CBA LPRC POSITION REQUEST FORM

The CBA Real Property Section position request is as follows:

1) Proposed legislative concept:

To propose and/or support the adoption in Connecticut of the Uniform Commercial Real Estate Receivership Act.

2) Explanation and rationale for advancing this position:

Receivership is an equitable remedy allowing a court to oversee the orderly management and disposition of property subject to a lawsuit. Although the remedy is not new, there is no standard set of receivership rules and the courts of different states have applied widely varying standards. This Uniform Commercial Real Estate Receivership Act applies to receiverships involving commercial real estate, and provides a standard set of rules for courts to apply. It will result in greater predictability for litigants, lenders, and other parties doing business with a company subject to receivership

3) Is draft legislation or a proposed bill included?

The legislation would mirror the Uniform Act drafted by the Uniform Law Commission, which is attached.

4) What is the date of any legislative hearing, if known?

Unknown.

5) Was this position previously approved by the CBA? If so, when does/did it expire?

No.

6) Is the CBA section or committee seeking to join a previously approved CBA section or committee position?

No.

7) Potential or actual CBA opposition from another CBA section or committee?

None anticipated.

8) Strength of section position (including process and results of section vote taken on issue):

Unanimous vote to approve by the Section at the May, 2018 meeting.

9) Fiscal impact (on the state):

None anticipated.

10) Are you seeking "fast-track" approval?

Yes.

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FOURTH YEAR
WILLIAMSBURG, VIRGINIA
JULY 10 - JULY 16, 2015

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

July 29, 2016

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Commercial Real Estate Receivership Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Affiliate" means:

(A) with respect to an individual:

(i) a companion of the individual;

(ii) a lineal ancestor or descendant, whether by blood or adoption, of:

(I) the individual; or

(II) a companion of the individual;

(iii) a companion of an ancestor or descendant described in clause (ii);

(iv) 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

(v) any other individual occupying the residence of the individual; and

(B) with respect to a person other than an individual:

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

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

(iii) a companion of, or an individual occupying the residence of, an individual described in clause (i) or (ii).

(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 [identify 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 it 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 that 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 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; or

(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 [act] 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", 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 law 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.

SECTION 3. NOTICE AND OPPORTUNITY FOR HEARING.

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

(b) The court may issue an order under this [act]:

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

(2) after notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held; or

(3) after notice and without a hearing if no interested party timely requests a hearing.

SECTION 4. SCOPE; EXCLUSIONS.

(a) Except as otherwise provided in subsection (b) or (c), this [act] applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

(b) This [act] does not apply to a receivership for an interest in real property improved by one to four dwelling units unless:

(1) 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;

(2) 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;

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

(4) 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.

(c) 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].

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

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

Legislative Note: *In many states, there are statutes under which a governmental unit or official may be appointed as a receiver for an organization such as a hospital, insurance company, or other organization affected with a public interest. This act generally would not govern the receivership, but the bracketed language at the end of subsection (c) would permit a state to modify its existing receivership statute to incorporate some or all provisions of this act.*

SECTION 5. POWER OF COURT. 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.

Legislative Note: *This section is appropriate in a state where a court in one county, circuit, or district may issue orders with statewide effect and has the power to act on property located in another county, circuit, or district within the state. In a state where a court in one county, circuit, or district may appoint a receiver but an order entered by the court in that county, circuit, or district lacks statewide effect, the state should modify this section to make clear that an order of a court appointing a receiver under this act has statewide effect.*

SECTION 6. APPOINTMENT OF RECEIVER.

(a) The court may appoint a receiver:

(1) 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:

(A) is being subjected to or is in danger of waste, loss, dissipation, or impairment; or

(B) has been or is about to be the subject of a voidable transaction;

(2) after judgment:

(A) to carry the judgment into effect; or

(B) 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; [or]

(3) in an action in which a receiver for real property may be appointed on equitable grounds[; or

(4) 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].

(b) In connection with the foreclosure or other enforcement of a mortgage, [a mortgagee is entitled to appointment of][the court may appoint] a receiver for the mortgaged property if:

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

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

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

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

(5) the owner fails to turn over to the mortgagee proceeds or rents the mortgagee

was entitled to collect; or

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

(c) The court may condition appointment of a receiver without prior notice under Section 3(b)(1) or without a prior hearing under Section 3(b)(2) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

Legislative Note: *Subsection (a)(4) permits the court to appoint a receiver for the property and its rents during the redemption period. It would be appropriate in a state that provides a post-sale statutory redemption right.*

Subsection (b) includes bracketed alternatives. Under the first, a mortgagee is entitled to appointment of a receiver in the six circumstances listed in subsection (b). Under the second, these six circumstances would justify appointment of a receiver, but appointment would be subject to the court's discretion rather than an entitlement. Under Section 7 of the Uniform Assignment of Rents Act (UARA), an assignee of rents is entitled to appointment of a receiver under the circumstances expressed in subsection (b). Thus, in a jurisdiction that has enacted UARA, subsection (b) should use the first bracketed alternative to avoid the risk that adoption of this act might create an implied repeal of UARA Section 7. Even if a jurisdiction has not adopted UARA, it may still wish to enact the first bracketed alternative.

