

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 SENATE BILL 362

By: Holt

4
5
6 AS INTRODUCED

7 An Act relating to commercial real estate; creating
8 the Uniform Commercial Real Estate Receivership Act;
9 providing short title; defining terms; providing due
10 process requirements; clarifying applicability of
11 act; establishing jurisdiction; establishing
12 guidelines for appointment of receiver; stating
13 grounds for disqualification from appointment;
14 requiring certain bond; allowing certain alternative
15 security; establishing status as lien creditor;
16 applying certain agreement to certain property;
17 providing for collection of receivership property;
18 establishing powers and duties of receiver;
19 establishing duties of property owner; providing for
20 stay of certain proceedings; authorizing injunctive
21 relief under certain circumstances; providing
22 exceptions; permitting certain professional services;
23 defining term; authorizing certain use or transfer of
24 property; defining term; authorizing executor
contract under certain conditions; establishing
requirements for certain executory contracts;
entitling receiver to certain defenses and
immunities; requiring certain interim report;
requiring notice to certain creditors; establishing
requirements for certain claims; providing for
certain distribution; authorizing award for certain
fees and expenses; providing for resignation or
removal of receiver; providing for termination of
receivership; requiring final report; specifying
contents of certain report; authorizing appointment
of out-of-state receiver under certain circumstances;
clarifying effects of certain enforcement; construing
provisions; providing for applicability of act;
providing for codification; and providing an
effective date.

1 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1201 of Title 60, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Uniform
6 Commercial Real Estate Receivership Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1202 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 As used in this act:

11 1. "Affiliate" means:

12 a. with respect to an individual:

13 (1) a companion of the individual,

14 (2) a lineal ancestor or descendant, whether by blood
15 or adoption, of:

16 (a) the individual, or

17 (b) a companion of the individual,

18 (3) a companion of an ancestor or descendant
19 described in division (2),

20 (4) a sibling, aunt, uncle, great aunt, great uncle,
21 first cousin, niece, nephew, grandniece or
22 grandnephew of the individual, whether related by
23 the whole or the half blood or adoption, or a
24 companion of any of them, or

1 (5) any other individual occupying the residence of
2 the individual, and

3 b. with respect to a person other than an individual:

4 (1) another person that directly or indirectly
5 controls, is controlled by, or is under common
6 control with the person,

7 (2) an officer, director, manager, member, partner,
8 employee, or trustee or other fiduciary of the
9 person, or

10 (3) a companion of, or an individual occupying the
11 residence of, an individual described in division
12 (1) or (2);

13 2. "Companion" means:

14 a. the spouse of an individual,

15 b. the domestic partner of an individual, or

16 c. another individual in a civil union with an
17 individual;

18 3. "Court" means the court of general equity jurisdiction in
19 this state;

20 4. "Executory contract" means a contract, including a lease,
21 under which each party has an unperformed obligation and the failure
22 of a party to complete performance would constitute a material
23 breach;

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1 5. "Governmental unit" means an office, department, division,
2 bureau, board, commission or other agency of this state or a
3 political subdivision of this state;

4 6. "Lien" means an interest in property which secures payment
5 or performance of an obligation;

6 7. "Mortgage" means a record, however denominated, that creates
7 or provides for a consensual lien on real property or rents, even if
8 it also creates or provides for a lien on personal property;

9 8. "Mortgagee" means a person entitled to enforce an obligation
10 secured by a mortgage;

11 9. "Mortgagor" means a person that grants a mortgage or a
12 successor in ownership of the real property described in the
13 mortgage;

14 10. "Owner" means the person for whose property a receiver is
15 appointed;

16 11. "Person" means an individual, estate, business or nonprofit
17 entity, public corporation, government or governmental subdivision,
18 agency, instrumentality or other legal entity;

19 12. "Proceeds" means the following property:

20 a. whatever is acquired on the sale, lease, license,
21 exchange, or other disposition of receivership
22 property,

23 b. whatever is collected on, or distributed on account
24 of, receivership property,

- 1 c. rights arising out of receivership property,
2 d. to the extent of the value of receivership property,
3 claims arising out of the loss, nonconformity or
4 interference with the use of, defects or infringement
5 of rights in or damage to the property, or
6 e. to the extent of the value of receivership property
7 and to the extent payable to the owner or mortgagee,
8 insurance payable by reason of the loss or
9 nonconformity of, defects or infringement of rights
10 in, or damage to the property;

