RECEIVERSHIP ACT

Act 16 of 2018

AN ACT to enact the receivership act; to provide for the appointment of receivers to take possession of commercial property of another and to receive, collect, care for, and dispose of the property or proceeds of the property; and to provide remedies related to the receiverships.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

The People of the State of Michigan enact:

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554.1011 Short title.

Sec. 1.

This act shall be known and may be cited as the "receivership act".

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1012 Definitions.

Sec. 2.

As used in this act:

(a) "Affiliate" means all of the following:

(i) With respect to an individual, any of the following:

(A) A companion of the individual.

(B) A lineal ancestor or descendant, whether by blood or adoption, of either of the following:

(I) The individual.

(II) A companion of the individual.

(C) A companion of an ancestor or descendant described in sub-subparagraph (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.

(E) Any other individual occupying the residence of the individual.

(ii) With respect to a person other than an individual, any of the following:

(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.

(C) A companion of, or an individual occupying the residence of, an individual described in sub-subparagraph (A) or (B).

(b) "Companion" means any of the following:

(i) The spouse of an individual.

(ii) The domestic partner of an individual.

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

(c) "Court" means the circuit court.

(d) "Court rules" means the rules adopted by the supreme court under section 5 of article VI of the state constitution of 1963, including the most recent amendments.

(e) "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.

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

(g) "Lien" means an interest in property that secures payment or performance of an obligation.

(h) "Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if it also creates or provides for a lien on personal property.

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

(j) "Mortgagor" means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

(k) "Owner" means the person for whose property a receiver is appointed.

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

(m) "Proceeds" means any of the following property:

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

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

(iii) Rights arising out of receivership property.

(iv) 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.

(v) 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.

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

(o) "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 act or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

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

(q) "Receivership property" means the property of an owner that 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.

(r) "Record", 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.

(s) "Rents" means all of the following:

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

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

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

(iv) Sums payable to terminate an agreement to possess or occupy real or personal property of another person.

(v) 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.

(vi) Other sums payable under an agreement relating to the real or personal property of another person that constitute rents under law of this state other than this act.

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

(u) "Secured party" means a person entitled to enforce a secured obligation or lien.

(v) "Security agreement" means an agreement that creates or provides for a lien, including a mortgage.

(w) "Sign" means to do any of the following with present intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

(ii) Attach to or logically associate with the record an electronic sound, symbol, or process.

(x) "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.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1013 Court order; issuance; notice and hearing; circumstances.

Sec. 3.

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

(2) The court may issue an order under this act under the following circumstances:

(a) Without prior notice if cause exists to require issuance of an order before notice is given.

(b) After notice and without a prior hearing if cause exists to require issuance of an order before a hearing is held.

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

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1014 Applicability of act; scope; limitation.

Sec. 4.

(1) Except as otherwise provided in subsection (2) or (3), this act applies to a receivership for an interest in any of the following commercial property:

(a) Real property, fixtures, and any personal property related to or used in operating the real property.

(b) Personal property.

(2) This act does not apply to a receivership for an interest in real property improved by 1 to 4 dwelling units unless 1 or more of the following applies:

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

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

(c) The owner planned or is planning to develop the property into 1 or more dwelling units to be sold or leased in the ordinary course of the owner's business.

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

(3) This act does not apply to a receivership authorized by law of this state other than this act in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit except to the extent provided by the other law.

(4) This act does not limit the authority of a court to appoint a receiver under law of this state other than this act.

(5) Unless displaced by a particular provision of this act, the principles of law and equity supplement this act.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1015 Selection, appointment, removal, and compensation of receiver; establishment by court rule; jurisdiction.

Sec. 5.

(1) Except as provided in this act, the procedure for the selection, appointment, removal, and compensation of a receiver, or a professional engaged under section 15, under this act is as established by the court rules.

(2) The court that appoints a receiver under this act has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1016 Appointment of receiver; circumstances; appointment without prior notice or hearing; security.

Sec. 6.

(1) The court may appoint a receiver as follows:

(a) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, under either of the following circumstances:

(i) The property or its revenue-producing potential is being subjected to or is in danger of waste, loss, dissipation, or impairment.

(ii) The property or its revenue-producing potential has been or is about to be the subject of a voidable transaction.

