

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Senate Bill 440

BY SENATORS WOODRUM AND TRUMP

[Passed March 09, 2022; in effect 90 days from passage]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §55-20-1, §55-20-2, §55-20-3, §55-20-4, §55-20-5, §55-20-6, §55-20-7, §55-
3 20-8, §55-20-9, §55-20-10, §55-20-11, §55-20-12, §55-20-13, §55-20-14, §55-20-15, §55-
4 20-16, §55-20-17, §55-20-18, §55-20-19, §55-20-20, §55-20-21, §55-20-22, §55-20-23,
5 §55-20-24, §55-20-25, §55-20-26, §55-20-27, and §55-20-28, all relating to establishing
6 uniform requirements and authority for a receiver appointed by a court for management of
7 commercial real estate during certain matters pending before the court; providing a short
8 title; providing definitions; providing for notice and an opportunity for a hearing; providing
9 for scope and exclusions; establishing the power of court; providing for the appointment
10 of receiver; providing for the disqualification from appointment as receiver and disclosure
11 of interest; providing for bond and alternative security; providing for the status of receiver
12 as lien creditor; creating a security agreement covering after-acquired property; providing
13 for the collection and turnover of receivership property; creating the powers and duties of
14 receiver; creating the duties of owner; creating a stay of other actions and injunction;
15 providing for engagement and compensation of professional; providing for the use or
16 transfer of receivership property not in ordinary course of business; creating an executory
17 contract; providing defenses and immunities of receiver; providing for an interim report of
18 receiver; creating notice of appointment, claim against receivership, and distribution to
19 creditors; providing fees and expenses; creating the removal of receiver, replacement,
20 and termination of receivership; creating the final report of receiver and discharge; creating
21 receivership in another state and ancillary reporting; providing an effect of enforcement by
22 mortgagee; creating uniformity of application and construction; and providing for transition.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT.

§55-20-1. Short title.

1 This article may be cited as the Uniform Commercial Real Estate Receivership Act.

§55-20-2. Definitions.

1 When used in this article, the following words have the meanings specified in this section:

2 "Affiliate" means:

3 (1) With respect to an individual:

4 (A) A spouse, companion, or domestic partner of the individual;

5 (B) A lineal ancestor or descendant, whether by blood or adoption, of:

6 (i) The individual; or

7 (ii) A spouse, companion, or domestic partner of the individual;

8 (C) A spouse, companion, or domestic partner of an ancestor or descendant described in
9 clause (ii);

10 (D) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece,
11 or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a
12 companion of any of them; or

13 (E) Any other individual occupying the residence of the individual; and

14 (2) With respect to a person other than an individual:

15 (A) Another person that directly or indirectly controls, is controlled by, or is under common
16 control with the person;

17 (B) An officer, director, manager, member, partner, employee, or trustee, or another
18 fiduciary of the person; or

19 (C) A spouse, companion, or domestic partner of an individual, or any other individual
20 occupying the residence of, an individual described in paragraph (A) or (B).

21 "Court" means a circuit court.

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

25 “Governmental unit” means an office, department, division, bureau, board, commission,
26 or other agency of this state or a subdivision of this state.

27 “Lien” means an interest in property which secures payment or performance of an
28 obligation.

29 “Mortgage” means a record, however denominated, that creates or provides for a
30 consensual lien on real property or rents, even if it also creates or provides for a lien on personal
31 property.

32 “Mortgagee” means a person entitled to enforce an obligation secured by a mortgage.

33 “Mortgagor” means a person that grants a mortgage or a successor in ownership of the
34 real property described in the mortgage.

35 “Owner” means the person for whose property a receiver is appointed.

36 “Person” means an individual, estate, business or nonprofit entity, public corporation,
37 government or governmental subdivision, agency, or instrumentality, or other legal entity.

38 “Proceeds” means the following property:

39 (1) Whatever is acquired on the sale, lease, license, exchange, or other disposition of
40 receivership property;

41 (2) Whatever is collected on, or distributed on account of, receivership property;

42 (3) Rights arising out of receivership property;

43 (4) To the extent of the value of receivership property, claims arising out of the loss,
44 nonconformity, or interference with the use of, defects or infringement of rights in, or damage to
45 the property; or

46 (5) To the extent of the value of receivership property and to the extent payable to the
47 owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or
48 infringement of rights in, or damage to the property.

49 “Property” means all of a person’s right, title, and interest, both legal and equitable, in real
50 and personal property, tangible and intangible, wherever located and however acquired. The term
51 includes proceeds, products, offspring, rents, or profits of or from the property.