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

16 14. "Receiver" means a person appointed by the court as the
17 court's agent, and subject to the court's direction, to take
18 possession of, manage, and, if authorized by this act or court
19 order, transfer, sell, lease, license, exchange, collect or
20 otherwise dispose of receivership property;

21 15. "Receivership" means a proceeding in which a receiver is
22 appointed;

23 16. "Receivership property" means the property of an owner
24 which is described in the order appointing a receiver or a

1 subsequent order. The term includes any proceeds, products,
2 offspring, rents or profits of or from the property;

3 17. "Record", used as a noun, means information that is
4 inscribed on a tangible medium or that is stored on an electronic or
5 other medium and is retrievable in perceivable form;

6 18. "Rents" means:

7 a. sums payable for the right to possess or occupy, or
8 for the actual possession or occupation of, real
9 property of another person,

10 b. sums payable to a mortgagor under a policy of rental-
11 interruption insurance covering real property,

12 c. claims arising out of a default in the payment of sums
13 payable for the right to possess or occupy real
14 property of another person,

15 d. sums payable to terminate an agreement to possess or
16 occupy real property of another person,

17 e. sums payable to a mortgagor for payment or
18 reimbursement of expenses incurred in owning,
19 operating and maintaining real property or
20 constructing or installing improvements on real
21 property, or

22 f. other sums payable under an agreement relating to the
23 real property of another person which constitute rents
24 under law of this state other than this act;

1 19. "Secured obligation" means an obligation for which the
2 payment or performance is secured by a security agreement;

3 20. "Security agreement" means an agreement that creates or
4 provides for a lien;

5 21. "Sign" means, with present intent to authenticate or adopt
6 a record:

7 a. to execute or adopt a tangible symbol, or

8 b. to attach to or logically associate with the record an
9 electronic sound, symbol or process; and

10 22. "State" means a state of the United States, the District of
11 Columbia, Puerto Rico, the United States Virgin Islands or any
12 territory or insular possession subject to the jurisdiction of the
13 United States.

14 SECTION 3. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1203 of Title 60, unless there
16 is created a duplication in numbering, reads as follows:

17 A. Except as otherwise provided in subsection B of this
18 section, the court may issue an order under this act only after
19 notice and opportunity for a hearing appropriate in the
20 circumstances.

21 B. The court may issue an order under this act:

22 1. Without prior notice if the circumstances require issuance
23 of an order before notice is given;

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1 2. After notice and without a prior hearing if the
2 circumstances require issuance of an order before a hearing is held;
3 or

4 3. After notice and without a hearing if no interested party
5 timely requests a hearing.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1204 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Except as otherwise provided in subsection B or C of this
10 section, this act applies to a receivership for an interest in real
11 property and any personal property related to or used in operating
12 the real property.

13 B. This act does not apply to a receivership for an interest in
14 real property improved by one to four dwelling units unless:

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

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

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

1 4. The owner is collecting or has the right to collect rents or
2 other income from the property from a person other than an affiliate
3 of the owner.

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

8 D. This act does not limit the authority of a court to appoint
9 a receiver under law of this state other than this act.

10 E. Unless displaced by a particular provision of this act, the
11 principles of law and equity supplement this act.

12 SECTION 5. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1205 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

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

18 SECTION 6. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1206 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The court may appoint a receiver:

22 1. Before judgment, to protect a party that demonstrates an
23 apparent right, title or interest in real property that is the
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1 subject of the action, if the property or its revenue-producing
2 potential:

- 3 a. is being subjected to or is in danger of waste, loss,
4 dissipation or impairment, or
- 5 b. has been or is about to be the subject of a voidable
6 transaction;

7 2. After judgment:

- 8 a. to carry the judgment into effect, or
- 9 b. to preserve nonexempt real property pending appeal or
10 when an execution has been returned unsatisfied and
11 the owner refuses to apply the property in
12 satisfaction of the judgment; or

13 3. In an action in which a receiver for real property may be
14 appointed on equitable grounds; or

15 4. During the time allowed for redemption, to preserve real
16 property sold in an execution or foreclosure sale and secure its
17 rents to the person entitled to the rents.

