

CHAPTER 2020-106

Committee Substitute for House Bill No. 783

An act relating to the Uniform Commercial Real Estate Receivership Act; creating chapter 714, F.S., relating to the Uniform Commercial Real Estate Receivership Act; providing a short title; defining terms; prohibiting a court from issuing certain orders unless certain requirements are met; providing requirements for certain court orders; providing construction and applicability; specifying that a court has exclusive jurisdiction to direct receivers and determine controversies under certain circumstances; providing requirements and authorizations relating to the appointment of a receiver; authorizing certain parties to move to dissolve or modify certain orders; requiring that such motions be heard within a specified timeframe; specifying when a person is or is not disqualified from appointment as a receiver; authorizing certain persons to nominate someone to serve as a receiver; specifying that the court is not bound by such nomination; requiring a receiver to post a bond with the court which meets certain requirements; providing an exception; prohibiting a claim against a receiver's bond or alternative security from being made after a certain time; providing that an appointed receiver has certain statuses of a lien creditor; providing that certain property is subject to specified security agreements; providing requirements relating to the collection and turnover of receivership property; providing for powers and duties of a receiver; authorizing the court to expand, modify, or limit such powers and duties; providing for duties of an owner; authorizing a court to take certain actions if a person knowingly fails to perform a duty; authorizing a court to take certain actions relating to stays and injunctions; providing requirements for certain injunctions; authorizing certain persons to apply for relief from a stay or injunction; requiring that certain motions be heard within a specified timeframe; specifying when an order does not operate as a stay or injunction; authorizing receivers to engage and compensate certain professionals under certain circumstances; requiring certain persons to file an itemized statement with the court; requiring a receiver to pay an amount approved by the court; defining the term "good faith"; authorizing a receiver to use or transfer receivership property other than in the ordinary course of business under certain circumstances; providing for the service of notice to lienholders who are not parties to the action; defining the term "timeshare interest"; authorizing a receiver to adopt or reject an executory contract of the owner relating to receivership property under certain circumstances; requiring that a claim of damages for rejection of a contract be submitted within a specified timeframe; authorizing a purchaser to take certain actions if a receiver rejects an executory contract under certain circumstances; prohibiting a receiver from rejecting unexpired leases of certain property under certain circumstances; providing for defenses and immunities of a receiver; providing requirements for interim reports filed by a receiver; providing requirements relating to notices of appointment; authorizing

the court to enter certain orders if the court concludes that receivership property is likely to be insufficient to satisfy certain claims; providing requirements for certain distributions of receivership property; authorizing a court to award fees and expenses; authorizing a court to order certain persons to pay fees and expenses; providing for the removal and replacement of a receiver and the termination of a court's administration of the receivership property under certain circumstances; requiring a receiver to file a final report containing certain information upon completion of the receiver's duties; specifying that a receiver is discharged if certain requirements are met; authorizing a court to appoint ancillary receivers under certain circumstances; providing for rights, powers, and duties of an ancillary receiver; specifying that certain requests, appointments, and applications by a mortgagee do not have certain effects; providing construction and applicability; providing an effective date.

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

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

CHAPTER 714
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;

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

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

(3) “Court” means the court of general equity jurisdiction in this state.

(4) “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.

(5) “Governmental unit” means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

(6) “Lien” means an interest in property which secures payment or performance of an obligation.

(7) “Mortgage” means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if the record also creates or provides for a lien on personal property.

(8) “Mortgagee” means a person entitled to enforce an obligation secured by a mortgage.

(9) “Mortgagor” means a person who grants a mortgage or a successor in ownership of the real property described in the mortgage.

(10) “Owner” means the person for whose property a receiver is appointed.

(11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality or other legal entity.

(12) “Proceeds” means any of the following property:

(a) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property.

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

(c) Rights arising out of receivership property.

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

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

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

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

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

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

(17) "Record," if used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(18) "Rents" means:

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

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

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

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

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

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

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

(20) “Security agreement” means an agreement that creates or provides for a lien.

(21) “Sign” means, with present intent to authenticate or adopt a record:

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

(b) To attach to or logically associate with the record an electronic sound, symbol, or process.

(22) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

714.03 Notice and opportunity for hearing.—

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

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

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

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

(3) Only an affidavit, a declaration or a verified pleading, or a motion may be used to support the application for the appointment of a receiver, unless the adverse party appears at the hearing or has received reasonable prior notice of the hearing. Every order appointing a receiver without notice must be endorsed with the date and hour of entry, must be filed forthwith in the clerk’s office, must define the injury, must state findings by the court as to why the injury may be irreparable, and must give the reasons why the order was granted without notice if notice was not given. The order appointing a receiver shall remain in effect until the further order of the court.

(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 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 must be heard within 5 days 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. 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 (5), 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 (5), 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 other document. 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.

(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 must be heard within 5 days 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. 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 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 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 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 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 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 an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment.

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

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

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

714.17 Executory contract.—

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

(2) Except as otherwise provided in subsection (8), with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver’s adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or

reject the contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract.

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

(4) A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (2) to adopt the contract.

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

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

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

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

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

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

(b) Retain the purchaser's right to possession under the contract. If the purchaser retains his or her right to possession pursuant to this paragraph, the purchaser must continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser does not have a right or claim against other receivership property or the receiver on account of the damages.

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

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

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

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

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

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

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

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

714.18 Defenses and immunities of receiver.—

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

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

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

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

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

(3) Receipts and dispositions of receivership property;

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

(5) Any other information required by the court.

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

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

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

(b) Publication as directed by the court.

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

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

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

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

(c) Identify any property securing the claim;

(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 the laws of this state other than this chapter.

(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 s. 714.21:

(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 the laws of this state other than this chapter; and

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

714.21 Fees and expenses.—

(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 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 s. 714.06(1)(a).

714.22 Removal of receiver; replacement; termination of receivership.

(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 property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

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

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

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

714.23 Final report of receiver; discharge.—

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

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

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

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

(d) A list of dispositions of receivership property;

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

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

(g) Any other information required by the court.

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

714.24 Receivership in another state; ancillary proceeding.—

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

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

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

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

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

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

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

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

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

(4) Make the secured obligation unenforceable;

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

(6) Constitute an action under chapter 702.

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

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

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

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

Approved by the Governor June 27, 2020.

Filed in Office Secretary of State June 27, 2020.