(b) After judgment for any of the following reasons:

(i) To carry the judgment into effect.

(ii) To preserve nonexempt 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) If a receiver may be appointed on equitable grounds.

(d) During the time allowed for redemption, to preserve 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 security agreement or lien, the court may appoint a receiver for the property under any of the following circumstances:

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

(b) The person that granted a lien in the property 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 held by the secured party is not sufficient to satisfy the secured obligation.

(e) The owner fails to turn over to the secured party proceeds or rents the secured party was entitled to collect.

(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 section 3(2)(a) or without a prior hearing under section 3(2)(b) 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, the court shall release the security.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1017 Appointment of receiver; objection; requirements; disqualifications.

Sec. 7.

(1) If a court determines there is good cause to appoint a receiver, the court shall select the receiver in accordance with this section. A receiver selected by the court must have sufficient competence, qualifications, and experience to administer the receivership estate.

(2) The party moving for the appointment of a receiver may request, or the parties may stipulate to, the selection of a receiver. The moving party shall describe how the nominated receiver meets the requirements of this section.

(3) If the nonmoving party does not file an objection to the moving party's nominated receiver within 14 days after the complaint or motion is served, or if the parties stipulate to the selection of the receiver, the court shall appoint the receiver nominated by the party or parties, unless the court determines that a different receiver should be appointed. All of the following apply to an objection to a receiver:

(a) The party filing an objection to a nominated receiver shall submit an alternative nominee for appointment as receiver and serve the objection on all parties, as required by the court rules, with a notice of hearing.

(b) If the court appoints a different receiver under this section, within 14 days after the appointment, any party may file an objection to the receiver and submit an alternative nominee for appointment as receiver.

(c) An objecting party shall describe how the alternative nominee meets the requirements for a receiver under this section.

(d) The court may, in its discretion, with or without motion or notice, order the period for objection to a receiver reduced. If the court exercises this discretion, the court shall identify and show good cause for the reduction.

(4) If the court appoints a different receiver under subsection (3), or if a party objects to a receiver and nominates a new receiver under this section, the court or objecting party shall state its rationale for selecting that particular receiver after considering all of the following factors:

(a) The experience of the receiver in the operation or liquidation of the type of assets to be administered.

(b) Relevant business, legal, or receivership knowledge of the receiver.

(c) The receiver's ability to obtain the required bonding if more than a nominal bond is required.

(d) Whether the receiver is disqualified under this section.

(e) Any other factors the court determines to be appropriate.

(5) Except as otherwise provided in subsection (6), a person is disqualified from appointment as receiver if 1 or more of the following apply:

(a) The person is an affiliate of a party.

(b) The person has an interest materially adverse to an interest of a party.

(c) The person has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver.

(d) The person has a debtor-creditor relationship with a party.

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

(6) A person is not disqualified from appointment as receiver solely because 1 or more of the following apply:

(a) The person 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) The person 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.

(c) The person maintains with a party a deposit account as defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1018 Bond; alternative security.

Sec. 8.

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

(a) The bond is conditioned on the faithful discharge of the receiver's duties.

(b) The bond has 1 or more sureties approved by the court.

(c) The bond is in an amount the court specifies.

(d) The bond is effective as of the date of the receiver's appointment.

(2) The court may approve the posting by a receiver with the court of alternative security, 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 on 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.

(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.

History: 2018, Act 16, Eff. May 7, 2018

554.1019 Status of receiver as lien creditor.

Sec. 9.

On appointment of a receiver, the receiver has the status of a lien creditor under both of the following:

(a) Article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to 440.9809, as to receivership property that is personal property or fixtures.

(b) The recording statutes of this state as to receivership property that is real property.

History: 2018, Act 16, Eff. May 7, 2018

554.1020 Acquisition of property after appointment as receiver; security agreement.

Sec. 10.

Except as otherwise provided by law of this state other than this act, property that a receiver or 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.

History: 2018, Act 16, Eff. May 7, 2018

554.1021 Receivership property; duties of person upon demand of receiver; failure to turn over property; sanction.

Sec. 11.

(1) Unless the court orders otherwise, a person shall do both of the following on demand by a receiver, as applicable:

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

(b) Subject to subsection (3), if the person has possession, custody, or control of receivership property, 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 contempt a person's failure to turn the property over when required by this section.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1022 Powers and duties of receiver.