18 B. In connection with the foreclosure or other enforcement of a
19 mortgage, the court may appoint a receiver for the mortgaged
20 property if:

21 1. Appointment is necessary to protect the property from waste,
22 loss, transfer, dissipation or impairment;

23 2. The mortgagor agreed in a signed record to appointment of a
24 receiver on default;

1 3. The owner agreed, after default and in a signed record, to
2 appointment of a receiver;

3 4. The property and any other collateral held by the mortgagee
4 are not sufficient to satisfy the secured obligation;

5 5. The owner fails to turn over to the mortgagee proceeds or
6 rents the mortgagee was entitled to collect; or

7 6. The holder of a subordinate lien obtains appointment of a
8 receiver for the property.

9 C. The court may condition appointment of a receiver without
10 prior notice under paragraph 1 of subsection B of Section 3 of this
11 act or without a prior hearing under paragraph 2 of subsection B of
12 Section 3 of this act on the giving of security by the person
13 seeking the appointment for the payment of damages, reasonable
14 attorney's fees and costs incurred or suffered by any person if the
15 court later concludes that the appointment was not justified. If
16 the court later concludes that the appointment was justified, the
17 court shall release the security.

18 SECTION 7. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1207 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 A. The court may not appoint a person as receiver unless the
22 person submits to the court a statement under penalty of perjury
23 that the person is not disqualified.

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1 B. Except as otherwise provided in subsection C of this
2 section, a person is disqualified from appointment as receiver if
3 the person:

4 1. Is an affiliate of a party;

5 2. Has an interest materially adverse to an interest of a
6 party;

7 3. Has a material financial interest in the outcome of the
8 action, other than compensation the court may allow the receiver;

9 4. Has a debtor-creditor relationship with a party; or

10 5. Holds an equity interest in a party, other than a
11 noncontrolling interest in a publicly-traded company.

12 C. A person is not disqualified from appointment as receiver
13 solely because the person:

14 1. Was appointed receiver or is owed compensation in an
15 unrelated matter involving a party or was engaged by a party in a
16 matter unrelated to the receivership;

17 2. Is an individual obligated to a party on a debt that is not
18 in default and was incurred primarily for personal, family or
19 household purposes; or

20 3. Maintains with a party a deposit account as defined in
21 paragraph 29 of subsection A of Section 1-9-102 of Title 12A of the
22 Oklahoma Statutes.

1 D. A person seeking appointment of a receiver may nominate a
2 person to serve as receiver, but the court is not bound by the
3 nomination.

4 SECTION 8. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1208 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Except as otherwise provided in subsection B of this
8 section, a receiver shall post with the court a bond that:

9 1. Is conditioned on the faithful discharge of the receiver's
10 duties;

11 2. Has one or more sureties approved by the court;

12 3. Is in an amount the court specifies; and

13 4. Is effective as of the date of the receiver's appointment.

14 B. The court may approve the posting by a receiver with the
15 court of alternative security, such as a letter of credit or deposit
16 of funds. The receiver may not use receivership property as
17 alternative security. Interest that accrues on deposited funds must
18 be paid to the receiver on the receiver's discharge.

19 C. The court may authorize a receiver to act before the
20 receiver posts the bond or alternative security required by this
21 section.

22 D. A claim against a receiver's bond or alternative security
23 must be made not later than one year after the date the receiver is
24 discharged.

1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1209 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 On appointment of a receiver, the receiver has the status of a
5 lien creditor under:

- 6 1. Article 9 of the Uniform Commercial Code as to receivership
7 property that is personal property or fixtures; and
- 8 2. The recording statutes of this state as to receivership
9 property that is real property.

10 SECTION 10. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1210 of Title 60, unless there
12 is created a duplication in numbering, reads as follows:

13 Except as otherwise provided by law of this state other than
14 this act, property that a receiver or owner acquires after
15 appointment of the receiver is subject to a security agreement
16 entered into before the appointment to the same extent as if the
17 court had not appointed the receiver.

18 SECTION 11. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1211 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

- 21 A. Unless the court orders otherwise, on demand by a receiver:
 - 22 1. A person who owes a debt that is receivership property and
23 is matured or payable on demand or on order shall pay the debt to or
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1 on the order of the receiver, except to the extent the debt is
2 subject to setoff or recoupment; and

3 2. Subject to subsection C of this section, a person that has
4 possession, custody or control of receivership property shall turn
5 the property over to the receiver.

6 B. A person that has notice of the appointment of a receiver
7 and owes a debt that is receivership property may not satisfy the
8 debt by payment to the owner.

