From: Sullivan Jr, Frank <fransull@iupui.edu>

Sent: Wednesday, October 11, 2023 5:16 PM

To: Paje Felts <pfelts@inbar.org>; Dible, Jeffrey S. <jdible@fbtlaw.com>

Cc: Aaron Freeman <aaron@aaronfreemanlaw.com>; Carolyn Travis <carolyn.travis@iga.in.gov>

Subject: Uniform Commercial Real Estate Receivership Act

Dear Paje and Jeff:

You will recall that prior to the 2023 session of the Legislature, we discussed the possible enactment in Indiana of the Uniform Commercial Real Estate Receivership Act. Senator Aaron Freeman was interested in the project but concluded that the press of time made it inadvisable to pursue then.

He and I have been in touch and have agreed to try to pursue it during the 2024 session. In fact, he has already had LSA draft the bill (copy attached). Also attached is some background information prepared by the ULC. I have also discussed this project with Judge Heather Welch who sees commercial real estate receivership cases in the Commercial Court. She is very supportive of the concept and has identified several lawyers who practice in this area whose help I am soliciting.

Senator Freeman has specifically asked that I keep the two of you apprised of this matter and, of course, I would be glad to have your help and that if any of your colleagues you would care to identify.

I am convening a meeting on Friday, October 27, at 9:30 AM to discuss pursuing enactment of this act and hope very much that you might be able to attend. I think it is likely that Senator Freeman will be able to join us.

The meeting will have a physical location: Room 235E in the Robert H. McKinney School of Law, 530 West New York Street, Indianapolis. This is a high-tech classroom so those of you who would prefer to participate by Zoom are welcome to do so.

If you come in person, the parking code for the underground garage is 22476#. You will also need the code to exit.

The Zoom address is 991-991-0738. I will also distribute a link several days in advance of the meeting.

There are no restrictions on attending this session. If you have partners, associates, or colleagues who would like to participate (or whom you would like to participate), they are very welcome. If you want to let me know ahead of time their names and contact info, I'll put them on my distribution list. But no such advance notice is required.

Let me know if you have any questions.

Sincerely,

Frank Sullivan

From: John Carr <pmsteelheader@gmail.com>
Sent: Tuesday, December 20, 2022 5:13 PM
To: Berg, Elizabeth <Elizabeth.Berg@fnf.com>
Cc: rrw@wshlaw.com; Colom, Kiamesha-Sylvia G. <KColom@taftlaw.com>; nhuang@fbtlaw.com; Jeffrey S. Dible <jdible@fbtlaw.com>; Paje Felts <pfelts@inbar.org>; lawsbc@gmail.com
Subject: Re: PTRP Real Property Legislation 2023 - UCRERA

My preliminary thoughts focus on two not entirely unrelated things. I'm all in favor of well-crafted uniform laws where they cure some flaw in Indiana law, resolve an otherwise irreconcilable conflict of law affecting commerce, or advance some improvement made possible by technical innovation which can be superimposed upon or extend Indiana law without disrupting an otherwise adequate statutory scheme.

Many of you may recall my strong support for revisions to the Uniform Commercial Code, likewise for the UVTA once we carefully altered a presumption not in accordance with Indiana law (and which was embraced by other States), support for electronic recording and remote notarization, and borrowing sections of other uniform laws to patch gaps without undoing existing law.

I'm generally skeptical of any effort to unnecessarily altering our statutory scheme where it is otherwise adequate and not violative of notions of fairness, notice and due process.

My concern here is the commissioners frankly admit that Indiana has some greater level of adequate receivership scheme than most other States. That in and of itself heightens my level of scrutiny.

I am a great fan of the equity of redemption and concur with our Supreme Court's interpretation in the *Tippecanoe Associates* case[923 N.E.2d 423] regarding a sale without the owner's consent. And I am concerned with the breadth of the uniform scheme that could adversely impact agricultural land and owner occupied business properties. In stating this position, it is expressly understood that federal bankruptcy laws may give trustees powers not enjoyed by a State Court appointed receiver.

So what I am looking for here is a compelling reason to even consider the enactment of this particular law at present. The day may come when uniformity dictates Indiana must adopt such a uniform scheme, which may look a bit different than it reads at present.

