

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1927

By: Kannady

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5
6 AS INTRODUCED

7 An Act relating to civil procedure; creating the
8 Uniform Commercial Real Estate Receivership Act;
9 defining terms; requiring notice and opportunity for
10 hearing; providing scope and exclusions; providing
11 power of the court; authorizing appointment of
12 receiver; specifying circumstances; prohibiting
13 appointment of disqualified persons as receivers;
14 requiring submission to the court of statement that
15 person is not disqualified; providing circumstances
16 in which person is disqualified; providing
17 circumstances in which person is not disqualified;
18 providing for nomination of person as receiver;
19 providing for posting of bond or alternative
20 security; specifying receiver has status as lien
21 creditor; providing status of certain security
22 agreements; providing for collection and turnover of
23 receivership property; providing powers and duties of
24 receiver; providing duties of owner; providing that
appointment of receiver acts as stay or act, action
or proceeding, with exceptions; granting the court
certain injunctive authority; providing procedure for
relief from stay or injunction; authorizing receiver
to hire certain professionals with court approval;
requiring filing of itemized statements; providing
for use or transfer of receivership property not in
the ordinary course of business; providing for
executory contracts; providing defenses and
immunities of receiver; providing for interim reports
by a receiver; requiring notice of appointment to
creditors; specifying method of notice; providing
requirements for claims submitted by creditors;
requiring notice to receiver of assignment claims;
authorizing receiver to file objections to claims;
authorizing limited notice by receiver to creditors
in certain circumstances; providing for fees and

1 expenses; providing for removal or replacement of a
2 receiver; providing for termination of receivership;
3 providing for final report of receiver; providing for
4 discharge of receiver; providing for appointment of
5 receiver in another state in ancillary proceeding;
6 providing effect of enforcement by mortgagee;
7 providing for uniformity of application and
8 construction; providing relation to federal
9 Electronic Signatures in Global and National Commerce
10 Act; excluding receiverships appointed prior to a
11 certain date; amending 12 O.S. 2011, Section 1151,
12 which relates to appointment of receivers; providing
13 for appointment of receiver in foreclosure actions
14 pursuant to the Uniform Commercial Real Estate
15 Receivership Act; providing for codification; and
16 providing an effective date.

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

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1561.1 of Title 12, unless there
20 is created a duplication in numbering, reads as follows:

21 SHORT TITLE. This act shall be known and may be cited as the
22 "Uniform Commercial Real Estate Receivership Act".

23 SECTION 2. NEW LAW A new section of law to be codified
24 in the Oklahoma Statutes as Section 1561.2 of Title 12, unless there
is created a duplication in numbering, reads as follows:

DEFINITIONS. As used in the Uniform Commercial Real Estate
Receivership Act:

(1) "Affiliate" means:

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- (A) with respect to an individual:
 - (i) a companion of the individual,
 - (ii) a lineal ancestor or descendant, whether by blood or adoption, of:
 - (I) the individual, or
 - (II) a companion of the individual,
 - (iii) a companion of an ancestor or descendant described in clause (ii),
 - (iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them, or
 - (v) any other individual occupying the residence of the individual, and
- (B) with respect to a person other than an individual:
 - (i) another person that directly or indirectly controls, is controlled by, or is under common control with the person,
 - (ii) an officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person, or

1 (iii) a companion of, or an individual occupying the
2 residence of, an individual described in clause
3 (i) or (ii);

4 (2) "Companion" means:

5 (A) the spouse of an individual,

6 (B) the domestic partner of an individual, or

7 (C) another individual in a civil union with an
8 individual;

9 (3) "Court" means the Supreme Court or the district court;

10 (4) "Executory contract" means a contract, including a lease,
11 under which each party has an unperformed obligation and the failure
12 of a party to complete performance would constitute a material
13 breach;

14 (5) "Governmental unit" means an office, department, division,
15 bureau, board, commission, or other agency of this state or a
16 subdivision of this state;

17 (6) "Lien" means an interest in property which secures payment
18 or performance of an obligation;

19 (7) "Mortgage" means a record, however denominated, that
20 creates or provides for a consensual lien on real property or rents,
21 even if it also creates or provides for a lien on personal property;

22 (8) "Mortgagee" means a person entitled to enforce an
23 obligation secured by a mortgage;