9 C. If a creditor has possession, custody or control of
10 receivership property and the validity, perfection or priority of
11 the creditor's lien on the property depends on the creditor's
12 possession, custody, or control, the creditor may retain possession,
13 custody, or control until the court orders adequate protection of
14 the creditor's lien.

15 D. Unless a bona fide dispute exists about a receiver's right
16 to possession, custody or control of receivership property, the
17 court may sanction as civil contempt a person's failure to turn the
18 property over when required by this section.

19 SECTION 12. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1212 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Except as limited by court order or law of this state other
23 than this act, a receiver may:

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- 1 1. Collect, control, manage, conserve and protect receivership
2 property;
- 3 2. Operate a business constituting receivership property,
4 including preservation, use, sale, lease, license, exchange,
5 collection or disposition of the property in the ordinary course of
6 business;
- 7 3. In the ordinary course of business, incur unsecured debt and
8 pay expenses incidental to the receiver's preservation, use, sale,
9 lease, license, exchange, collection or disposition of receivership
10 property;
- 11 4. Assert a right, claim, cause of action or defense of the
12 owner which relates to receivership property;
- 13 5. Seek and obtain instruction from the court concerning
14 receivership property, exercise of the receiver's powers and
15 performance of the receiver's duties;
- 16 6. On subpoena, compel a person to submit to examination under
17 oath, or to produce and permit inspection and copying of designated
18 records or tangible things, with respect to receivership property or
19 any other matter that may affect administration of the receivership;
- 20 7. Engage a professional as provided in Section 15 of this act;
- 21 8. Apply to a court of another state for appointment as
22 ancillary receiver with respect to receivership property located in
23 that state; and
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1 9. Exercise any power conferred by court order, this act or
2 laws of this state other than this act.

3 B. With court approval, a receiver may:

4 1. Incur debt for the use or benefit of receivership property
5 other than in the ordinary course of business;

6 2. Make improvements to receivership property;

7 3. Use or transfer receivership property other than in the
8 ordinary course of business as provided in Section 16 of this act;

9 4. Adopt or reject an executory contract of the owner as
10 provided in Section 17 of this act;

11 5. Pay compensation to the receiver as provided in Section 21
12 of this act, and to each professional engaged by the receiver as
13 provided in Section 15 of this act;

14 6. Recommend allowance or disallowance of a claim of a creditor
15 as provided in Section 20 of this act; and

16 7. Make a distribution of receivership property as provided in
17 Section 20 of this act.

18 C. A receiver shall:

19 1. Prepare and retain appropriate business records, including a
20 record of each receipt, disbursement and disposition of receivership
21 property;

22 2. Account for receivership property, including the proceeds of
23 a sale, lease, license, exchange, collection or other disposition of
24 the property;

1 3. File with the appropriate real property recording office a
2 copy of the order appointing the receiver and, if a legal
3 description of the real property is not included in the order, the
4 legal description;

5 4. Disclose to the court any fact arising during the
6 receivership which would disqualify the receiver under Section 7 of
7 this act; and

8 5. Perform any duty imposed by court order, this act or law of
9 this state other than this act.

10 D. The powers and duties of a receiver may be expanded,
11 modified, or limited by court order.

12 SECTION 13. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1213 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A. An owner shall:

16 1. Assist and cooperate with the receiver in the administration
17 of the receivership and the discharge of the receiver's duties;

18 2. Preserve and turn over to the receiver all receivership
19 property in the owner's possession, custody or control;

20 3. Identify all records and other information relating to the
21 receivership property, including a password, authorization, or other
22 information needed to obtain or maintain access to or control of the
23 receivership property, and make available to the receiver the
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1 records and information in the owner's possession, custody, or
2 control;

3 4. On subpoena, submit to examination under oath by the
4 receiver concerning the acts, conduct, property, liabilities and
5 financial condition of the owner or any matter relating to the
6 receivership property or the receivership; and

7 5. Perform any duty imposed by court order, this act or law of
8 this state other than this act.

9 B. If an owner is a person other than an individual, this
10 section applies to each officer, director, manager, member, partner,
11 trustee or other person exercising or having the power to exercise
12 control over the affairs of the owner.

13 C. If a person knowingly fails to perform a duty imposed by
14 this section, the court may:

15 1. Award the receiver actual damages caused by the person's
16 failure, reasonable attorney's fees, and costs; and

17 2. Sanction the failure as civil contempt.