52 “Receiver” means a person appointed by the court as the court’s agent, and subject to the
53 court’s direction, to take possession of, manage, and, if authorized by this article or court order,
54 transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

55 “Receivership” means a proceeding in which a receiver is appointed.

56 “Receivership property” means the property of an owner which is described in the order
57 appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring,
58 rents, or profits of or from the property.

59 “Record”, used as a noun, means information that is inscribed on a tangible medium or
60 that is stored on an electronic or other medium and is retrievable in perceivable form.

61 “Rents” means:

62 (1) Sums payable for the right to possess or occupy, or for the actual possession or
63 occupation of, real property of another person;

64 (2) Sums payable to a mortgagor under a policy of rental-interruption insurance covering
65 real property;

66 (3) Claims arising out of a default in the payment of sums payable for the right to possess
67 or occupy real property of another person;

68 (4) Sums payable to terminate an agreement to possess or occupy real property of another
69 person;

70 (5) Sums payable to a mortgagor for payment, or for reimbursement of expenses incurred
71 in owning, operating, and maintaining real property, or constructing or installing improvements on
72 real property; or

73 (6) Other sums payable under an agreement relating to the real property of another person
74 which constitute rents under law of this state other than this article.

75 “Secured obligation” means an obligation the payment or performance of which is secured
76 by a security agreement.

77 “Security agreement” means an agreement that creates, or provides for, a lien.

78 “Sign” means, with present intent to authenticate or adopt a record:

79 (1) To execute or adopt a tangible symbol; or

80 (2) To attach to, or logically associate with, the record an electronic sound, symbol, or
81 process.

82 “State” means a state of the United States, the District of Columbia, Puerto Rico, the
83 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
84 United States.

§55-20-3. Notice and opportunity for hearing.

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

4 (b) The court may issue an order under this article:

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

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

9 (3) After notice, and without a hearing, if no interested party timely requests a hearing.

§55-20-4. Scope; exclusions.

1 (a) Except as otherwise provided in subsection (b) or (c) of this section, this article applies
2 to a receivership for an interest in real property and any personal property related to or used in
3 operating the real property.

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

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

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

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

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

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

18 (d) This article does not limit the authority of a court to appoint a receiver under law of this
19 state other than this article.

20 (e) Unless displaced by a particular provision of this article, the principles of law and equity
21 supplement this article.

§55-20-5. Power of court.

1 The court that appoints a receiver under this article has exclusive jurisdiction to direct the
2 receiver and determine any controversy related to the receivership or receivership property and
3 all such orders shall have statewide effect.

§55-20-6. Appointment of receiver.

1 (a) The court may appoint a receiver:

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

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

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

6 (2) After judgment:

7 (A) To carry the judgment into effect; or

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

10 or

11 (3) In an action in which a receiver for real property may be appointed on equitable
12 grounds.

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

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

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

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

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

21 (5) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was
22 entitled to collect; or

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

24 (c) The court may condition appointment of a receiver without prior notice under §55-20-
25 3(b)(1) of this code or without a prior hearing under §55-20-3(b)(2) of this code on the giving of
26 security by the person seeking the appointment for the payment of damages, reasonable
27 attorney's fees, and costs incurred or suffered by any person if the court later concludes that the
28 appointment was not justified. If the court later concludes that the appointment was justified, the
29 court shall release the security.

§55-20-7. Disqualification from appointment as receiver; disclosure of interest.

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

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

5 (1) Is an affiliate of a party;

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

7 (3) Has a material financial interest in the outcome of the action, other than compensation
8 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 noncontrolling interest in a publicly-
11 traded company.

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

13 (1) Was appointed receiver or is owed compensation in an unrelated matter involving a
14 party or was engaged by a party in a matter unrelated to the receivership;

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

17 (3) Maintains with a party a deposit account as defined in §46-9-102(a)(29) of this code.

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

§55-20-8. Bond; alternative security.

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

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

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

5 (3) Is in an amount the court specifies; and

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

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

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

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

§55-20-9. Status of receiver as lien creditor.

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

2 (1) Section §46-9-101 *et seq.* of this code as to receivership property that is personal
3 property or fixtures; and

4 (2) Chapter 38 of this code as to receivership property that is real property.

§55-20-10. Security agreement covering after-acquired property.

1 Except as otherwise provided by law of this state other than this article, property that a
2 receiver or owner acquires after appointment of the receiver is subject to a security agreement
3 entered into before the appointment to the same extent as if the court had not appointed the
4 receiver.