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1 (9) "Mortgagor" means a person that grants a mortgage or a
2 successor in ownership of the real property described in the
3 mortgage;

4 (10) "Owner" means the person for whose property a receiver is
5 appointed;

6 (11) "Person" means an individual, estate, business or
7 nonprofit entity, public corporation, government or governmental
8 subdivision, agency, or instrumentality, or other legal entity;

9 (12) "Proceeds" means the following property:

10 (A) whatever is acquired on the sale, lease, license,
11 exchange, or other disposition of receivership
12 property,

13 (B) whatever is collected on, or distributed on account
14 of, receivership property,

15 (C) rights arising out of receivership property,

16 (D) to the extent of the value of receivership property,
17 claims arising out of the loss, nonconformity, or
18 interference with the use of, defects or infringement
19 of rights in, or damage to the property, or

20 (E) to the extent of the value of receivership property
21 and to the extent payable to the owner or mortgagee,
22 insurance payable by reason of the loss or
23 nonconformity of, defects or infringement of rights
24 in, or damage to the property;

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

6 (14) "Receiver" means a person appointed by the court as the
7 court's agent, and subject to the court's direction, to take
8 possession of, manage, and, if authorized by the Uniform Commercial
9 Real Estate Receivership Act or court order, transfer, sell, lease,
10 license, exchange, collect, or otherwise dispose of receivership
11 property;

12 (15) "Receivership" means a proceeding in which a receiver is
13 appointed;

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

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

21 (18) "Rents" means:

22 (A) sums payable for the right to possess or occupy, or
23 for the actual possession or occupation of, real
24 property of another person,

- 1 (B) sums payable to a mortgagor under a policy of rental-
2 interruption insurance covering real property,
3 (C) claims arising out of a default in the payment of sums
4 payable for the right to possess or occupy real
5 property of another person,
6 (D) sums payable to terminate an agreement to possess or
7 occupy real property of another person,
8 (E) sums payable to a mortgagor for payment or
9 reimbursement of expenses incurred in owning,
10 operating, and maintaining real property or
11 constructing or installing improvements on real
12 property, or
13 (F) other sums payable under an agreement relating to the
14 real property of another person which constitute rents
15 under law of this state other than the Uniform
16 Commercial Real Estate Receivership Act;

17 (19) "Secured obligation" means an obligation the payment or
18 performance of which is secured by a security agreement;

19 (20) "Security agreement" means an agreement that creates or
20 provides for a lien;

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

- 23 (A) to execute or adopt a tangible symbol, or
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1 (B) to attach to or logically associate with the record an
2 electronic sound, symbol, or process; and

3 (22) "State" means a state of the United States, the District
4 of Columbia, Puerto Rico, the United States Virgin Islands, or any
5 territory or insular possession subject to the jurisdiction of the
6 United States.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1561.3 of Title 12, unless there
9 is created a duplication in numbering, reads as follows:

10 NOTICE AND OPPORTUNITY FOR HEARING.

11 (a) Except as otherwise provided in subsection (b) of this
12 section, the court may issue an order under the Uniform Commercial
13 Real Estate Receivership Act only after notice and opportunity for a
14 hearing appropriate in the circumstances.

15 (b) The court may issue an order under the Uniform Commercial
16 Real Estate Receivership Act:

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

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

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

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1 SECTION 4. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1561.4 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 SCOPE; EXCLUSIONS.

5 (a) Except as otherwise provided in subsection (b) or (c) of
6 this section, the Uniform Commercial Real Estate Receivership Act
7 applies to a receivership for an interest in real property and any
8 personal property related to or used in operating the real property.

9 (b) The Uniform Commercial Real Estate Receivership Act does
10 not apply to a receivership for an interest in real property
11 improved by one to four dwelling units unless:

12 (1) the interest is used for agricultural, commercial,
13 industrial, or mineral-extraction purposes, other than incidental
14 uses by an owner occupying the property as the owner's primary
15 residence;

16 (2) the interest secures an obligation incurred at a time when
17 the property was used or planned for use for agricultural,
18 commercial, industrial, or mineral-extraction purposes;

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

22 (4) the owner is collecting or has the right to collect rents
23 or other income from the property from a person other than an
24 affiliate of the owner.

