
OLR Bill Analysis

sHB 6356

AN ACT ADOPTING THE UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT.

SUMMARY

This bill adopts the Uniform Commercial Real Estate Receivership Act. It provides rules for these receiverships on a range of matters, many of which are currently not addressed in statute.

The bill applies to commercial receiverships for an interest in real property and any personal property related to, or used in, operating the real property. With limited exceptions, the bill does not apply to residential properties with four or fewer units.

Under the bill, a receiver is a person (individual or entity) the court appoints as its agent, and subject to the court's direction, to take possession of and manage another person's property and, if authorized by the bill or court order, transfer or otherwise dispose of the property. The receivership property is the owner's property described in the order appointing the receiver and includes rents and other proceeds from the property.

Among various other things, the bill establishes rules for:

1. appointing a receiver, including when a court may appoint one and when a party is entitled to one;
2. the receiver's powers and duties;
3. the duties of the owner whose property is in receivership;
4. when a receivership operates as a stay on certain proceedings involving the receivership property; and
5. when the receiver may adopt or reject certain of the owner's

contracts with court approval, including limits on rejecting certain leases.

The bill does not apply to receiverships for which a receiver was appointed before July 1, 2022.

EFFECTIVE DATE: July 1, 2022

§ 3 — NOTICE AND OPPORTUNITY FOR HEARING

Generally, the court may issue an order under the bill's provisions only after notice and an opportunity for a hearing that the court deems appropriate. But the bill allows the court to issue an order:

1. without prior notice (i.e., *ex parte*), or after notice and without a prior hearing, if the circumstances require it, or
2. after notice and without a hearing if no interested party timely requests a hearing.

§ 4 — SCOPE AND EXCLUSIONS

The bill generally applies to receiverships for an interest in real property and any personal property related to, or used in, operating the real property. It does not apply to receiverships for real property improved by one to four dwelling units unless the:

1. interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as his or her primary residence;
2. interest secures an obligation incurred when the property was used or planned for agricultural, commercial, industrial, or mineral-extraction purposes;
3. owner planned or is planning to develop the property into dwelling units to be sold or leased in the ordinary course of the owner's business; or
4. owner is collecting or has the right to collect rents or income from the property from someone other than his or her affiliate.

The bill does not apply to a receivership authorized by other law in which the receiver is a governmental unit or an individual acting in an official capacity on the government's behalf.

The bill specifies that (1) it does not limit the court's authority to appoint a receiver under other law and (2) the principles of law and equity supplement the bill, unless displaced by a particular provision of it.

§ 5 — POWER OF COURT

Under the bill, the court that appoints a receiver has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or the property.

§ 6 — APPOINTMENT OF RECEIVER

The bill establishes rules for when courts may or must appoint a receiver. It allows the court to appoint a receiver before judgment to protect a party demonstrating an apparent right, title, or interest in real property that is the subject of the action, if the property or its revenue-producing potential:

1. is being subjected to or is in danger of waste, loss, dissipation, or impairment; or
2. has been, or is about to be, the subject of a voidable transaction.

The court can appoint a receiver after judgment to (1) effectuate the judgment or (2) preserve nonexempt real property pending appeal or when an execution was returned unsatisfied and the owner refuses to apply the property to satisfy the judgment.

The bill additionally allows courts to appoint a receiver in an action in which a receiver may be appointed on equitable grounds.

Under the bill, a mortgagee foreclosing upon or otherwise enforcing a mortgage is entitled to appointment of a receiver if:

1. it is needed 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 or the owner consented in a signed record after default;
3. the property and any other collateral do not satisfy the secured obligation;
4. the owner fails to turn over proceeds or rents the mortgagee was entitled to collect; or
5. a subordinate lienholder obtains appointment of a receiver.

Under the bill, if the court appoints a receiver without prior notice or hearing, it may make the appointment conditional on the person seeking the appointment giving security for damages, reasonable attorney's fees, and costs if the court later concludes that the appointment was not justified. If the court later concludes that it was justified, the court must release the security.