Alternatively, if the political winds that are blowing dictate a different approach, then we ought to then consider narrowing the scope of this Act. Maybe Paje can advise us how much pressure is being exerted in support of this bill. My guess is the Bankers and Mortgage Bankers may not like a Court having discretion as to whether or not to appoint the receiver, but they will LOVE the broad effect of doing away with the equity of redemption over what I deem an overly wide spectrum. Within that framework could be the stuff of a negotiation.

John

On Tue, Dec 20, 2022, 3:57 PM Berg, Elizabeth <Elizabeth.Berg@fnf.com> wrote:

Good afternoon!

And here you thought you wouldn't hear from me until the New Year.

Jeff Dible and I were on a call with former Justice Frank Sullivan and Ben Orzeske from the Uniform Law Commission. The Uniform Law on Commercial Real Estate Receivers Act will be carried by Senator Aaron Freeman. He was contacted by Justice Sullivan after a law student studied our laws on the subject and talked with several receivers on the state of the different practices across the state when it comes to receiverships. This law is only passed right now in 12 states. While historically we do like to tweak Uniform Laws because we can and should make it work best for Indiana, there is always push by the ULC to not tweak their work. Having been an observer myself this year, they are very thorough.

Jeff Dible and his partner, Howard Cohen, have already taken a first look at this act and shared the memo attached hereto. I've also attached the ULC's informational page on the act along with the final UCRERA from the ULC. I have not seen the actual Preliminary Draft (PD), but this can get us started.

Without the actual language being proposed in Indiana, I don't want to ask the questions "what needs tweaking?" or "do we support/oppose/stay neutral?" I just wanted to send this over early because it will be a meaty bill since it is a uniform law and in case anyone dealing in real estate was bored and looking for something to do at the end of the year! I do not personally have any thoughts on this legislation yet. If you know anyone that works in this area at your firms, other than Howard, please reach out to them to gather their thoughts.

Thank you all for participating!

Elizabeth J. Wysong Berg, ITP, NTP

FNF National Agency VP for Education and Training

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Uniform Law Commission
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WHY YOUR STATE SHOULD ADOPT THE UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT (UCRERA)

A receiver is a person appointed by a court to take possession of property and to manage or dispose of that property and any income the property produces. Usually the property or its owner is the subject of a lawsuit or a foreclosure action. The receiver's job is to ensure the property retains its maximum value and that any income is distributed to the proper parties.

Courts usually appoint receivers of commercial property when the court needs a responsible party to run a business located on the property, collect rents, or sell the property in an orderly manner. However, the standards for court appointment and the powers of the receiver vary widely from state to state, and sometimes from court to court. The Uniform Commercial Real Estate Receivership Act (UCRERA) provides a basic set of standard rules for receiverships, and gives courts the flexibility to design the most appropriate remedy for the circumstances. States should adopt UCRERA because:

- ***UCRERA provides certainty for business owners and creditors.*** Commercial lending markets operate most efficiently when the rules are consistent from state to state. Under UCRERA, all parties know exactly when a receiver may be appointed and what powers a receiver may exercise.

- ***UCRERA is fair to all parties.*** No receiver may be appointed under UCRERA without notice and an opportunity for a court hearing, unless special circumstances make that impossible. Receivers must post a security bond and are subject to court supervision and removal. Anyone who wrongfully obtains appointment of a receiver is liable for damages, including legal fees.

- ***UCRERA can preserve and maximize the value of commercial property***. Standard commercial mortgage contracts give the lender a right to have a receiver appointed in the event of default. Under UCRERA, with court approval, a receiver may sell receivership property free and clear of liens and rights of redemption (i.e., with the same effect as a foreclosure sale) without impairing a senior mortgage. This permits a receiver to market and sell receivership property more effectively than through foreclosure (which by law is a "distress sale" at public auction), and thus receiver sales under UCRERA should produce higher sale prices. UCRERA's fair and efficient procedures should encourage lenders to choose receivership, but do not prevent lenders from choosing to proceed with a traditional foreclosure.

- ***UCRERA helps state courts implement proper remedies.*** A receiver can act as an extension of the court, doing the practical day-to-day work necessary to preserve property and income as necessary to implement the court's orders.

- ***UCRERA is limited to commercial property.*** No receiver may be appointed for owner-occupied real property improved with one to four dwelling units unless the owner uses the property primarily for agricultural, commercial, industrial, or mineral-extraction purposes.