§55-20-11. Collection and turnover of receivership property.

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

2 (1) A person that owes a debt that is receivership property and is matured or payable on
3 demand or on order shall pay the debt to or on the order of the receiver, except to the extent the
4 debt is subject to setoff or recoupment; and

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

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

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

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

§55-20-12. Powers and duties of receiver.

1 (a) Except as limited by court order or law of this state other than this article, a receiver
2 may:

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

4 (2) Operate a business constituting receivership property, including preservation, use,
5 sale, lease, license, exchange, 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 pay expenses incidental
8 to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of
9 receivership property;

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

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

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

17 (7) Engage a professional as provided in §55-20-15 of this code;

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

20 (9) Exercise any power conferred by court order, this article, or law of this state other than
21 this article.

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

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

25 (2) Make improvements to receivership property;

26 (3) Use or transfer receivership property other than in the ordinary course of business as
27 provided in §55-20-16 of this code;

28 (4) Adopt or reject an executory contract of the owner as provided in §55-20-17 of this
29 code;

30 (5) Pay compensation to the receiver as provided in §55-20-21 of this code, and to each
31 professional engaged by the receiver as provided in §55-20-15 of this code;

32 (6) Recommend allowance or disallowance of a claim of a creditor as provided in §55-20-
33 20 of this code; and

34 (7) Make a distribution of receivership property as provided in §55-20-20 of this code.

35 (c) A receiver shall:

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

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

40 (3) File a copy of the order appointing the receiver with the county clerk of the appropriate
41 county and, if a legal description of the real property is not included in the order, the legal
42 description;

43 (4) Disclose to the court any fact arising during the receivership which would disqualify the
44 receiver under §55-20-7 of this code; and

45 (5) Perform any duty imposed by court order, this article, or law of this state other than this
46 article.

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

§55-20-13. Duties of owner.

1 (a) An owner shall:

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

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

6 (3) Identify all records and other information relating to the receivership property, including
7 a password, authorization, or other information needed to obtain or maintain access to or control
8 of the receivership property, and make available to the receiver the records and information in the
9 owner's possession, custody, or control;

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

13 (5) Perform any duty imposed by court order, this article, or law of this state other than this
14 article.

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

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

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

21 (2) Sanction the failure as civil contempt.

§55-20-14. Stay of other actions; injunction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 and

29 (2) Sanction the violation as civil contempt.

§55-20-15. Engagement and compensation of professional.

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

4 (1) The identity and qualifications of the professional;

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

6 (3) Any potential conflict of interest; and

7 (4) The proposed compensation.

8 (b) A person is not disqualified from engagement under this section solely because of the
9 person's engagement by, representation of, or other relationship with the receiver, a creditor, or
10 a party. This article does not prevent the receiver from serving in the receivership as an attorney,
11 accountant, auctioneer, or broker when authorized by law.

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

§55-20-16. Use or transfer of receivership property not in ordinary course of business.

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

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

5 (c) With court approval, a receiver may transfer receivership property, other than in the
6 ordinary course of business, by sale, lease, license, exchange, or other disposition. Unless the
7 agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the
8 person that obtained appointment of the receiver, any subordinate lien, and any right of
9 redemption, but is subject to a senior lien.

10 (d) A lien on receivership property which is extinguished by a transfer under subsection
11 (c) of this section attaches to the proceeds of the transfer with the same validity, perfection, and
12 priority the lien had on the property immediately before the transfer, even if the proceeds are not
13 sufficient to satisfy all obligations secured by the lien.

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

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

§55-20-17. Executory contract.

1 (a) In this section, “executory contract” has the same meaning as “timesharing plan” as
2 defined in §36-9-4 of this code.

3 (b) Except as otherwise provided in subsection (h) of this section, with court approval, a
4 receiver may adopt or reject an executory contract of the owner relating to receivership property.

5 The court may condition the receiver's adoption and continued performance of the contract on
6 terms appropriate under the circumstances. If the receiver does not request court approval to
7 adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver
8 is deemed to have rejected the contract.

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

12 (d) A provision in an executory contract which requires or permits a forfeiture, modification,
13 or termination of the contract because of the appointment of a receiver or the financial condition
14 of the owner does not affect a receiver's power under subsection (b) of this section to adopt the
15 contract.

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

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

21 (2) Thirty days after the court approves the rejection.

22 (f) If at the time a receiver is appointed, the owner has the right to assign an executory
23 contract relating to receivership property under law of this state other than this article, the receiver
24 may assign the contract with court approval.