§ 7 — DISQUALIFICATION FROM APPOINTMENT; DISCLOSURE OF INTEREST

The bill prohibits the court from appointing a person as receiver who has not submitted a statement, under penalty of perjury, stating that person is not disqualified. Generally, a person is disqualified if the person:

1. is an affiliate of a party (e.g., certain family members of an individual, or an entity's employee, officer, or director);
2. has an interest materially adverse to a party's interest;
3. has a material financial interest in the action's outcome, other than court-allowed compensation as receiver;
4. has a debtor-creditor relationship with a party; or
5. holds an equity interest in a party, other than a non-controlling interest in a publicly traded company.

A person is not disqualified 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 an unrelated matter,
2. is an individual owing a debt to a party that is not in default and was incurred primarily for non-business purposes, or
3. maintains a deposit account with a party.

Under the bill, a person seeking appointment of a receiver may nominate a person to serve in that role, but the court is not bound by the nomination.

§ 8 — RECEIVER’S BOND; ALTERNATE SECURITY

The bill generally requires a receiver to post a bond in an amount the court sets. The bond takes effect upon the appointment and must (1) be conditioned on the faithful discharge of the receiver’s duties and (2) have one or more court-approved sureties.

The court may approve an alternative security such as a letter of credit or deposit of funds, except receivership property may not be used as alternative security. Any interest that accrues on deposited funds must be paid to the receiver upon the receiver’s discharge.

The court may authorize a receiver to act before posting the bond or alternative security. A claim against the bond or security may be made up to one year after the receiver’s discharge.

§ 9 — STATUS AS LIEN CREDITOR

Upon appointment under the bill, a receiver has the status of a lien creditor under:

1. article 9 of the Uniform Commercial Code as to receivership property that is personal property or fixtures and
2. any provision of other law that provides for filing on a town’s land records a certificate as to real property in receivership.

§ 10 — SECURITY AGREEMENT COVERING AFTER-ACQUIRED PROPERTY

Under the bill, if the owner entered into a pre-appointment security agreement and the owner or receiver acquired that property after the appointment, that agreement is effective to the same extent as if there were no receiver, unless other law provides differently.

§ 11 — COLLECTION AND TURNOVER OF RECEIVERSHIP PROPERTY

Under the bill, unless the court orders otherwise:

1. a person owing a debt that is receivership property and is matured, payable on demand, or payable on order must pay the debt to the receiver on demand, except to the extent the debtor has a right of setoff or recoupment; and
2. a person in possession, custody, or control of receivership property must turn it over to the receiver on demand, except as noted below.

A person owing a debt as to receivership property and who has notice of the receiver's appointment may not satisfy the debt by paying the owner.

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

The bill allows the court to sanction as civil contempt a person's failure to turn over property as the bill requires, unless there is a bona fide dispute about the receiver's rights as to the property.

§ 12 — RECEIVERSHIP POWERS AND DUTIES

The bill sets forth various default powers for receivers and other powers that require court authorization. It generally provides that a receiver's powers and duties may be expanded, modified, or limited by court order.

Under the bill, unless limited by court order or other laws, a receiver may do the following:

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, and incur unsecured debt and pay expenses incidental to these actions;
3. assert a right, claim, cause of action, or defense of the owner that relates to receivership property;
4. seek and obtain instruction from the court concerning the property and the exercise of powers and performance of duties as receiver;
5. 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 other matters affecting the receivership;
6. engage a professional as provided in the bill (see § 15);
7. apply to another state's court for appointment as ancillary receiver with respect to receivership property located there; and
8. exercise any power conferred by court order, the bill, or other law.

The bill allows a receiver to do the following with court approval:

1. incur debt for the use or benefit of receivership property other than in the ordinary course of business,
2. make improvements to the property,

3. use or transfer the property other than in the ordinary course of business (see § 16),
4. adopt or reject an executory contract of the owner (see § 17),
5. compensate himself or herself and professionals the receiver engages (see §§ 15 and 21),
6. recommend allowing or denying a creditor's claim (see § 20), and
7. make a distribution of receivership property (see § 20).