1 (c) The Uniform Commercial Real Estate Receivership Act does
2 not apply to a receivership authorized by law of this state other
3 than the Uniform Commercial Real Estate Receivership Act in which
4 the receiver is a governmental unit or an individual acting in an
5 official capacity on behalf of the unit except to the extent
6 provided by the other law.

7 (d) The Uniform Commercial Real Estate Receivership Act does
8 not limit the authority of a court to appoint a receiver under law
9 of this state other than the Uniform Commercial Real Estate
10 Receivership Act.

11 (e) Unless displaced by a particular provision of the Uniform
12 Commercial Real Estate Receivership Act, the principles of law and
13 equity supplement the Uniform Commercial Real Estate Receivership
14 Act.

15 SECTION 5. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1561.5 of Title 12, unless there
17 is created a duplication in numbering, reads as follows:

18 POWER OF COURT. The court that appoints a receiver under the
19 Uniform Commercial Real Estate Receivership Act has exclusive
20 jurisdiction to direct the receiver and determine any controversy
21 related to the receivership or receivership property.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1561.6 of Title 12, unless there
24 is created a duplication in numbering, reads as follows:

1 APPOINTMENT OF RECEIVER.

2 (a) The court may appoint a receiver:

3 (1) before judgment, to protect a party that demonstrates an
4 apparent right, title, or interest in real property that is the
5 subject of the action, if the property or its revenue-producing
6 potential:

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

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

11 (2) after judgment:

12 (A) to carry the judgment into effect, or

13 (B) to preserve nonexempt real property pending appeal or
14 when an execution has been returned unsatisfied and
15 the owner refuses to apply the property in
16 satisfaction of the judgment;

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

19 (4) during the time allowed for redemption, to preserve real
20 property sold in an execution or foreclosure sale and secure its
21 rents to the person entitled to the rents.

22 (b) In connection with the foreclosure or other enforcement of
23 a mortgage, the court may appoint a receiver for the mortgaged
24 property if:

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

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

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

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

9 (5) the owner fails to turn over to the mortgagee proceeds or
10 rents the mortgagee was entitled to collect; or

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

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

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1561.7 of Title 12, unless there
24 is created a duplication in numbering, reads as follows:

1 DISQUALIFICATION FROM APPOINTMENT AS RECEIVER; DISCLOSURE OF
2 INTEREST.

3 (a) The court may not appoint a person as receiver unless the
4 person submits to the court a statement under penalty of perjury
5 that the person is not disqualified.

6 (b) Except as otherwise provided in subsection (c) of this
7 section, a person is disqualified from appointment as receiver if
8 the person:

9 (1) is an affiliate of a party;

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

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

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

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

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

19 (1) was appointed receiver or is owed compensation in an
20 unrelated matter involving a party or was engaged by a party in a
21 matter unrelated to the receivership;

22 (2) is an individual obligated to a party on a debt that is not
23 in default and was incurred primarily for personal, family, or
24 household purposes; or

1 (3) maintains with a party a deposit account as defined in
2 subsection (a) of Section 1-9-102 of Title 12A of the Oklahoma
3 Statutes.

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

7 SECTION 8. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1561.8 of Title 12, unless there
9 is created a duplication in numbering, reads as follows:

10 RECEIVER'S BOND; ALTERNATIVE SECURITY.

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

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

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

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

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

18 and

19 (5) complies with Section 1553 of Title 12 of the Oklahoma
20 Statutes.

21 (b) The court may approve the posting by a receiver with the
22 court of alternative security, such as a letter of credit or deposit
23 of funds. The receiver may not use receivership property as
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1 alternative security. Interest that accrues on deposited funds must
2 be paid to the receiver on the receiver's discharge.

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

6 (d) A claim against a receiver's bond or alternative security
7 must be made not later than one (1) year after the date the receiver
8 is discharged.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1561.9 of Title 12, unless there
11 is created a duplication in numbering, reads as follows:

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

14 (1) Article 9 of the Uniform Commercial Code as to receivership
15 property that is personal property or fixtures; and

16 (2) Section 706 of Title 12 of the Oklahoma Statutes as to
17 receivership property that is real property.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1561.10 of Title 12, unless
20 there is created a duplication in numbering, reads as follows:

21 SECURITY AGREEMENT COVERING AFTER-ACQUIRED PROPERTY. Except as
22 otherwise provided by law of this state other than the Uniform
23 Commercial Real Estate Receivership Act, property that a receiver or
24 owner acquires after appointment of the receiver is subject to a

1 security agreement entered into before the appointment to the same
2 extent as if the court had not appointed the receiver.