Sec. 12.

(1) Except as limited by court order or applicable law, a receiver may do all of the following:

(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 that 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) On 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 as provided in section 15.

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

(i) Exercise any power conferred by court order, this act, or law of this state other than this act.

(2) With court approval, a receiver may do any of the following:

(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 as provided in section 16.

(d) Adopt or reject an executory contract of the owner as provided in section 17.

(e) Pay compensation to the receiver as provided in section 21, and to each professional engaged by the receiver as provided in section 15.

(f) Recommend allowance or disallowance of a claim of a creditor as provided in section 20.

(g) Make a distribution of receivership property as provided in section 20.

(3) A receiver shall do all of the following:

(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 appropriate real property recording office 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.

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(d) Disclose to the court any fact arising during the receivership that would disqualify the receiver under section 7.

(e) Perform any duty imposed by court order, this act, or law of this state other than this act.

(4) The powers and duties of a receiver may be expanded, modified, or limited by court order on reasonable notice as determined by the court.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1023 Duties of owner.

Sec. 13.

(1) An owner shall do all of the following:

(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) Except as may be otherwise ordered by the court for cause, within 7 days after the entry of the order appointing the receiver, deliver to the receiver a list containing the name and address of all creditors and other known interested parties of the receivership estate.

(e) 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.

(f) Perform any duty imposed by court order, this act, or law of this state other than 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 do 1 or both of the following:

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

(b) Sanction the failure as contempt.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1024 Stay or injunction.

Sec. 14.

(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 to do any of the following:

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(a) Obtain possession of, exercise control over, or enforce a judgment against receivership property.

(b) Enforce a lien against receivership property to the extent the lien secures a claim against the owner that 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 any of the following:

(a) An act, action, or proceeding to foreclose or otherwise enforce a security agreement by the person seeking appointment of the receiver.

(b) An 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.

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

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

(6) If a person knowingly violates a stay or injunction under this section, the court may do 1 or both of the following:

(a) Award actual damages caused by the violation, reasonable attorney fees, and costs.

(b) Sanction the violation as contempt.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1025 Engagement of professional; compensation.

Sec. 15.

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

(d) The proposed compensation.

(2) 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.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1026 "Good faith" defined; use or transfer of receivership property not in ordinary course of business.

Sec. 16.

(1) As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(2) With court approval, a receiver may use receivership property other than in the ordinary course of business.

(3) With court approval, and after notice and an opportunity for a hearing is given to all creditors and other known interested parties unless the court orders otherwise for cause, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption but is subject to a senior lien.

(4) A lien on receivership property that is extinguished by a transfer under subsection (3) attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(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.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1027 "Timeshare interest" defined; executory contract.

Sec. 17.

(1) As used in this section, "timeshare interest" means either of the following, as applicable:

(a) Unless subdivision (b) applies, an interest having a duration of more than 3 years that grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

(b) If the condominium act, 1978 PA 59, MCL 559.101 to 559.276, applies, a time-share estate or a time-share license, as those terms are defined in section 10 of the condominium act, 1978 PA 59, MCL 559.110.

(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 that 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 the following:

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

(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 law of this state other than this act, the receiver may assign the contract with court approval.

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

(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.

(b) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall 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 has no 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 1 or more of the following apply:

(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.

(c) The receiver was appointed at the request of a mortgagee and 1 or more of the following apply:

(i) The lease is superior to the lien of the mortgage.

(ii) 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.

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

(iv) 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.

History: 2018, Act 16, Eff. May 7, 2018

554.1028 Defenses and immunities of receiver.

Sec. 18.

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

(2) Leave of the appointing court must be obtained before the institution of any action or proceeding against a receiver or a professional engaged by the receiver.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1029 Quarterly interim report of receiver.

Sec. 19.

Except as otherwise ordered by the court for cause, a receiver shall file quarterly interim reports that include all of the following:

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

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

(c) Receipts and dispositions of receivership property.

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

(e) Any other information required by the court.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1030 Notice of order governing appointment; notice to all creditors; claim; distribution of receivership property.

Sec. 20.