The bill requires a receiver to do the following:

1. prepare and retain appropriate business records, including a record of receipts, disbursements, and dispositions of receivership property;
2. account for the property, including disposition proceeds;
3. file on the appropriate town's land records a copy of the appointment order and a legal description of the real property if not already described in the order;
4. disclose to the court any fact arising during the receivership that would disqualify the receiver (see § 7); and
5. perform any duty imposed by court order, the bill, or other law.

§ 13 — DUTIES OF OWNERS

The bill requires the property owner to assist and cooperate with the receiver in administering the receivership and discharging the receiver's duties. The owner must preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control.

The owner must identify all records and other information relating to the property, such as passwords or other information needed to obtain or maintain access to or control of the property, and make them

available to the receiver if the owner has them.

Upon subpoena, the owner must submit to the receiver's examination under oath concerning the owner's acts, property, liabilities, and finances or any matter relating to the property or the receivership. The owner must perform any other duty imposed by court order, the bill, or other law.

The bill specifies that if the owner is an entity, these provisions apply to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the owner's affairs.

Under the bill, if a person knowingly fails to perform any of these duties, the court may (1) award the receiver actual damages, reasonable attorney's fees, and costs and (2) sanction the failure as civil contempt.

§ 14 — STAYS AND INJUNCTIONS

The bill generally provides that, unless the court orders otherwise, an order appointing a receiver stays (suspends) any act, action, or proceeding to (1) possess or control receivership property or enforce a judgment against it and (2) enforce a lien against the property to the extent the lien secures a claim arising before the order.

Except as provided below, the court may enjoin an act, action, or proceeding against or relating to receivership property if needed to protect the property or facilitate the receivership.

Under the bill, any such order 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. a criminal proceeding;

4. an action or proceeding, or enforcement of a judgment other than a money judgment, by a governmental unit to enforce its police or regulatory power; or
5. tax liability against the owner or property or an appeal of the liability.

A person whose act, action, or proceeding is stayed or enjoined under these provisions may apply to the court for relief for cause.

The court may void an act that violates a stay or injunction. In addition, if a person knowingly violates a stay or injunction, the court may (1) award actual damages, reasonable attorney's fees, and costs, and (2) sanction the violation as civil contempt.

§ 15 — HIRING AND COMPENSATING PROFESSIONALS

The bill allows a receiver, with court approval, to engage attorneys, accountants, appraisers, auctioneers, brokers, or other professionals for assistance. The receiver must disclose to the court (1) the professional's identity and qualifications, (2) the scope and nature of the proposed arrangement, (3) any potential conflict of interest, and (4) the proposed compensation.

The receiver or the professional must file with the court an itemized statement of the professional's time spent, work performed, billing rate, and itemized list of expenses. The receiver must pay the court-approved amount.

A person is not disqualified from such an arrangement solely because he or she was otherwise hired by or represents, or has another relationship with, the receiver, a creditor, or a party.

The bill does not prevent the receiver, when authorized by law, from serving in the receivership as an attorney, accountant, auctioneer, or broker.

§ 16 — USE OR TRANSFER OF RECEIVERSHIP PROPERTY NOT IN ORDINARY COURSE OF BUSINESS

The bill allows a receiver, with court approval, to use or transfer

(e.g., by sale or lease) receivership property other than in the ordinary course of business. Unless the sale agreement provides otherwise, such a sale 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.

Under the bill, any liens extinguished by these transfers attach to the transfer proceeds with the same validity, perfection, and priority as before the transfer, even if the proceeds do not satisfy all obligations secured by the lien.

The bill allows these transfers to occur by means other than a public auction sale. A creditor holding a valid lien may purchase the property and offset against the purchase price any part of the allowed amount secured by the lien, if the creditor tenders funds sufficient to fully satisfy the reasonable transfer expenses and the obligation secured by any senior lien being extinguished.