3 SECTION 11. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1561.11 of Title 12, unless
5 there is created a duplication in numbering, reads as follows:

6 COLLECTION AND TURNOVER OF RECEIVERSHIP PROPERTY.

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

8 (1) a person that owes a debt that is receivership property and
9 is matured or payable on demand or on order shall pay the debt to or
10 on the order of the receiver, except to the extent the debt is
11 subject to setoff or recoupment; and

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

15 (b) A person that has notice of the appointment of a receiver
16 and owes a debt that is receivership property may not satisfy the
17 debt by payment to the owner.

18 (c) If a creditor has possession, custody, or control of
19 receivership property and the validity, perfection, or priority of
20 the creditor's lien on the property depends on the creditor's
21 possession, custody, or control, the creditor may retain possession,
22 custody, or control until the court orders adequate protection of
23 the creditor's lien.

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

5 SECTION 12. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1561.12 of Title 12, unless
7 there is created a duplication in numbering, reads as follows:

8 POWERS AND DUTIES OF RECEIVER.

9 (a) Except as limited by court order or law of this state other
10 than the Uniform Commercial Real Estate Receivership Act, a receiver
11 may:

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

14 (2) operate a business constituting receivership property,
15 including preservation, use, sale, lease, license, exchange,
16 collection, or disposition of the property in the ordinary course of
17 business;

18 (3) in the ordinary course of business, incur unsecured debt
19 and pay expenses incidental to the receiver's preservation, use,
20 sale, lease, license, exchange, collection, or disposition of
21 receivership property;

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

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

4 (6) on subpoena, compel a person to submit to examination under
5 oath, or to produce and permit inspection and copying of designated
6 records or tangible things, with respect to receivership property or
7 any other matter that may affect administration of the receivership;

8 (7) engage a professional as provided in Section 15 of this
9 act;

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

13 (9) exercise any power conferred by court order, the Uniform
14 Commercial Real Estate Receivership Act, or law of this state other
15 than the Uniform Commercial Real Estate Receivership Act.

16 (b) With court approval, a receiver may:

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

19 (2) make improvements to receivership property;

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

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

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1 (5) pay compensation to the receiver as provided in Section 21
2 of this act, and to each professional engaged by the receiver as
3 provided in Section 15 of this act;

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

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

8 (c) A receiver shall:

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

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

15 (3) file with the county clerk a copy of the order appointing
16 the receiver and, if a legal description of the real property is not
17 included in the order, the legal description;

18 (4) disclose to the court any fact arising during the
19 receivership which would disqualify the receiver under Section 7 of
20 this act; and

21 (5) perform any duty imposed by court order, the Uniform
22 Commercial Real Estate Receivership Act, or law of this state other
23 than the Uniform Commercial Real Estate Receivership Act.

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

3 SECTION 13. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1561.13 of Title 12, unless
5 there is created a duplication in numbering, reads as follows:

6 DUTIES OF OWNER.

7 (a) An owner shall:

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

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

13 (3) identify all records and other information relating to the
14 receivership property, including a password, authorization, or other
15 information needed to obtain or maintain access to or control of the
16 receivership property, and make available to the receiver the
17 records and information in the owner's possession, custody, or
18 control;

19 (4) on subpoena, submit to examination under oath by the
20 receiver concerning the acts, conduct, property, liabilities, and
21 financial condition of the owner or any matter relating to the
22 receivership property or the receivership; and
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1 (5) perform any duty imposed by court order, the Uniform
2 Commercial Real Estate Receivership Act, or law of this state other
3 than the Uniform Commercial Real Estate Receivership Act.

4 (b) If an owner is a person other than an individual, this
5 section applies to each officer, director, manager, member, partner,
6 trustee, or other person exercising or having the power to exercise
7 control over the affairs of the owner.

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

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

12 (2) sanction the failure as civil contempt.

13 SECTION 14. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1561.14 of Title 12, unless
15 there is created a duplication in numbering, reads as follows:

16 STAY; INJUNCTION.

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

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

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

4 (b) Except as otherwise provided in subsection (d) of this
5 section, the court may enjoin an act, action, or proceeding against
6 or relating to receivership property if the injunction is necessary
7 to protect the property or facilitate administration of the
8 receivership.

