

1                   A bill to be entitled  
2           An act relating to the Uniform Commercial Real Estate  
3           Receivership Act; creating chapter 714, F.S., relating  
4           to the Uniform Commercial Real Estate Receivership  
5           Act; providing a short title; defining terms;  
6           prohibiting a court from issuing certain orders unless  
7           certain requirements are met; providing requirements  
8           for certain court orders; providing construction and  
9           applicability; specifying that a court has exclusive  
10          jurisdiction to direct receivers and determine  
11          controversies under certain circumstances; providing  
12          requirements and authorizations relating to the  
13          appointment of a receiver; authorizing certain parties  
14          to move to dissolve or modify certain orders;  
15          requiring that such motions be heard within a  
16          specified timeframe; specifying when a person is or is  
17          not disqualified from appointment as a receiver;  
18          authorizing certain persons to nominate someone to  
19          serve as a receiver; specifying that the court is not  
20          bound by such nomination; requiring a receiver to post  
21          a bond with the court which meets certain  
22          requirements; providing an exception; prohibiting a  
23          claim against a receiver's bond or alternative  
24          security from being made after a certain time;  
25          providing that an appointed receiver has certain

26 statuses of a lien creditor; providing that certain  
27 property is subject to specified security agreements;  
28 providing requirements relating to the collection and  
29 turnover of receivership property; providing for  
30 powers and duties of a receiver; authorizing the court  
31 to expand, modify, or limit such powers and duties;  
32 providing for duties of an owner; authorizing a court  
33 to take certain actions if a person knowingly fails to  
34 perform a duty; authorizing a court to take certain  
35 actions relating to stays and injunctions; providing  
36 requirements for certain injunctions; authorizing  
37 certain persons to apply for relief from a stay or  
38 injunction; requiring that certain motions be heard  
39 within a specified timeframe; specifying when an order  
40 does not operate as a stay or injunction; authorizing  
41 receivers to engage and compensate certain  
42 professionals under certain circumstances; requiring  
43 certain persons to file an itemized statement with the  
44 court; requiring a receiver to pay an amount approved  
45 by the court; defining the term "good faith";  
46 authorizing a receiver to use or transfer receivership  
47 property other than in the ordinary course of business  
48 under certain circumstances; providing for the service  
49 of notice to lienholders who are not parties to the  
50 action; defining the term "timeshare interest";

51 authorizing a receiver to adopt or reject an executory  
52 contract of the owner relating to receivership  
53 property under certain circumstances; requiring that a  
54 claim of damages for rejection of a contract be  
55 submitted within a specified timeframe; authorizing a  
56 purchaser to take certain actions if a receiver  
57 rejects an executory contract under certain  
58 circumstances; prohibiting a receiver from rejecting  
59 unexpired leases of certain property under certain  
60 circumstances; providing for defenses and immunities  
61 of a receiver; providing requirements for interim  
62 reports filed by a receiver; providing requirements  
63 relating to notices of appointment; authorizing the  
64 court to enter certain orders if the court concludes  
65 that receivership property is likely to be  
66 insufficient to satisfy certain claims; providing  
67 requirements for certain distributions of receivership  
68 property; authorizing a court to award fees and  
69 expenses; authorizing a court to order certain persons  
70 to pay fees and expenses; providing for the removal  
71 and replacement of a receiver and the termination of a  
72 court's administration of the receivership property  
73 under certain circumstances; requiring a receiver to  
74 file a final report containing certain information  
75 upon completion of the receiver's duties; specifying

76 that a receiver is discharged if certain requirements  
 77 are met; authorizing a court to appoint ancillary  
 78 receivers under certain circumstances; providing for  
 79 rights, powers, and duties of an ancillary receiver;  
 80 specifying that certain requests, appointments, and  
 81 applications by a mortgagee do not have certain  
 82 effects; providing construction and applicability;  
 83 providing an effective date.

84

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

86

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

89

CHAPTER 714

90

UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

91

714.01 Short title.—This chapter may be cited as the

92

"Uniform Commercial Real Estate Receivership Act."