The bill generally provides that a good faith purchaser's title is not affected by reversal or modification of an order approving the transfer, even if the person knew about the request to reverse or modify the order before the transfer. A reversal or modification also generally does not revive against the person any lien extinguished by the transfer. These provisions do not apply if the court stayed the order before the transfer. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

§ 17 — EXECUTORY CONTRACT

Under the bill, except as noted below for certain leases, a receiver may adopt or reject an executory contract of the owner relating to receivership property, with court approval. An "executory contract" means a contract, including a lease, under which each party has an unperformed obligation and the failure to complete performance would constitute a material breach. (An example would be a contract for landscaping services at the property.)

Under the bill, 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 appointment, the receiver is deemed to have rejected the contract. A receiver's performance of an executory contract before court approval to adopt or reject it does not prevent the receiver from seeking approval to reject it.

Even if the contract contains a provision requiring or allowing for contract forfeiture, termination, or modification because of the appointment of a receiver or the owner's financial condition, the receiver may adopt the contract with court approval as set forth above.

A receiver's right to possess or use the property pursuant to an executory contract terminates upon rejecting the contract. Rejection is a breach of the contract effective immediately before appointment. A claim for damages for rejection must be submitted by the later of (1) the time set for submitting a claim in the receivership or (2) 30 days after the court approves the rejection.

The receiver may assign the contract, with court approval, if the owner would have had the right to assign it under other law when the receiver is appointed.

Under the bill, if a receiver rejects an executory contract for the sale of receivership property that is real property the purchaser possesses, or a real-property timeshare interest of more than three years, the purchaser may:

1. treat the rejection as a contract termination, in which case the purchaser has a lien for the recovery of any part of the purchase price already paid, or
2. retain the right to possession under the contract, in which case the purchaser must continue to perform all contractual obligations and may offset any damages caused by nonperformance of the owner's obligation after the rejection date, but the purchaser has no right or claim against other receivership property or the receiver.

If the owner was a landlord of the property, the receiver may not reject an unexpired lease if (1) the tenant occupies the premises as his or her primary residence or (2) the receiver was appointed at the request of someone other than a mortgagee.

If the mortgagee requested the appointment, the receiver may not reject an unexpired lease if:

1. the lease is superior to the mortgage lien;
2. the tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its lease obligations;
3. the mortgagee consented to the lease, either in a signed record or by its failure to timely object that the lease violated the mortgage; or
4. the lease's terms were commercially reasonable when agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

§ 18 — DEFENSES AND IMMUNITIES OF RECEIVER

Under the bill, a receiver is entitled to all defenses and immunities provided by other law for an act or omission within the scope of the appointment. A party seeking to sue a receiver personally for acts or omissions in administering the property must obtain the appointing court's approval.

§ 19 — INTERIM REPORT OF RECEIVER

Under the bill, the court may order the receiver to file an interim report that includes the following:

1. the receiver's activities since appointment or a previous report;
2. receipts and disbursements, including payments made or proposed to be made to professionals;

3. receipts and dispositions of receivership property;
4. the receiver's fees and expenses and, if not filed separately, a request to approve payment; and
5. any other information the court requires.

Even if not ordered to do so, the receiver may still file this report.

§ 20 — NOTICE OF APPOINTMENT; CLAIM AGAINST RECEIVERSHIP; DISTRIBUTION TO CREDITORS

Under the bill, except as provided below, a receiver must notify the owner's creditors about the appointment. The receiver must do so by (1) court-directed publication or (2) deposit for delivery through first-class mail or other commercially reasonable delivery method to each creditor's last-known address.

Except as provided below, the notice must specify the date by which each creditor holding a claim against the owner that arose before appointment must submit the claim to the receiver. The date must be at least 90 days after the later of the notice or last publication. The court may extend the claim submission period. Unless the court orders otherwise, a claim that is submitted late is not entitled to a distribution from the receivership.

Under the bill, a creditor's submitted claim must:

1. state the creditor's name and address and be signed under penalty of perjury,
2. state the amount and basis of the claim and identify any property securing it, and
3. include a copy of any record on which the claim is based.