9 (c) A person whose act, action, or proceeding is stayed or
10 enjoined under this section may apply to the court for relief from
11 the stay or injunction for cause.

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

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

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

19 (3) commencement or continuation of a criminal proceeding;

20 (4) commencement or continuation of an action or proceeding, or
21 enforcement of a judgment other than a money judgment in an action
22 or proceeding, by a governmental unit to enforce its police or
23 regulatory power; or

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

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

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

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

10 (2) sanction the violation as civil contempt.

11 SECTION 15. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1561.15 of Title 12, unless
13 there is created a duplication in numbering, reads as follows:

14 ENGAGEMENT AND COMPENSATION OF PROFESSIONAL.

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

19 (1) the identity and qualifications of the professional;

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

21 (3) any potential conflict of interest; and

22 (4) the proposed compensation.

23 (b) A person is not disqualified from engagement under this
24 section solely because of the person's engagement by, representation

1 of, or other relationship with the receiver, a creditor, or a party.
2 The Uniform Commercial Real Estate Receivership Act does not prevent
3 the receiver from serving in the receivership as an attorney,
4 accountant, auctioneer, or broker when authorized by law.

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

10 SECTION 16. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1561.16 of Title 12, unless
12 there is created a duplication in numbering, reads as follows:

13 USE OR TRANSFER OF RECEIVERSHIP PROPERTY NOT IN ORDINARY COURSE
14 OF BUSINESS.

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
5 proceeds of the transfer with the same validity, perfection, and
6 priority the lien had on the property immediately before the
7 transfer, even if the proceeds are not sufficient to satisfy all
8 obligations secured by the lien.

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

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

24

1 SECTION 17. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1561.17 of Title 12, unless
3 there is created a duplication in numbering, reads as follows:

4 EXECUTORY CONTRACT.

5 (a) In this section, "timeshare interest" means an interest
6 having a duration of more than three (3) years which grants its
7 holder the right to use and occupy an accommodation, facility, or
8 recreational site, whether improved or not, for a specific period
9 less than one (1) year during any given year.

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

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

23 (d) A provision in an executory contract which requires or
24 permits a forfeiture, modification, or termination of the contract

1 because of the appointment of a receiver or the financial condition
2 of the owner does not affect a receiver's power under subsection (b)
3 of this section to adopt the contract.

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

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

11 (2) thirty (30) days after the court approves the rejection.

12 (f) If at the time a receiver is appointed, the owner has the
13 right to assign an executory contract relating to receivership
14 property under law of this state other than the Uniform Commercial
15 Real Estate Receivership Act, the receiver may assign the contract
16 with court approval.

17 (g) If a receiver rejects under subsection (b) of this section
18 an executory contract for the sale of receivership property that is
19 real property in possession of the purchaser or a real-property
20 timeshare interest, the purchaser may:

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

24

1 (2) retain the purchaser's right to possession under the
2 contract, and in that case the purchaser shall continue to perform
3 all obligations arising under the contract and may offset any
4 damages caused by nonperformance of an obligation of the owner after
5 the date of the rejection, but the purchaser has no right or claim
6 against other receivership property or the receiver on account of
7 the damages.

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

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

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

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

16 (A) the lease is superior to the lien of the mortgage,

17 (B) the tenant has an enforceable agreement with the
18 mortgagee or the holder of a senior lien under which
19 the tenant's occupancy will not be disturbed as long
20 as the tenant performs its obligations under the
21 lease,

22 (C) the mortgagee has consented to the lease, either in a
23 signed record or by its failure timely to object that
24 the lease violated the mortgage, or

1 (D) the terms of the lease were commercially reasonable at
2 the time the lease was agreed to and the tenant did
3 not know or have reason to know that the lease
4 violated the mortgage.

5 SECTION 18 NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1561.18 of Title 12, unless
7 there is created a duplication in numbering, reads as follows:

8 DEFENSES AND IMMUNITIES OF RECEIVER.

9 (a) A receiver is entitled to all defenses and immunities
10 provided by law of this state other than the Uniform Commercial Real
11 Estate Receivership Act for an act or omission within the scope of
12 the receiver's appointment.