93

714.02 Definitions.—For the purposes of this chapter, the

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term:

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(1) "Affiliate" means:

96

(a) With respect to an individual:

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1. A companion of the individual;

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2. A lineal ancestor or descendent, whether by blood or

99

adoption, of:

100

a. The individual; or

101        b. A companion of the individual;  
 102        3. A companion of an ancestor or descendent as described  
 103 in subparagraph 2.;  
 104        4. A sibling, aunt, uncle, great aunt, great uncle, first  
 105 cousin, niece, nephew, grandniece, or grandnephew of the  
 106 individual, whether related by the whole or the half blood or  
 107 adoption, or a companion of any of them; or  
 108        5. Any other person occupying the residence of the  
 109 individual; and  
 110        (b) With respect to a person other than an individual:  
 111        1. Another person who directly or indirectly controls, is  
 112 controlled by, or is under common control with the person;  
 113        2. An officer, director, manager, member, partner,  
 114 employee, or trustee or other fiduciary of the person; or  
 115        3. A companion of an individual or an individual occupying  
 116 the residence of an individual.  
 117        (2) "Companion" means:  
 118        (a) The spouse of an individual;  
 119        (b) The registered domestic partner of an individual; or  
 120        (c) Another individual in a civil union with an  
 121 individual.  
 122        (3) "Court" means the court of general equity jurisdiction  
 123 in this state.  
 124        (4) "Executory contract" means a contract, including a  
 125 lease, under which each party has an unperformed obligation and

126 | the failure of a party to complete performance would constitute  
 127 | a material breach.

128 | (5) "Governmental unit" means an office, department,  
 129 | division, bureau, board, commission, or other agency of this  
 130 | state or a subdivision of this state.

131 | (6) "Lien" means an interest in property which secures  
 132 | payment or performance of an obligation.

133 | (7) "Mortgage" means a record, however denominated, that  
 134 | creates or provides for a consensual lien on real property or  
 135 | rents, even if the record also creates or provides for a lien on  
 136 | personal property.

137 | (8) "Mortgagee" means a person entitled to enforce an  
 138 | obligation secured by a mortgage.

139 | (9) "Mortgagor" means a person who grants a mortgage or a  
 140 | successor in ownership of the real property described in the  
 141 | mortgage.

142 | (10) "Owner" means the person for whose property a  
 143 | receiver is appointed.

144 | (11) "Person" means an individual, estate, business or  
 145 | nonprofit entity, public corporation, government or governmental  
 146 | subdivision, agency, or instrumentality or other legal entity.

147 | (12) "Proceeds" means any of the following property:

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

150 | (b) Whatever is collected on, or distributed on account

151 of, receivership property.

152 (c) Rights arising out of receivership property.

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

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

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

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

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

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

176 offspring, rents, or profits of or from the property.

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

181 (18) "Rents" means:

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

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

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

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

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

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

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



201        (20) "Security agreement" means an agreement that creates  
 202 or provides for a lien.

203        (21) "Sign" means, with present intent to authenticate or  
 204 adopt a record:

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

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

208        (22) "State" means a state of the United States, the  
 209 District of Columbia, Puerto Rico, the United States Virgin  
 210 Islands, or any territory or insular possession subject to the  
 211 jurisdiction of the United States.

212        714.03 Notice and opportunity for hearing.—

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

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

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

225            (b) The movant's attorney certifies in writing all efforts

226 that have been made to give notice to all known adverse parties,  
227 or the reasons why such notice should not be required.

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

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

246 714.04 Scope; exclusions.-

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

251        (2) This chapter does not apply to:

252        (a) Actions in which a state agency or officer is

253 expressly authorized by statute to seek or obtain the

254 appointment of a receiver;

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

256        (c) Real property improved by one or two dwelling units

257 which includes the homestead of an individual owner or an

258 affiliate of an individual owner;

259        (d) Property of an individual exempt from forced sale,

260 execution, or seizure under the laws of this state; or

261        (e) Personal property of an individual which is used

262 primarily for personal, family, or household purposes.

263        (3) This chapter does not limit the authority of a court

264 to appoint a receiver under the laws of this state other than

265 this chapter.

266        (4) This chapter does not limit an individual's homestead

267 rights under the laws of this state or federal law.

268        (5) Unless displaced by a particular provision of this

269 chapter, the principles of law and equity, including the law

270 relative to capacity to contract, principal and agent, estoppel,

271 laches, fraud, misrepresentation, duress, coercion, mistake,

272 bankruptcy, or other validating or invalidating cause,

273 supplement this chapter.