If the creditor assigned a claim against the owner, the assignment is effective against the receiver only if the assignee gives timely notice to the receiver in a signed record.

Before the court order approving a receiver's final report, the

receiver may file with the court an objection to a creditor's claim, stating the basis for the objection. The court must allow or disallow the claim according to other applicable law.

Under the bill, if the court concludes that receivership property likely is insufficient to satisfy claims of all creditors holding a perfected lien, the court may order that:

1. the receiver need not notify all creditors of the appointment, but only those as the court directs; and
2. unsecured creditors need not submit claims under these provisions.

The bill provides that, subject to the bill's provisions on fees and expenses (see § 21), a distribution of property to a creditor:

1. holding a perfected lien must be in accordance with the creditor's priority under other law and
2. with an allowed unsecured claim must be made as the court directs according to other law.

§ 21 — FEES AND EXPENSES

Under the bill, a court may award a receiver, from receivership property, the reasonable and necessary fees and expenses of performing duties and exercising powers as a receiver.

The court may assess the fees and expenses, including reasonable attorney's fees and costs, against one or more of the following:

1. a person that requested the appointment, if the receivership funds are insufficient to pay the fees and expenses, or
2. a person whose conduct justified or would have justified the appointment under certain circumstances (such as subjecting the property to waste).

§ 22 — REMOVAL OR REPLACEMENT OF RECEIVER; TERMINATION OF RECEIVERSHIP

The bill (1) allows the court to remove a receiver for cause and (2) requires the court to replace a receiver who dies, resigns, or is removed.

Once a resigned or removed receiver (or the representative of a deceased receiver) has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements, the replaced receiver is discharged.

The bill allows the court to discharge a receiver and terminate the court's administration of the property if it finds that the receiver's appointment was improvident or that the receivership is no longer warranted. If the court finds that the appointment was sought wrongfully or in bad faith, it may assess against the person that sought the appointment the receivership fees and expenses and actual damages caused by the appointment, including reasonable attorney's fees and costs.

§ 23 — FINAL REPORT OF RECEIVER; DISCHARGE

The bill requires a receiver, upon completing its duties, to file a final report including:

1. a description of its activities in conducting the receivership;
2. a list of receivership property at the beginning of the receivership, received during the receivership, and dispositions of any such property;
3. a list of disbursements, including payments to professionals;
4. a list of distributions made or proposed to be made to creditors;
5. if not filed separately, a request for approval of the receiver's fees and expenses; and
6. any other information the court requires.

The receiver is discharged when the court approves the final report and the receiver distributes all receivership property.

§ 24 — RECEIVERSHIP IN ANOTHER STATE; ANCILLARY PROCEEDING

The bill allows the court to appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver for property located in Connecticut or subject to the jurisdiction of the court for which a receiver could be appointed under the bill, if:

1. the person or nominee would be eligible to serve as receiver under the bill and
2. the appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

The court may issue an order giving effect to an out-of-state order appointing or directing a receiver.

Unless the court orders otherwise, an ancillary receiver appointed under these provisions has the same rights, powers, and duties as a receiver appointed under the bill.

Under the bill, references to other states include the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or other territories or insular possessions under U.S. jurisdiction.

§ 25 — EFFECT OF ENFORCEMENT BY MORTGAGEE

Under the bill, a mortgagee's request to appoint a receiver, the appointment of a receiver, or a 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 or the owner's agent or
2. make the secured obligation unenforceable, preclude a later action to enforce it, or limit any of the mortgagee's available rights with respect to it.

§ 26 — UNIFORMITY OF APPLICATION AND CONSTRUCTION

The bill directs that, in applying and construing this uniform act,

consideration be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 27 — RELATIONSHIP TO E-SIGN ACT

The bill provides that its provisions generally modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce (E-SIGN) Act, which regulates the use of electronic records and signatures in interstate and foreign commerce. But the bill does not (1) modify, limit, or supersede E-SIGN's provisions on consumer disclosures or (2) authorize electronic delivery of specified notices not subject to E-SIGN.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/29/2021)