For further information about UCRERA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

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THE UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT

- A Summary -

A receiver is someone appointed by a court to take possession of another person's property and manage it. Receivers can be used in a variety of situations, including:

- When the property is the subject of a lawsuit and its value must be preserved while the issue is litigated;
- When the property includes an operating business, to sell its assets in an orderly manner and maximize the return for its owners and/or creditors; and
- When requested by a creditor, to collect, preserve, and distribute the property of an insolvent or defaulting debtor.

Currently, receivership procedures vary widely from state to state, and sometimes even from court to court. The Uniform Commercial Real Estate Receivership Act (UCRERA) provides a consistent set of rules for receiverships involving commercial property, including:

Due Process. Under UCRERA, the court may issue an order only after notice and opportunity for a hearing, unless no interested party requests a hearing or special circumstances require the issuance of an order before a hearing can be held.

Appointment. UCRERA establishes uniform standards under which a court may appoint a receiver, and under which a mortgage lender may obtain appointment of a receiver, either as a matter of right or as a matter of the court's discretion.

Identity and Independence. Because a receiver is the agent of the court, UCRERA requires independent receivers. A party seeking the appointment of a receiver may nominate a person to serve, but the nomination is not binding on the court.

Effect of Appointment. On appointment, a receiver has the legal status of a lien creditor with respect to receivership property. However, pre-existing perfected security interests in receivership property are unaffected.

Powers and Duties. UCRERA sets out the receiver's presumptive powers, as well as those that the receiver may exercise only with court approval. The act also sets out the duties of both the receiver and the owner of receivership property.

Use or Sale of Receivership Property. Receivers can use or sell receivership property in the ordinary course of business, but must get court approval for uses or transfers of property outside the ordinary course of business. With court approval, sales may be free and clear of liens and rights of redemption, except that junior lienholders may not force a sale free and clear of liens without the consent of senior lienholders. Secured creditors are entitled to the proceeds of property sales according to existing priority rules.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

Existing Contracts and Leases. A receiver may accept or reject a pre-existing contract with court approval, but UCRERA provides special protections for most commercial tenants of receivership property as well as tenants who occupy receivership property as their primary residences.

Creditor Claims. In most cases, a receiver must notify creditors of the receivership, and creditors must file claims with the receiver before receiving distributions from receivership property.

Reporting. A receiver must file periodic reports with the court overseeing the receivership, creating a public record of receivership accounts.

Receivership in Context of Mortgage Enforcement. Under UCRERA, a mortgage lender that requests appointment of a receiver is not liable as a possessor of receivership property and retains other remedies for enforcing the mortgage.

UCRERA provides a set of uniform rules that should provide more predictability to lenders and borrowers alike. It gives state courts guidance on the receivership process while preserving the court's flexibility to craft a remedy appropriate under the circumstances.

For further information about UCRERA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

AMERICAN COLLEGE OF COMMERCIAL FINANCE LAWYERS

September 12, 2017

Anita Ramasastry
President, Uniform Law Commission
111 N. Wabash Avenue
Suite 1010
Chicago, Illinois 60602

ACCFL Endorsement of the Uniform Commercial Real Estate Receivership Act

Dear President Ramasastry:

I am pleased to inform you that the American College of Commercial Finance Lawyers, by vote of its Board of Regents, formally endorses the Uniform Commercial Real Estate Receivership Act as approved by the Uniform Law Commission, and supports the state level enactment of the Act throughout the country.

Few states have a comprehensive statutory scheme governing real estate receiverships, and the Act is a well-drafted and thoughtful response to that legal vacuum. In particular, the College commends the Act for establishing uniform standards for the appointment of a receiver and delineating the powers of a receiver. Specifically, by authorizing a receiver to use, sell, or lease receivership property in the ordinary course of business, and to take such actions outside the ordinary course of business with court approval, the Act allows a mortgagee – through a receiver – to effectively assume control of the mortgaged property, operate the property as a going concern, and sell the property in an arms-length transaction. In addition, the Act allows a receiver to conduct a unified sale of encumbered real estate and related personal property, such as equipment, a franchise agreement, and intellectual property. This process will likely yield a higher recovery than a distressed foreclosure sale would, thereby benefitting both the mortgagee and the owner.