274        714.05 Power of the court.—The court that appoints a

275 receiver under this chapter has exclusive jurisdiction to direct

276 | the receiver and determine any controversy related to the  
277 | receivership or receivership property.  
278 | 714.06 Appointment of receiver.—  
279 | (1) The court may appoint a receiver:  
280 | (a) Before judgment, to protect a party that demonstrates  
281 | an apparent right, title, or interest in real property that is  
282 | the subject of the action, if the property or its revenue-  
283 | producing potential:  
284 | 1. Is being subjected to or is in danger of waste, loss,  
285 | substantial diminution in value, dissipation, or impairment; or  
286 | 2. Has been or is about to be the subject of a voidable  
287 | transaction;  
288 | (b) After judgment:  
289 | 1. To carry the judgment into effect; or  
290 | 2. To preserve nonexempt real property pending appeal or  
291 | when an execution has been returned unsatisfied and the owner  
292 | refuses to apply the property in satisfaction of the judgment;  
293 | (c) In an action in which a receiver for real property may  
294 | be appointed on equitable grounds, subject to the requirements  
295 | of paragraphs (a) and (b); or  
296 | (d) During the time allowed for redemption, to preserve  
297 | real property sold in an execution or foreclosure sale and  
298 | secure its rents to the person entitled to the rents.  
299 | (2) In connection with the foreclosure or other  
300 | enforcement of a mortgage, the court shall consider the

301 following facts and circumstances, together with any other  
302 relevant facts, in deciding whether to appoint a receiver for  
303 the mortgaged property:

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

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

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

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

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

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

317 (3) The court may condition the appointment of a receiver  
318 without prior notice or hearing under s. 714.03 on the giving of  
319 security by the person seeking the appointment for the payment  
320 of damages, reasonable attorney fees, and costs incurred or  
321 suffered by any person if the court later concludes that the  
322 appointment was not justified. If the court later concludes that  
323 the appointment was justified and the order of appointment of  
324 the receiver becomes final and no longer subject to appeal, the  
325 court shall release the bond or other security. When any order

326 appointing a receiver or providing for injunctive relief is  
 327 issued on the pleading of a municipality or the state, or any  
 328 officer, agency, or political subdivision thereof, the court may  
 329 require or dispense with a bond, with or without surety, and  
 330 conditioned in the same manner, having due regard for public  
 331 interest.

332 (4) A party adversely affected by an order appointing a  
 333 receiver may move to dissolve or modify the order at any time.  
 334 If a party moves to dissolve or modify the order, the motion  
 335 must be heard within 5 days after the movant applies for a  
 336 hearing on the motion or at such time as the court determines is  
 337 reasonable and appropriate under the circumstances after the  
 338 movant applies for a hearing on the motion. After notice and a  
 339 hearing, the court may grant relief for cause shown.

340 714.07 Disqualification from appointment as receiver;  
 341 disclosure of interest.—

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

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

348 (a) Is an affiliate of a party;

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

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

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

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

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

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

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

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

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

370 714.08 Receiver's bond; alternative security.-

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

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

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

376 (c) Is in an amount the court specifies; and  
 377 (d) Is effective as of the date of the receiver's  
 378 appointment.

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

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

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

395 714.09 Status of receiver as lien creditor.—Upon  
 396 appointment of a receiver, the receiver has the status of a lien  
 397 creditor under:

- 398 (1) Chapter 679 as to receivership property or fixtures;  
 399 and  
 400 (2) Chapter 695 as to receivership property that is real



401 property.

402 714.10 Security agreement covering after-acquired  
403 property.—Except as otherwise provided by law other than this  
404 chapter, property that a receiver or an owner acquires after  
405 appointment of the receiver is subject to a security agreement  
406 entered into before the appointment to the same extent as if the  
407 court had not appointed the receiver.

408 714.11 Collection and turnover of receivership property.—

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

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

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

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

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

426 protection of the creditor's lien.