18 SECTION 14. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1214 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 A. Except as otherwise provided in subsection D of this section
22 or ordered by the court, an order appointing a receiver operates as
23 a stay, applicable to all persons, of an act, action or proceeding:

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1 1. To obtain possession of, exercise control over or enforce a
2 judgment against receivership property;

3 2. To enforce a lien against receivership property to the
4 extent the lien secures a claim against the owner which arose before
5 entry of the order; and

6 3. Except as otherwise provided in subsection D of this
7 section, the court may enjoin an act, action or proceeding against
8 or relating to receivership property if the injunction is necessary
9 to protect the property or facilitate administration of the
10 receivership.

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

14 D. An order under subsection A or B of this section does not
15 operate as a stay or injunction of:

16 1. An act, action or proceeding to foreclose or otherwise
17 enforce a mortgage by the person seeking appointment of the
18 receiver;

19 2. An act, action or proceeding to perfect, or maintain or
20 continue the perfection of, an interest in receivership property;

21 3. Commencement or continuation of a criminal proceeding;

22 4. Commencement or continuation of an action or proceeding, or
23 enforcement of a judgment other than a money judgment in an action
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1 or proceeding, by a governmental unit to enforce its police or
2 regulatory power; or

3 5. Establishment by a governmental unit of a tax liability
4 against the owner or receivership property or an appeal of the
5 liability.

6 E. The court may void an act that violates a stay or injunction
7 under this section.

8 F. If a person knowingly violates a stay or injunction under
9 this section, the court may:

10 1. Award actual damages caused by the violation, reasonable
11 attorney's fees, and costs; and

12 2. Sanction the violation as civil contempt.

13 SECTION 15. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1215 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 A. With court approval, a receiver may engage an attorney,
17 accountant, appraiser, auctioneer, broker or other professional to
18 assist the receiver in performing a duty or exercising a power of
19 the receiver. The receiver shall disclose to the court:

20 1. The identity and qualifications of the professional;

21 2. The scope and nature of the proposed engagement;

22 3. Any potential conflict of interest; and

23 4. The proposed compensation.

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1 B. A person is not disqualified from engagement under this
2 section solely because of the person's engagement by, representation
3 of, or other relationship with the receiver, a creditor, or a party.
4 This act does not prevent the receiver from serving in the
5 receivership as an attorney, accountant, auctioneer, or broker when
6 authorized by law.

7 C. A receiver or professional engaged under subsection A of
8 this section shall file with the court an itemized statement of the
9 time spent, work performed and billing rate of each person that
10 performed the work and an itemized list of expenses. The receiver
11 shall pay the amount approved by the court.

12 SECTION 16. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1216 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A. In this section, "good faith" means honesty in fact and the
16 observance of reasonable commercial standards of fair dealing.

17 B. With court approval, a receiver may use receivership
18 property other than in the ordinary course of business.

19 C. With court approval, a receiver may transfer receivership
20 property other than in the ordinary course of business by sale,
21 lease, license, exchange, or other disposition. Unless the
22 agreement of sale provides otherwise, a sale under this section is
23 free and clear of a lien of the person that obtained appointment of
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1 the receiver, any subordinate lien, and any right of redemption but
2 is subject to a senior lien.

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

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

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

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1 SECTION 17. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1217 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

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

9 B. Except as otherwise provided in subsection H of this
10 section, with court approval, a receiver may adopt or reject an
11 executory contract of the owner relating to receivership property.
12 The court may condition the receiver's adoption and continued
13 performance of the contract on terms appropriate under the
14 circumstances. If the receiver does not request court approval to
15 adopt or reject the contract within a reasonable time after the
16 receiver's appointment, the receiver is deemed to have rejected the
17 contract.

18 C. A receiver's performance of an executory contract before
19 court approval under subsection B of this section of its adoption or
20 rejection is not an adoption of the contract and does not preclude
21 the receiver from seeking approval to reject the contract.

22 D. A provision in an executory contract which requires or
23 permits a forfeiture, modification or termination of the contract
24 because of the appointment of a receiver or the financial condition

1 of the owner does not affect a receiver's power under subsection B
2 of this section to adopt the contract.

3 E. A receiver's right to possess or use receivership property
4 pursuant to an executory contract terminates on rejection of the
5 contract under subsection B of this section. Rejection is a breach
6 of the contract effective immediately before appointment of the
7 receiver. A claim for damages for rejection of the contract must be
8 submitted by the later of:

- 9 1. The time set for submitting a claim in the receivership; or
- 10 2. Thirty (30) days after the court approves the rejection.