SECTION 7. DISQUALIFICATION FROM APPOINTMENT AS RECEIVER; DISCLOSURE OF INTEREST.

(a) 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.

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

(1) is an affiliate of a party;

(2) has an interest materially adverse to an interest of a party;

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

(4) has a debtor-creditor relationship with a party; or

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

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

(1) 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;

(2) 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

(3) maintains with a party a deposit account as defined in [U.C.C. Section 9-102(a)(29)].

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

SECTION 8. RECEIVER'S BOND; ALTERNATIVE SECURITY.

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

(1) is conditioned on the faithful discharge of the receiver's duties;

(2) has one or more sureties approved by the court;

(3) is in an amount the court specifies; and

(4) is effective as of the date of the receiver's appointment.

(b) 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.

(c) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

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

Legislative Note: *Subsection (d) creates a limitation period for a claim against the bond based on an action by the receiver. The period should be consistent with the state's limitation period for obtaining relief from a judgment.*

SECTION 9. STATUS OF RECEIVER AS LIEN CREDITOR. On appointment of a receiver, the receiver has the status of a lien creditor under:

(1) [U.C.C. Article 9] as to receivership property that is personal property or fixtures; and

(2) [the recording statute of this state] as to receivership property that is real property.

SECTION 10. SECURITY AGREEMENT COVERING AFTER-ACQUIRED PROPERTY. 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.

SECTION 11. COLLECTION AND TURNOVER OF RECEIVERSHIP PROPERTY.

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

(1) 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

(2) subject to subsection (c), a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(b) 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.

(c) 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.

(d) 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.

SECTION 12. POWERS AND DUTIES OF RECEIVER.

(a) Except as limited by court order or law of this state other than this [act], a receiver may:

(1) collect, control, manage, conserve, and protect receivership property;

(2) 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;

(3) 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;

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

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

(6) 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;

(7) engage a professional as provided in Section 15;

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

(9) exercise any power conferred by court order, this [act], or law of this state other than this [act].

(b) With court approval, a receiver may:

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

(2) make improvements to receivership property;

(3) use or transfer receivership property other than in the ordinary course of business as provided in Section 16;

(4) adopt or reject an executory contract of the owner as provided in Section 17;

(5) pay compensation to the receiver as provided in Section 21, and to each professional engaged by the receiver as provided in Section 15;

(6) recommend allowance or disallowance of a claim of a creditor as provided in Section 20; and

(7) make a distribution of receivership property as provided in Section 20.

(c) A receiver shall:

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

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

(3) 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;

(4) disclose to the court any fact arising during the receivership which would disqualify the receiver under Section 7; and

(5) perform any duty imposed by court order, this [act], or law of this state other than this [act].

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

SECTION 13. DUTIES OF OWNER.

(a) An owner shall:

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

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

(3) 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;

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

(5) perform any duty imposed by court order, this [act], or law of this state other than this [act].

(b) 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.

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

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

(2) sanction the failure as civil contempt.

SECTION 14. STAY; INJUNCTION.

(a) Except as otherwise provided in subsection (d) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding:

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

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

(b) Except as otherwise provided in subsection (d), 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.

(c) 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.

(d) An order under subsection (a) or (b) does not operate as a stay or injunction of:

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

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

(3) commencement or continuation of a criminal proceeding;

(4) 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

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

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

(f) If a person knowingly violates a stay or injunction under this section, the court may:

(1) award actual damages caused by the violation, reasonable attorney's fees, and costs; and

(2) sanction the violation as civil contempt.

SECTION 15. ENGAGEMENT AND COMPENSATION OF PROFESSIONAL.

(a) 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 to the court:

(1) the identity and qualifications of the professional;

(2) the scope and nature of the proposed engagement;

(3) any potential conflict of interest; and

(4) the proposed compensation.

(b) 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 [act] does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

(c) A receiver or professional engaged under subsection (a) 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.

SECTION 16. USE OR TRANSFER OF RECEIVERSHIP PROPERTY NOT IN ORDINARY COURSE OF BUSINESS.