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

431 714.12 Powers and duties of receiver.—

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

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

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

440 (c) In the ordinary course of business, incur unsecured  
441 debt and pay expenses incidental to the receiver's preservation,  
442 use, sale, lease, license, exchange, collection, or disposition  
443 of receivership property;

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

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

449 (f) Upon subpoena, compel a person to submit to  
450 examination under oath, or to produce and permit inspection and

451 copying of designated records or tangible things, with respect  
452 to receivership property or any other matter that may affect  
453 administration of the receivership;

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

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

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

460 (2) With court approval, a receiver may:

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

463 (b) Make improvements to receivership property;

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

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

468 (e) Pay compensation to the receiver pursuant to s.  
469 714.21, and to each professional engaged by the receiver under  
470 s. 714.15;

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

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

475 (3) A receiver shall:

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

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

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

486 (d) Disclose to the court any fact arising during the  
487 receivership which would disqualify the receiver under s.  
488 714.07; and

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

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

493 714.13 Duties of owner.—

494 (1) An owner shall:

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

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

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

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

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

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

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

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

521 (b) Sanction the failure as civil contempt.

522 714.14 Stay; injunction.—

523 (1) Except as otherwise provided in subsection (5), after  
524 notice and opportunity for a hearing, the court may enter an  
525 order providing for a stay, applicable to all persons, of any

526 act, action, or proceeding:

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

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

533

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

539 (2) Except as otherwise provided in subsection (5), the  
540 court may enjoin an act, action, or proceeding against or  
541 relating to receivership property if the injunction is necessary  
542 to protect against misappropriation of, or waste relating  
543 directly to, the receivership property.

544 (3) If the court grants injunctive relief, the injunction  
545 must specify the reasons for entry and must describe in  
546 reasonable detail the act or acts restrained without reference  
547 to a pleading or other document. The injunction is binding on  
548 the parties to the action; on the parties' officers, agents,  
549 servants, employees, and attorneys; and on any person who  
550 receives actual notice of the injunction and is in active

551 concert or participation with the parties.

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

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

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

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

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

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

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

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

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

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

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

591 714.15 Engagement and compensation of professional.—

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

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

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

599 (c) Any potential conflict of interest; and

600 (d) The proposed compensation.



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

607       (3) A receiver or professional engaged under subsection  
608 (1) shall file with the court an itemized statement of the time  
609 spent, work performed, and billing rate of each person that  
610 performed the work and an itemized list of expenses. The  
611 receiver shall pay the amount approved by the court.

612       714.16 Use or transfer of receivership property not in  
613 ordinary course of business.-

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

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

625       (a) After the commencement of the action in which the

626 receiver is appointed, expressly consents in writing to the  
627 receiver's proposed use or transfer of the receivership  
628 property, and the receiver notes the property owner's express  
629 consent in the motion to approve the proposed use or transfer;  
630 or

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

640  
641 Service of notice to lienholders who are not parties to the  
642 action must be made as provided in chapter 48 for service of  
643 original process or, in the case of a financial institution  
644 lienholder, as provided in s. 655.0201. If service cannot be  
645 effectuated in such manner, upon authorization by court order,  
646 the receiver may effect service of notice on the nonparty  
647 lienholder pursuant to chapter 49 or as otherwise ordered by the  
648 court.

649 (3) After judgment is entered against the property owner  
650 and with court approval in the action in which the receiver is

651 appointed, a receiver may use or transfer receivership property  
652 other than in the ordinary course of business to carry the  
653 judgment into effect or to preserve nonexempt real property  
654 pending appeal or when an execution has been returned  
655 unsatisfied and the owner refuses to apply the property in  
656 satisfaction of the judgment.

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

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

674 (6) A reversal or modification of an order approving a  
675 transfer under subsection (3) does not affect the validity of

676 the transfer to a person that acquired the property in good  
677 faith or revive against the person any lien extinguished by the  
678 transfer, whether the person knew before the transfer of the  
679 request for reversal or modification, unless the court stayed  
680 the order before the transfer.

681 714.17 Executory contract.—

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

684 (2) Except as otherwise provided in subsection (8), with  
685 court approval, a receiver may adopt or reject an executory  
686 contract of the owner relating to receivership property. The  
687 court may condition the receiver's adoption and continued  
688 performance of the contract on terms appropriate under the  
689 circumstances. If the receiver does not request court approval  
690 to adopt or reject the contract within a reasonable time after  
691 the receiver's appointment, the receiver is deemed to have  
692 rejected the contract.

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

698 (4) A provision in an executory contract which requires or  
699 permits a forfeiture, modification, or termination of the  
700 contract because of the appointment of a receiver or the

701 financial condition of the owner does not affect a receiver's  
702 power under subsection (2) to adopt the contract.