11 F. If at the time a receiver is appointed, the owner has the
12 right to assign an executory contract relating to receivership
13 property under law of this state other than this act, the receiver
14 may assign the contract with court approval.

15 G. If a receiver rejects under subsection B of this section an
16 executory contract for the sale of receivership property that is
17 real property in possession of the purchaser or a real-property
18 timeshare interest, the purchaser may:

- 19 1. Treat the rejection as a termination of the contract, and in
20 that case the purchaser has a lien on the property for the recovery
21 of any part of the purchase price the purchaser paid; or
- 22 2. Retain the purchaser's right to possession under the
23 contract, and in that case the purchaser shall continue to perform
24 all obligations arising under the contract and may offset any

1 damages caused by nonperformance of an obligation of the owner after
2 the date of the rejection, but the purchaser has no right or claim
3 against other receivership property or the receiver on account of
4 the damages.

5 H. A receiver may not reject an unexpired lease of real
6 property under which the owner is the landlord if:

7 1. The tenant occupies the leased premises as the tenant's
8 primary residence;

9 2. The receiver was appointed at the request of a person other
10 than a mortgagee; or

11 3. The receiver was appointed at the request of a mortgagee
12 and:

13 a. the lease is superior to the lien of the mortgage,

14 b. the tenant has an enforceable agreement with the
15 mortgagee or the holder of a senior lien under which
16 the tenant's occupancy will not be disturbed as long
17 as the tenant performs its obligations under the
18 lease,

19 c. the mortgagee has consented to the lease, either in a
20 signed record or by its failure timely to object that
21 the lease violated the mortgage, or

22 d. the terms of the lease were commercially reasonable at
23 the time the lease was agreed to and the tenant did
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1 not know or have reason to know that the lease
2 violated the mortgage.

3 SECTION 18. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1218 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

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

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

12 SECTION 19. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1219 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A receiver may file or, if ordered by the court, shall file an
16 interim report that includes:

17 1. The activities of the receiver since appointment or a
18 previous report;

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

21 3. Receipts and dispositions of receivership property;

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

1 5. Any other information required by the court.

2 SECTION 20. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1220 of Title 60, unless there
4 is created a duplication in numbering, reads as follows:

5 A. Except as otherwise provided in subsection F of this
6 section, a receiver shall give notice of appointment of the receiver
7 to creditors of the owner by:

8 1. Deposit for delivery through first-class mail or other
9 commercially reasonable delivery method to the last-known address of
10 each creditor; and

11 2. Publication as directed by the court.

12 B. Except as otherwise provided in subsection F of this
13 section, the notice required by subsection A of this section must
14 specify the date by which each creditor holding a claim against the
15 owner which arose before appointment of the receiver must submit the
16 claim to the receiver. The date specified must be at least ninety
17 (90) days after the later of notice under paragraph 1 of subsection
18 A of this section or last publication under paragraph 2 of
19 subsection A of this section. The court may extend the period for
20 submitting the claim. Unless the court orders otherwise, a claim
21 that is not submitted timely is not entitled to a distribution from
22 the receivership.

23 C. A claim submitted by a creditor under this section must:

24 1. State the name and address of the creditor;

- 1 2. State the amount and basis of the claim;
- 2 3. Identify any property securing the claim;
- 3 4. Be signed by the creditor under penalty of perjury; and
- 4 5. Include a copy of any record on which the claim is based.

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

8 E. At any time before entry of an order approving a receiver's
9 final report, the receiver may file with the court an objection to a
10 claim of a creditor, stating the basis for the objection. The court
11 shall allow or disallow the claim according to law of this state
12 other than this act.

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

16 1. The receiver need not give notice under subsection A of this
17 section of the appointment to all creditors of the owner, but only
18 such creditors as the court directs; and

19 2. Unsecured creditors need not submit claims under this
20 section.

21 G. Subject to Section 21 of this act:

22 1. A distribution of receivership property to a creditor
23 holding a perfected lien on the property must be made in accordance
24

1 with the creditor's priority under law of this state other than this
2 act; and

3 2. A distribution of receivership property to a creditor with
4 an allowed unsecured claim must be made as the court directs
5 according to law of this state other than this act.

6 SECTION 21. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1221 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The court may award a receiver from receivership property
10 the reasonable and necessary fees and expenses of performing the
11 duties of the receiver and exercising the powers of the receiver.