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

16 SECTION 19. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1561.19 of Title 12, unless
18 there is created a duplication in numbering, reads as follows:

19 INTERIM REPORT OF RECEIVER. A receiver may file or, if ordered
20 by the court, shall file an interim report that includes:

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

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

1 (3) receipts and dispositions of receivership property;

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

5 (5) any other information required by the court.

6 SECTION 20. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1561.20 of Title 12, unless
8 there is created a duplication in numbering, reads as follows:

9 NOTICE OF APPOINTMENT; CLAIM AGAINST RECEIVERSHIP; DISTRIBUTION
10 TO CREDITORS.

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

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

17 (2) publication as directed by the court.

18 (b) Except as otherwise provided in subsection (f) of this
19 section, the notice required by subsection (a) of this section must
20 specify the date by which each creditor holding a claim against the
21 owner which arose before appointment of the receiver must submit the
22 claim to the receiver. The date specified must be at least ninety
23 (90) days after the later of notice under paragraph (1) of
24 subsection (a) of this section or last publication under paragraph

1 (2) of subsection (a) of this section. The court may extend the
2 period for submitting the claim. Unless the court orders otherwise,
3 a claim that is not submitted timely is not entitled to a
4 distribution from the receivership.

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

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

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

8 (3) identify any property securing the claim;

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

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

11 (d) An assignment by a creditor of a claim against the owner is
12 effective against the receiver only if the assignee gives timely
13 notice of the assignment to the receiver in a signed record.

14 (e) At any time before entry of an order approving a receiver's
15 final report, the receiver may file with the court an objection to a
16 claim of a creditor, stating the basis for the objection. The court
17 shall allow or disallow the claim according to law of this state
18 other than the Uniform Commercial Real Estate Receivership Act.

19 (f) If the court concludes that receivership property is likely
20 to be insufficient to satisfy claims of each creditor holding a
21 perfected lien on the property, the court may order that:

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

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

3 (g) Subject to Section 21 of this act:

4 (1) a distribution of receivership property to a creditor
5 holding a perfected lien on the property must be made in accordance
6 with the creditor's priority under law of this state other than the
7 Uniform Commercial Real Estate Receivership Act; and

8 (2) a distribution of receivership property to a creditor with
9 an allowed unsecured claim must be made as the court directs
10 according to law of this state other than the Uniform Commercial
11 Real Estate Receivership Act.

12 SECTION 21. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1561.21 of Title 12, unless
14 there is created a duplication in numbering, reads as follows:

15 FEES AND EXPENSES.

16 (a) The court may award a receiver from receivership property
17 the reasonable and necessary fees and expenses of performing the
18 duties of the receiver and exercising the powers of the receiver.

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

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

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

4 SECTION 22. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1561.22 of Title 12, unless
6 there is created a duplication in numbering, reads as follows:

7 REMOVAL OF RECEIVER; REPLACEMENT; TERMINATION OF RECEIVERSHIP.

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

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

11 (c) If the court finds that a receiver that resigns or is
12 removed, or the representative of a receiver that is deceased, has
13 accounted fully for and turned over to the successor receiver all
14 receivership property and has filed a report of all receipts and
15 disbursements during the service of the replaced receiver, the
16 replaced receiver is discharged.

17 (d) The court may discharge a receiver and terminate the
18 court's administration of the receivership property if the court
19 finds that appointment of the receiver was improvident or that the
20 circumstances no longer warrant continuation of the receivership.
21 If the court finds that the appointment was sought wrongfully or in
22 bad faith, the court may assess against the person that sought the
23 appointment:

- 1 (1) the fees and expenses of the receivership, including
2 reasonable attorney's fees and costs; and
3 (2) actual damages caused by the appointment, including
4 reasonable attorney's fees and costs.