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

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

30 (2) Retain the purchaser's right to possession under the contract, and in that case the
31 purchaser shall continue to perform all obligations arising under the contract and may offset any
32 damages caused by nonperformance of an obligation of the owner after the date of the rejection,
33 but the purchaser has no right or claim against other receivership property or the receiver on
34 account of the damages.

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

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

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

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

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

41 (B) The tenant has an enforceable agreement with the mortgagee or the holder of a senior
42 lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its
43 obligations under the lease;

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

46 (D) The terms of the lease were commercially reasonable at the time the lease was agreed
47 to and the tenant did not know or have reason to know that the lease violated the mortgage.

§55-20-18. Defenses and immunities of receiver.

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

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

§55-20-19. Interim report of receiver.

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

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

- 3 (2) Receipts and disbursements, including a payment made or proposed to be made to a
- 4 professional engaged by the receiver;
- 5 (3) Receipts and dispositions of receivership property;
- 6 (4) Fees and expenses of the receiver and, if not filed separately, a request for approval
- 7 of payment of the fees and expenses; and
- 8 (5) Any other information required by the court.

§55-20-20. Notice of appointment; claim against receivership; distribution to creditors.

1 (a) Except as otherwise provided in subsection (f) of this section, a receiver shall give

2 notice of appointment of the receiver to creditors of the owner by:

- 3 (1) Deposit for delivery through first-class mail or other commercially reasonable delivery
- 4 method to the last-known address of each creditor; and
- 5 (2) Publication as directed by the court.

6 (b) Except as otherwise provided in subsection (f) of this section, the notice required by

7 subsection (a) of this section must specify the date by which each creditor holding a claim against

8 the owner which arose before appointment of the receiver must submit the claim to the receiver.

9 The date specified must be at least 90 days after the later of notice under subsection (a)(1) or last

10 publication under subsection (a)(2) of this section. The court may extend the period for submitting

11 the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to

12 a distribution from the receivership.

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

- 14 (1) State the name and address of the creditor;
- 15 (2) State the amount and basis of the claim;
- 16 (3) Identify any property securing the claim;
- 17 (4) Be signed by the creditor under penalty of perjury; and
- 18 (5) Include a copy of any record on which the claim is based.

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

22 (e) At any time before entry of an order approving a receiver's final report, the receiver
23 may file with the court an objection to a claim of a creditor, stating the basis for the objection. The
24 court shall allow or disallow the claim according to law of this state other than this article.

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

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

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

30 (g) Subject to §55-20-21 of this code:

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

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

§55-20-21. Fees and expenses.

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

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

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

8 (2) A person whose conduct justified or would have justified the appointment of the
9 receiver under §55-20-6(a)(1) of this code.

§55-20-22. Removal of receiver; replacement; termination of receivership.

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

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

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

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

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

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

§55-20-23. Final report of receiver; discharge.

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

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

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

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

6 (4) A list of dispositions of receivership property;

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

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

11 (7) Any other information required by the court.

12 (b) If the court approves a final report filed under subsection (a) and the receiver distributes
13 all receivership property, the receiver is discharged.

§55-20-24. Receivership in another state; ancillary proceeding.

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

4 (1) The person or nominee would be eligible to serve as receiver under the provisions of
5 §55-20-7 of this code; and

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

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

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

§55-20-25. Effect of enforcement by mortgagee.

1 (a) A request by a mortgagee for appointment of a receiver, the appointment of a receiver,
2 or application by a mortgagee of receivership property or proceeds to the secured obligation does
3 not:

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

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

6 (3) Constitute an election of remedies that precludes a later action to enforce the secured
7 obligation;

8 (4) Make the secured obligation unenforceable;

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

10 (6) Except as otherwise provided in subsection (b), bar a deficiency judgment pursuant to
11 law of this state other than this article governing or relating to a deficiency judgment.

12 (b) If a receiver sells receivership property that pursuant to §55-10-16(c) of this code is
13 free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured by
14 the lien is subject to law of this state other than this article relating to a deficiency judgment.

§55-20-26. Uniformity of application and construction.

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

§55-20-27. Relation to Electronic Signatures in Global and National Commerce Act.

1 This article modifies, limits, or supersedes the Electronic Signatures in Global and National
2 Commerce Act, 15 U.S.C. § 7001 *et seq.* of this code, but does not modify, limit, or supersede
3 Section 101(c) of that act, 15 U.S.C. § 7001(c) of this code, or authorize electronic delivery of any
4 of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b) of this code.

§55-20-28. Transition.

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

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Governor