For these and numerous other reasons, the College believes the Act will significantly improve the law in the states that choose to adopt it.

Sincerely yours,

Sylvia Fung. Chin
President

PRELIMINARY DRAFT
No. 3008

PREPARED BY
LEGISLATIVE SERVICES AGENCY
2024 GENERAL ASSEMBLY

DIGEST

Citations Affected: IC 32-18-4; IC 32-30-5-0.5.

Synopsis: Uniform commercial real estate receivership act. Adds to the Indiana Code a new chapter codifying the Uniform Commercial Real Estate Receivership Act (Act). Sets forth provisions contained in the Act that address the following: (1) Receiverships that are subject to the Act's provisions. (2) Definitions of terms. (3) Notice and hearing requirements in receivership proceedings. (4) The authority of the court with respect to receivership proceedings. (5) The appointment of a receiver. (6) Bond requirements for receivers. (7) The possession, custody, and control of receivership property. (8) Powers and duties of the receiver. (9) Duties of the owner of the receivership property. (10) The receiver's use or transfer of receivership property outside the ordinary course of business. (11) Executory contracts of the owner of the receivership property. (12) Creditors' submissions of claims against the receivership property. (13) Interim and final reports of the receiver. (14) Termination of the receivership and discharge of the receiver. (15) The effect of enforcement under the receivership on the rights and standing of a mortgagee. Amends Indiana's existing statute governing receiverships to specify that the statute does not apply to a receivership: (1) in which the receiver is appointed by the court after June 30, 2024; and (2) that is subject to the Act according to the terms of the Act.

Effective: July 1, 2024.

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 32-18-4 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:

Chapter 4. Uniform Commercial Real Estate Receivership Act

Sec. 1. This chapter shall be known as and may be cited as the Uniform Commercial Real Estate Receivership Act.

Sec. 2. (a) This chapter applies only to a receivership in which the receiver is appointed by the court after June 30, 2024.

(b) Except as provided in subsections (c) and (d), this chapter applies to a receivership for an interest in real property and in any personal property related to or used in operating the real property.

(c) This chapter does not apply to a receivership for an interest in real property improved by one (1) to four (4) dwelling units unless:

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

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

(3) the owner planned or is planning to develop the property into one (1) or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

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

(d) This chapter does not apply to a receivership authorized by any other Indiana law in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit.

(e) This chapter does not limit the authority of a court to

appoint a receiver under any other Indiana law, including IC 32-30-5.

(f) Unless displaced by a particular provision of this chapter, the principles of law and equity supplement this chapter.

Sec. 3. The following definitions apply throughout this chapter:

(1) "Affiliate" means:

(A) with respect to an individual:

(i) a companion of the individual;

(ii) a lineal ancestor or descendant, whether by blood or adoption, of the individual or of a companion of the individual;

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

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

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

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

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

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

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

(2) "Companion" means:

(A) the spouse of an individual;

(B) the domestic partner of an individual; or

(C) another individual in a civil union with an individual.

(3) "Court" means a circuit or superior court.

(4) "Executory contract" means a contract, including a lease, under which:

(A) each party has an unperformed obligation; and

(B) the failure of a party to complete performance would constitute a material breach.

(5) "Governmental unit" means an office, department, division, bureau, board, commission, or other agency of the state or of a political subdivision (as defined in IC 36-1-2-13).

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

(7) "Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, whether or not it also creates or provides for a lien on

personal property.

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

(9) "Mortgagor" means:

(A) a person that grants a mortgage; or

(B) a successor in ownership of the real property described in the mortgage.

(10) "Owner" means the person who owns property for which a receiver is appointed.

(11) "Person" means an individual, an estate, a business or nonprofit entity, a public corporation, a government or governmental subdivision, agency, or instrumentality, or another legal entity.

(12) "Proceeds" means the following property:

(A) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property.

(B) Whatever is collected on, or distributed on account of, receivership property.

(C) Rights arising out of receivership property.

(D) To the extent of the value of receivership property, claims arising out of:

(i) the loss, nonconformity, or interference with the use of;

(ii) defects or infringement of rights in; or

(iii) damage to;

the property.