5 SECTION 23. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1561.23 of Title 12, unless
7 there is created a duplication in numbering, reads as follows:

8 FINAL REPORT OF RECEIVER; DISCHARGE.

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

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

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

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

18 (4) a list of dispositions of receivership property;

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

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

23 (7) any other information required by the court.
24

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

4 SECTION 24. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1561.24 of Title 12, unless
6 there is created a duplication in numbering, reads as follows:

7 RECEIVERSHIP IN ANOTHER STATE; ANCILLARY PROCEEDING.

8 (a) The court may appoint a receiver appointed in another
9 state, or that person's nominee, as an ancillary receiver with
10 respect to property located in this state or subject to the
11 jurisdiction of the court for which a receiver could be appointed
12 under the Uniform Commercial Real Estate Receivership Act, if:

13 (1) the person or nominee would be eligible to serve as
14 receiver under Section 7 of this act; and

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

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

20 (c) Unless the court orders otherwise, an ancillary receiver
21 appointed under subsection (a) of this section has the rights,
22 powers, and duties of a receiver appointed under the Uniform
23 Commercial Real Estate Receivership Act.

1 SECTION 25. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1561.25 of Title 12, unless
3 there is created a duplication in numbering, reads as follows:

4 EFFECT OF ENFORCEMENT BY MORTGAGEE.

5 (a) A request by a mortgagee for appointment of a receiver, the
6 appointment of a receiver, or application by a mortgagee of
7 receivership property or proceeds to the secured obligation does
8 not:

9 (1) make the mortgagee a mortgagee in possession of the real
10 property;

11 (2) make the mortgagee an agent of the owner;

12 (3) constitute an election of remedies that precludes a later
13 action to enforce the secured obligation;

14 (4) make the secured obligation unenforceable;

15 (5) limit any right available to the mortgagee with respect to
16 the secured obligation;

17 (6) except as otherwise provided in subsection (b) of this
18 section, bar a deficiency judgment pursuant to law of this state
19 other than the Uniform Commercial Real Estate Receivership Act
20 governing or relating to a deficiency judgment.

21 (b) If a receiver sells receivership property that pursuant to
22 subsection (c) of Section 16 of this act is free and clear of a
23 lien, the ability of a creditor to enforce an obligation that had
24 been secured by the lien is subject to law of this state other than

1 the Uniform Commercial Real Estate Receivership Act relating to a
2 deficiency judgment.

3 SECTION 26. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1561.26 of Title 12, unless
5 there is created a duplication in numbering, reads as follows:

6 UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and
7 construing the Uniform Commercial Real Estate Receivership Act,
8 consideration must be given to the need to promote uniformity of the
9 law with respect to its subject matter among states that enact it.

10 SECTION 27. AMENDATORY 12 O.S. 2011, Section 1551, is
11 amended to read as follows:

12 Section 1551. A receiver may be appointed by a ~~Judge~~ Justice of
13 the Supreme Court or a district court judge:

14 1. In an action by a vendor to vacate a fraudulent purchase of
15 property, or by a creditor to subject any property or fund to his
16 claim, or between partners or others jointly owning or interested in
17 any property or fund, on the application of the plaintiff, or of any
18 party whose right to or interest in the property or fund, or the
19 proceeds thereof, is probable, and where it is shown that the
20 property or fund is in danger of being lost, removed or materially
21 injured.

22 2. In an action by a mortgagee for the foreclosure of his
23 mortgage and sale of the mortgaged property or in connection with a
24

1 mortgagee foreclosing his mortgage by power of sale under the
2 Oklahoma Power of Sale Mortgage Foreclosure Act:

3 a. where it appears that the mortgaged property is in
4 danger of being lost, removed or materially injured,
5 or

6 b. that a condition of the mortgage has not been
7 performed, and that the property is probably
8 insufficient to discharge the mortgage debt, or

9 c. that a condition of the mortgage has not been
10 performed and the mortgage instrument provides for the
11 appointment of a receiver.

12 Provided, appointment and authority shall be subject to the
13 provisions of the Uniform Commercial Real Estate Receivership Act.

14 3. After judgment, to carry the judgment into effect.

15 4. After judgment, to dispose of the property according to the
16 judgment, or to preserve it during the pendency of an appeal, or in
17 proceeding in aid of execution, when an execution has been returned
18 unsatisfied, or when the judgment debtor refuses to apply his
19 property in satisfaction of the judgment.

20 5. In the cases provided in this Code, and by special statutes,
21 when a corporation has been dissolved, or is insolvent, or in
22 imminent danger of insolvency, or has forfeited its corporate
23 rights.

24

1 6. In all other cases where receivers have heretofore been
2 appointed by the usages of the courts of equity.

3 SECTION 28. This act shall become effective November 1, 2017.

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