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

15 1. A person that requested the appointment of the receiver, if
16 the receivership does not produce sufficient funds to pay the fees
17 and expenses; or

18 2. A person whose conduct justified or would have justified the
19 appointment of the receiver under paragraph 1 of subsection A of
20 Section 6 of this section.

21 SECTION 22. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1222 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24 A. The court may remove a receiver for cause.

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

3 C. If the court finds that a receiver that resigns or is
4 removed, or the representative of a receiver that is deceased, has
5 accounted fully for and turned over to the successor receiver all
6 receivership property and has filed a report of all receipts and
7 disbursements during the service of the replaced receiver, the
8 replaced receiver is discharged.

9 D. The court may discharge a receiver and terminate the court's
10 administration of the receivership property if the court finds that
11 appointment of the receiver was improvident or that the
12 circumstances no longer warrant continuation of the receivership.
13 If the court finds that the appointment was sought wrongfully or in
14 bad faith, the court may assess against the person that sought the
15 appointment:

16 1. The fees and expenses of the receivership, including
17 reasonable attorney's fees and costs; and

18 2. Actual damages caused by the appointment, including
19 reasonable attorney's fees and costs.

20 SECTION 23. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 1223 of Title 60, unless there
22 is created a duplication in numbering, reads as follows:

23 A. On completion of a receiver's duties, the receiver shall
24 file a final report including:

1 1. A description of the activities of the receiver in the
2 conduct of the receivership;

3 2. A list of receivership property at the commencement of the
4 receivership and any receivership property received during the
5 receivership;

6 3. A list of disbursements, including payments to professionals
7 engaged by the receiver;

8 4. A list of dispositions of receivership property;

9 5. A list of distributions made or proposed to be made from the
10 receivership for creditor claims;

11 6. If not filed separately, a request for approval of the
12 payment of fees and expenses of the receiver; and

13 7. Any other information required by the court.

14 B. If the court approves a final report filed under subsection
15 A of this section and the receiver distributes all receivership
16 property, the receiver is discharged.

17 SECTION 24. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1224 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The court may appoint a receiver appointed in another state,
21 or that person's nominee, as an ancillary receiver with respect to
22 property located in this state or subject to the jurisdiction of the
23 court for which a receiver could be appointed under this act, if:

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1 1. The person or nominee would be eligible to serve as receiver
2 under Section 7 of this act; and

3 2. The appointment furthers the person's possession, custody,
4 control, or disposition of property subject to the receivership in
5 the other state.

6 B. The court may issue an order that gives effect to an order
7 entered in another state appointing or directing a receiver.

8 C. Unless the court orders otherwise, an ancillary receiver
9 appointed under subsection A of this section has the rights, powers
10 and duties of a receiver appointed under this act.

11 SECTION 25. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1225 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

14 A. A request by a mortgagee for appointment of a receiver, the
15 appointment of a receiver or application by a mortgagee of
16 receivership property or proceeds to the secured obligation does
17 not:

18 1. Make the mortgagee a mortgagee in possession of the real
19 property;

20 2. Make the mortgagee an agent of the owner;

21 3. Constitute an election of remedies that precludes a later
22 action to enforce the secured obligation;

23 4. Make the secured obligation unenforceable;

24

1 5. Limit any right available to the mortgagee with respect to
2 the secured obligation; or

3 6. Except as otherwise provided in subsection B of this
4 section, bar a deficiency judgment pursuant to law of this state
5 other than this act governing or relating to a deficiency judgment.

6 B. If a receiver sells receivership property that pursuant
7 subsection C of Section 16 of this act is free and clear of a lien,
8 the ability of a creditor to enforce an obligation that had been
9 secured by the lien is subject to law of this state other than this
10 act relating to a deficiency judgment.

11 SECTION 26. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1226 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

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

17 SECTION 27. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1227 of Title 60, unless there
19 is created a duplication in numbering, reads as follows:

20 This act modifies, limits, or supersedes the Electronic
21 Signatures in Global and National Commerce Act, 15 U.S.C. Section
22 7001 et seq., but does not modify, limit or supersede Section 101(c)
23 of that act, 15 U.S.C. Section 7001(c), or authorize electronic
24

1 delivery of any of the notices described in Section 103(b) of that
2 act, 15 U.S.C. Section 7003(b).

3 SECTION 28. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1228 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

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

8 SECTION 29. This act shall become effective November 1, 2017.

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