state appointing or directing a receiver.**



1 3. *Unless the court orders otherwise, an ancillary receiver*
2 *appointed under subsection 1 has the rights, powers, and duties of*
3 *a receiver appointed under sections 2 to 50, inclusive, of this act.*

4 **Sec. 48.** *1. A request by a mortgagee for appointment of a*
5 *receiver, the appointment of a receiver or the application by a*
6 *mortgagee of receivership property or proceeds to the secured*
7 *obligation does not:*

8 (a) *Make the mortgagee a mortgagee in possession of the real*
9 *property;*

10 (b) *Make the mortgagee an agent of the owner;*

11 (c) *Constitute an election of remedies that precludes a later*
12 *action to enforce the secured obligation;*

13 (d) *Make the secured obligation unenforceable;*

14 (e) *Limit any right available to the mortgagee with respect to*
15 *the secured obligation;*

16 (f) *Constitute an action within the meaning of subsection 1 of*
17 *NRS 40.430; or*

18 (g) *Except as otherwise provided in subsection 2, bar a*
19 *deficiency judgment pursuant to law of this State other than*
20 *sections 2 to 50, inclusive, of this act governing or relating to a*
21 *deficiency judgment.*

22 2. *If a receiver sells receivership property that pursuant to*
23 *subsection 2 of section 39 of this act is free and clear of a lien, the*
24 *ability of a creditor to enforce an obligation that had been secured*
25 *by the lien is subject to law of this State other than sections 2 to*
26 *50, inclusive, of this act relating to a deficiency judgment.*

27 **Sec. 49.** *In applying and construing the Uniform*
28 *Commercial Real Estate Receivership Act, consideration must be*
29 *given to the need to promote uniformity of the law with respect to*
30 *its subject matter among states that enact it.*

31 **Sec. 50.** *Sections 2 to 50, inclusive, of this act modify, limit*
32 *and supersede the Electronic Signatures in Global and National*
33 *Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify,*
34 *limit or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c),*
35 *or authorize electronic delivery of any of the notices described in*
36 *Section 103(b) of that act, 15 U.S.C. § 7003(b).*

37 **Sec. 51.** *This act does not apply to a receivership for which the*
38 *receiver was appointed before October 1, 2017.*