(1) Within 7 days after the receipt by the receiver of the list required under section 13(1)(d), the receiver shall provide all creditors and any other known interested parties with notice and a copy of any order governing its appointment. Notwithstanding the foregoing, the court may delay, limit, or eliminate the notice required by this subsection on finding that cause exists for doing so.

(2) If the receiver concludes that receivership property is likely to be sufficient to provide a distribution to creditors other than those holding a perfected lien on the property, the court shall order that the receiver give notice to all creditors and any other known interested parties that they need to submit claims under this section.

(3) When notice is given under subsection (1) or (2), it must be given by both of the following:

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

(b) Publication as directed by the court.

(4) Except as otherwise directed by the court, the notice required by subsection (1) must specify the date by which each creditor holding a claim against the owner that 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 subsection (3)(a) or last publication under subsection (3)(b). The court may extend the period for submitting the claim. Unless the court

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

(5) A claim submitted by a creditor under this section must satisfy all of the following requirements:

(a) The claim must state the name and address of the creditor.

(b) The claim must state the amount and basis of the claim.

(c) The claim must identify any property securing the claim.

(d) The claim must be signed by the creditor under penalty of perjury.

(e) The claim must include a copy of any record on which the claim is based.

(6) 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.

(7) 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 this act.

(8) Subject to section 21, both of the following apply to a distribution of receivership property:

(a) If the distribution is to a creditor holding a perfected lien on the property, the distribution must be made in accordance with the creditor's priority under law of this state other than this act.

(b) If the distribution is to a creditor with an allowed unsecured claim, the distribution must be made as the court directs according to law of this state other than this act.

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History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1031 Fees and expenses.

Sec. 21.

(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 1 or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney fees and costs and any fees and expenses of professionals engaged under section 15:

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

(b) A person whose conduct justified or would have justified the appointment of the receiver under section 6(1)(a).

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1032 Removal of receiver; replacement; discharge; termination.

Sec. 22.

(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 both of the following against the person that sought the appointment:

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

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

History: 2018, Act 16, Eff. May 7, 2018

554.1033 Final report of receiver; contents; discharge.

Sec. 23.

(1) On completion of a receiver's duties, the receiver shall file a final report including all of the following:

(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.

(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.

History: 2018, Act 16, Eff. May 7, 2018

554.1034 Receivership in another state; rights, powers, and duties of ancillary receiver.

Sec. 24.

(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 act, if both of the following apply:

(a) The person or nominee would be eligible to serve as receiver under section 7.

(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 act.

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History: 2018, Act 16, Eff. May 7, 2018

554.1035 Enforcement by secured party; effect.

Sec. 25.

A request by a secured party for appointment of a receiver, the appointment of a receiver, or application by a secured party of receivership property or proceeds to the secured obligation does not do any of the following:

(a) Make the secured party a mortgagee in possession of the real property.

(b) Impose any duty on the secured party under section 9207 of the uniform commercial code, 1962 PA 174, MCL 440.9207.

(c) Make the secured party an agent of the owner.

(d) Constitute an election of remedies that precludes a later action to enforce the secured obligation.

(e) Make the secured obligation unenforceable.

(f) Limit any right available to the secured party with respect to the secured obligation.

(g) Constitute an action within the meaning of section 3204(1)(b) of the revised judicature act of 1961, 1961 PA 236, MCL 600.3204.

History: 2018, Act 16, Eff. May 7, 2018 ;-- Am. 2020, Act 210, Imd. Eff. Oct. 15, 2020

554.1036 Uniformity of law.

Sec. 26.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: 2018, Act 16, Eff. May 7, 2018

554.1037 Electronic signatures in global and national commerce act.

Sec. 27.

This act modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 USC 7001 to 7031, but does not modify, limit, or supersede 15 USC 7001(c) or authorize electronic delivery of any of the notices described in 15 USC 7003(b).

History: 2018, Act 16, Eff. May 7, 2018

554.1038 Receiver appointed before effective date of act.

Sec. 28.

This act does not apply to a receivership for which the receiver was appointed before the effective date of this act.

History: 2018, Act 16, Eff. May 7, 2018

554.1040 Effective date.

Sec. 30.

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This act takes effect 90 days after the date it is enacted into law.

History: 2018, Act 16, Eff. May 7, 2018

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