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

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

(c) With court approval, 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.

(d) A lien on receivership property which is extinguished by a transfer under subsection (c) 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.

(e) A transfer under subsection (c) 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.

(f) A reversal or modification of an order approving a transfer under subsection (c) 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.

SECTION 17. EXECUTORY CONTRACT.

(a) In this section, "timeshare interest" means [an interest having a duration of more than three years which 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) Except as otherwise provided in subsection (h), 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.

(c) A receiver's performance of an executory contract before court approval under subsection (b) 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.

(d) 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 (b) to adopt the contract.

(e) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (b). 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:

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

(2) [30] days after the court approves the rejection.

(f) 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.

(g) If a receiver rejects under subsection (b) 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:

(1) 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

(2) 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.

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

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

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

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

(A) the lease is superior to the lien of the mortgage;

(B) 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;

(C) 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; or

(D) 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.

Legislative Note: *If a state statute defines the term "timeshare interest," the state should incorporate that definition into subsection (a).*

SECTION 18. DEFENSES AND IMMUNITIES OF RECEIVER.

(a) 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.

(b) 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.

SECTION 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.

SECTION 20. NOTICE OF APPOINTMENT; CLAIM AGAINST RECEIVERSHIP; DISTRIBUTION TO CREDITORS.

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

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

(2) publication as directed by the court.

(b) Except as otherwise provided in subsection (f), the notice required by subsection (a) 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 subsection (a)(1) or last publication under subsection (a)(2). 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.

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

(1) state the name and address of the creditor;

(2) state the amount and basis of the claim;

(3) identify any property securing the claim;

(4) be signed by the creditor under penalty of perjury; and

(5) include a copy of any record on which the claim is based.

(d) 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.

(e) 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].

(f) 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:

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

(2) unsecured creditors need not submit claims under this section.

(g) Subject to Section 21:

(1) a distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under law of this state other than this [act]; and

(2) a distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to law of this state other than this [act].

SECTION 21. FEES AND EXPENSES.

(a) 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.

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

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

(2) a person whose conduct justified or would have justified the appointment of the receiver under Section 6(a)(1).

SECTION 22. REMOVAL OF RECEIVER; REPLACEMENT; TERMINATION OF RECEIVERSHIP.

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

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

(c) 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.

(d) 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:

(1) the fees and expenses of the receivership, including reasonable attorney's fees and costs; and

(2) actual damages caused by the appointment, including reasonable attorney's fees and costs.

SECTION 23. FINAL REPORT OF RECEIVER; DISCHARGE.

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

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

(2) a list of receivership property at the commencement of the receivership and any receivership property received during the receivership;

(3) a list of disbursements, including payments to professionals engaged by the receiver;

(4) a list of dispositions of receivership property;

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

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

(7) any other information required by the court.

(b) If the court approves a final report filed under subsection (a) and the receiver

distributes all receivership property, the receiver is discharged.

SECTION 24. RECEIVERSHIP IN ANOTHER STATE; ANCILLARY PROCEEDING.

(a) 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:

(1) the person or nominee would be eligible to serve as receiver under Section 7; and

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

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

(c) Unless the court orders otherwise, an ancillary receiver appointed under subsection (a) has the rights, powers, and duties of a receiver appointed under this [act].

SECTION 25. EFFECT OF ENFORCEMENT BY MORTGAGEE.

[(a)] A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or 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 that precludes a later action to enforce the secured obligation;

(4) make the secured obligation unenforceable; [or]

(5) limit any right available to the mortgagee with respect to the secured obligation[;][; or]

[(6) constitute an action within the meaning of [cite the "one-action" statute of this state][; or]]

[(7) except as otherwise provided in subsection (b), bar a deficiency judgment pursuant to law of this state other than this [act] governing or relating to a deficiency judgment].

[(b) If a receiver sells receivership property that pursuant to Section 16(c) is free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured by the lien is subject to law of this state other than this [act] relating to a deficiency judgment.]

Legislative Note: *If state law does not prohibit or otherwise limit the ability of a lienholder to obtain a deficiency judgment following the enforcement of a lien, the state should enact this section without subsections (a)(7) and (b).*

A state that does not have a "one action" statute should omit subsection (a)(6).

SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION. 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.

SECTION 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. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 28. TRANSITION. This [act] does not apply to a receivership for which the receiver was appointed before [the effective date of this

[act]].

SECTION 29. REPEALS; CONFORMING AMENDMENTS.

(a) . . . .

(b) . . . .

(c) . . . .

SECTION 30. EFFECTIVE DATE. This [act] takes effect . . . .