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

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

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

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

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

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

725 (b) Retain the purchaser's right to possession under the

726 contract. If the purchaser retains his or her right to  
727 possession pursuant to this paragraph, the purchaser must  
728 continue to perform all obligations arising under the contract  
729 and may offset any damages caused by nonperformance of an  
730 obligation of the owner after the date of the rejection, but the  
731 purchaser does not have a right or claim against other  
732 receivership property or the receiver on account of the damages.

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

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

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

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

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

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

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

749 4. The terms of the lease were commercially reasonable at  
750 the time the lease was agreed to and the tenant did not know or

751 have reason to know that the lease violated the mortgage.

752 714.18 Defenses and immunities of receiver.—

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

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

760 714.19 Interim report of receiver.—A receiver may file or,  
761 if ordered by the court, shall file an interim report that  
762 includes:

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

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

768 (3) Receipts and dispositions of receivership property;

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

772 (5) Any other information required by the court.

773 714.20 Notice of appointment; claim against receivership;  
774 distribution to creditors.—

775 (1) Except as otherwise provided in subsection (6), a

776 receiver shall give notice of appointment of the receiver to  
777 creditors of the owner by:

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

781 (b) Publication as directed by the court.

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

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

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

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

796 (c) Identify any property securing the claim;

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

798 and

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



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

805       (5) At any time before entry of an order approving a  
806 receiver's final report, the receiver may file with the court an  
807 objection to a claim of a creditor, stating the basis for the  
808 objection. The court shall allow or disallow the claim according  
809 to the laws of this state other than this chapter.

810       (6) If the court concludes that receivership property is  
811 likely to be insufficient to satisfy claims of each creditor  
812 holding a perfected lien on the property, the court may order  
813 that:

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

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

819       (7) Subject to s. 714.21:

820       (a) A distribution of receivership property to a creditor  
821 holding a perfected lien on the property must be made in  
822 accordance with the creditor's priority under the laws of this  
823 state other than this chapter; and

824       (b) A distribution of receivership property to a creditor  
825 with an allowed unsecured claim must be made as the court

826 directs according to the laws of this state other than this  
827 chapter.

828 714.21 Fees and expenses.—

829 (1) The court may award a receiver from receivership  
830 property the reasonable and necessary fees and expenses of  
831 performing the duties of the receiver and exercising the powers  
832 of the receiver.

833 (2) The court may order one or more of the following to  
834 pay the reasonable and necessary fees and expenses of the  
835 receivership, including reasonable attorney fees and costs:

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

839 (b) A person whose conduct justified or would have  
840 justified the appointment of the receiver under s. 714.06(1)(a).

841 714.22 Removal of receiver; replacement; termination of  
842 receivership.—

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

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

846 (3) If the court finds that a receiver that resigns or is  
847 removed, or the representative of a receiver that is deceased,  
848 has accounted fully for and turned over to the successor  
849 receiver all receivership property and has filed a report of all  
850 receipts and disbursements during the service of the replaced

851 receiver, the replaced receiver is discharged.

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

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

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

863 714.23 Final report of receiver; discharge.—

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

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

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

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

873 (d) A list of dispositions of receivership property;

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

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

878 (g) Any other information required by the court.

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

882 714.24 Receivership in another state; ancillary  
 883 proceeding.-

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

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

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

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

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

900 714.25 Effect of enforcement by mortgagee.-A request by a

901 mortgagee for the appointment of a receiver, the appointment of  
 902 a receiver, or the application by a mortgagee of receivership  
 903 property or proceeds to the secured obligation does not:

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

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

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

909 (4) Make the secured obligation unenforceable;

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

912 (6) Constitute an action under chapter 702.

913 714.26 Uniformity of application and construction.—In  
 914 applying and construing this chapter, consideration must be  
 915 given to the need to promote uniformity of the law with respect  
 916 to its subject matter among states that have enacted a similar  
 917 law.

918 714.27 Relation to electronic signatures in global and  
 919 national commerce act.—This act modifies, limits, or supersedes  
 920 the Electronic Signatures in Global and National Commerce Act,  
 921 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or  
 922 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or  
 923 authorize electronic delivery of any of the notices described in  
 924 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

925 714.28 Transition.—This chapter does not apply to a

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2020

926 | receivership for which the receiver was appointed before July 1,  
927 | 2020.

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