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

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

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

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

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

(17) "Record" means information that:

(A) is inscribed on a tangible medium; or

(B) is stored on an electronic or other medium and is retrievable in perceivable form.

(18) "Rents" means:

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

(B) sums payable to a mortgagor under a policy of rental interruption insurance covering real property;

(C) claims arising out of a default in the payment of sums payable for the right to possess or occupy the real property of another person;

(D) sums payable to terminate an agreement to possess or occupy the real property of another person;

(E) sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property; or

(F) other sums payable under an agreement relating to the real property of another person which constitute rents under Indiana law other than this chapter.

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

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

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

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(22) "State" means:

(A) a state of the United States;

(B) the District of Columbia;

(C) Puerto Rico;

(D) the United States Virgin Islands; or

(E) any territory or insular possession subject to the jurisdiction of the United States.

Sec. 4. (a) Except as provided in subsection (b), the court may issue an order under this chapter only after notice and opportunity for a hearing, as appropriate in the circumstances.

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

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

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

is held; or

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

Sec. 5. The court that appoints a receiver under this chapter has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

Sec. 6. (a) The court may appoint a receiver:

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

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

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

(2) after judgment:

(A) to carry the judgment into effect; or

(B) to preserve nonexempt real property:

(i) pending appeal; or

(ii) when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment;

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

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

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

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

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

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

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

(5) the owner fails to turn over to the mortgagee:

(A) proceeds; or

(B) rents;

the mortgagee was entitled to collect; or

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

(c) The court may condition appointment of a receiver:

(1) without prior notice under section 4(b)(1) of this chapter;

or

(2) without a prior hearing under section 4(b)(2) of this chapter;

on the giving of security, by the person seeking the appointment, for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

Sec. 7. (a) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

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

(1) is an affiliate of a party;

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

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

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

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

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

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

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

(3) maintains with a party a deposit account (as defined in IC 26-1-9.1-102(a)(29)).

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

Sec. 8. (a) Except as provided in subsection (b), a receiver shall post with the court a bond that:

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

(2) has one (1) or more sureties approved by the court;

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

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

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

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

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

Sec. 9. Upon appointment of a receiver, the receiver has the status of a lien creditor under:

(1) IC 26-1-9.1 with respect to receivership property that is personal property or fixtures; and

(2) IC 32-28 with respect to receivership property that is real property.

Sec. 10. Except as otherwise provided by any other Indiana law, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

Sec. 11. (a) Unless the court orders otherwise, on demand by a receiver:

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

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

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

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

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

Sec. 12. (a) Except as limited by court order or any other Indiana law, a receiver may:

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

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

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

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

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

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

(7) engage a professional as provided in section 15 of this chapter;

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

(9) exercise any power conferred by court order, this chapter, or any other Indiana law.

(b) With court approval, a receiver may:

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

(2) make improvements to receivership property;

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

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

(5) pay compensation to:

(A) the receiver as provided in section 21 of this chapter; and

(B) each professional engaged by the receiver as provided in section 15 of this chapter;

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

(7) make a distribution of receivership property as provided in section 20 of this chapter.

(c) A receiver shall:

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

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

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

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

(5) perform any duty imposed by court order, this chapter, or any other Indiana law.

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

Sec. 13. (a) An owner shall:

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

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

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

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

(5) perform any duty imposed by court order, this chapter, or any other Indiana law.

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

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

(1) award the receiver:

(A) actual damages caused by the person's failure;

(B) reasonable attorney's fees; and

(C) costs; and

(2) sanction the failure as civil contempt.

Sec. 14. (a) Except as provided in subsection (d) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding:

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

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

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

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

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

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

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

(3) commencement or continuation of a criminal proceeding;

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

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

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

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

(1) award:

(A) actual damages caused by the violation;

(B) reasonable attorney's fees; and

(C) costs; and

(2) sanction the violation as civil contempt.

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

(1) the identity and qualifications of the professional;

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

(3) any potential conflict of interest; and

(4) the proposed compensation.

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

representation of, or other relationship with the receiver, a creditor, or a party. This chapter does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized to do so by law.

(c) The receiver or a professional engaged under subsection (a) shall file with the court:

(1) an itemized statement of the time spent, work performed, and billing rate of each person that performed the work; and

(2) an itemized list of expenses.

The receiver shall pay the amount approved by the court.

Sec. 16. (a) As used in this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

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

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

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

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

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

Sec. 17. (a) As used in this section, "timeshare interest" means an interest:

(1) having a duration of more than three (3) years; and

(2) granting the holder the right to use and occupy, during any given year, an accommodation, facility, or recreational

site, whether improved or not, for a specific period that is less than a full year.

(b) Except as provided in subsection (h), with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver is considered to have rejected the contract.

(c) A receiver's performance of an executory contract before court approval under subsection (b) of the contract's adoption or rejection:

(1) is not an adoption of the contract; and

(2) does not preclude the receiver from seeking approval to reject the contract.

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

(1) the appointment of a receiver; or

(2) the financial condition of the owner;

does not affect a receiver's power under subsection (b) to adopt the contract.

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

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

(2) the date that is thirty (30) days after the date the court approves the rejection.

(f) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under any other Indiana law, the receiver may assign the contract with court approval.

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

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

(2) retain the purchaser's right to possession under the contract, in which case the purchaser:

(A) shall continue to perform all obligations arising under the contract; and

(B) may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection.

However, the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

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

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

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

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

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

(B) the tenant has an enforceable agreement with:

(i) the mortgagee; or

(ii) the holder of a senior lien;

and the agreement provides that the tenant's occupancy will not be disturbed as long as the tenant performs the tenant's obligations under the lease;

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

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

Sec. 18. (a) A receiver is entitled to all defenses and immunities provided by any other Indiana law for an act or omission within the scope of the receiver's appointment.

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

Sec. 19. A receiver may file or, if ordered by the court, shall file an interim report that includes:

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

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

(3) receipts and dispositions of receivership property;

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

(5) any other information required by the court.

Sec. 20. (a) Except as provided in subsection (f), a receiver shall give notice of appointment of the receiver to creditors of the owner by:

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

(2) publication as directed by the court.

(b) Except as provided in subsection (f), the notice required by subsection (a) must specify the date by which each creditor holding a claim against the owner which arose before appointment of the receiver must submit the claim to the receiver. The date specified must be at least ninety (90) days after the later of:

(1) the date of mailing of the notice under subsection (a)(1); or

(2) the date of last publication under subsection (a)(2).

However, the court may extend the period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

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

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

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

(3) identify any property securing the claim;

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

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

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

(e) At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow the claim in accordance with Indiana law.

(f) If the court concludes that receivership property is not likely to be sufficient to satisfy the claims of each creditor holding a perfected lien on the property, the court may order that:

(1) the receiver give notice under subsection (a) only to such creditors as the court directs; and

(2) unsecured creditors are not required to submit claims under this section.

(g) Subject to section 21 of this chapter:

(1) a distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under Indiana law; and

(2) a distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs and in accordance with Indiana law.

Sec. 21. (a) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

(b) The court may order one (1) or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs:

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

(2) A person whose conduct justified or would have justified the appointment of the receiver under section 6(a)(1) of this chapter.

Sec. 22. (a) The court may remove a receiver for cause.

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

(c) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has:

(1) accounted fully for and turned over to the successor receiver all receivership property; and

(2) filed a report of all receipts and disbursements during the service of the replaced receiver;

the replaced receiver is discharged.

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

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

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

Sec. 23. (a) Upon completion of a receiver's duties, the receiver shall file a final report including:

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

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

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

(4) a list of dispositions of receivership property;

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

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

(7) any other information required by the court.

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

Sec. 24. (a) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in Indiana or subject to the jurisdiction of the court for which a receiver could be appointed under this chapter, if:

(1) the person or nominee would be eligible to serve as receiver under section 7 of this chapter; and

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

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

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

Sec. 25. A mortgagee's request for appointment of a receiver, the court's appointment of a receiver, or the mortgagee's application of receivership property or proceeds to the secured obligation does not:

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

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

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

(4) make the secured obligation unenforceable;

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

(6) bar a deficiency judgment, to the extent available under Indiana law.

Sec. 26. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 27. This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. 7003(b)).

SECTION 2. IC 32-30-5-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 0.5. This chapter does not apply to a receivership:**

(1) in which the receiver is appointed by the court after June 30, 2024; and

(2) that is subject to IC 32-18-4 in accordance with IC 32-18-4-2.