

# HOUSE BILL No. 4471

March 30, 2017, Introduced by Rep. Iden and referred to the Committee on Judiciary.

A bill to enact the uniform commercial real estate receivership act; to provide for the appointment of receivers to take possession of commercial real property of another and to receive, collect, care for, and dispose of the property or proceeds of the property; and to provide remedies related to the receiverships.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. This act shall be known and may be cited as the  
2 "uniform commercial real estate receivership act".

3           Sec. 2. As used in this act:

4           (a) "Affiliate" means all of the following:

5           (i) With respect to an individual, any of the following:

6           (A) A companion of the individual.

1 (B) A lineal ancestor or descendant, whether by blood or  
2 adoption, of either of the following:

3 (I) The individual.

4 (II) A companion of the individual.

5 (C) A companion of an ancestor or descendant described in sub-  
6 subparagraph (B).

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

11 (E) Any other individual occupying the residence of the  
12 individual.

13 (ii) With respect to a person other than an individual, any of  
14 the following:

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

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

19 (C) A companion of, or an individual occupying the residence  
20 of, an individual described in sub-subparagraph (A) or (B).

21 (b) "Companion" means any of the following:

22 (i) The spouse of an individual.

23 (ii) The domestic partner of an individual.

24 (iii) Another individual in a civil union with an individual.

25 (c) "Court" means the circuit court.

26 (d) "Executory contract" means a contract, including a lease,  
27 under which each party has an unperformed obligation and the

1 failure of a party to complete performance would constitute a  
2 material breach.

3 (e) "Governmental unit" means an office, department, division,  
4 bureau, board, commission, or other agency of this state or a  
5 subdivision of this state.

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

8 (g) "Mortgage" means a record, however denominated, that  
9 creates or provides for a consensual lien on real property or  
10 rents, even if it also creates or provides for a lien on personal  
11 property.

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

14 (i) "Mortgagor" means a person that grants a mortgage or a  
15 successor in ownership of the real property described in the  
16 mortgage.

17 (j) "Owner" means the person for whose property a receiver is  
18 appointed.

19 (k) "Person" means an individual, estate, business or  
20 nonprofit entity, public corporation, government or governmental  
21 subdivision, agency, or instrumentality, or other legal entity.

22 (l) "Proceeds" means any of the following property:

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

25 (ii) Whatever is collected on, or distributed on account of,  
26 receivership property.

27 (iii) Rights arising out of receivership property.

1           (iv) To the extent of the value of receivership property,  
2 claims arising out of the loss, nonconformity, or interference with  
3 the use of, defects or infringement of rights in, or damage to the  
4 property.

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

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

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

19           (o) "Receivership" means a proceeding in which a receiver is  
20 appointed.

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

25           (q) "Record", used as a noun, means information that is  
26 inscribed on a tangible medium or that is stored on an electronic  
27 or other medium and is retrievable in perceivable form.

1 (r) "Rents" means all of the following:

2 (i) Sums payable for the right to possess or occupy, or for  
3 the actual possession or occupation of, real property of another  
4 person.

5 (ii) Sums payable to a mortgagor under a policy of rental-  
6 interruption insurance covering real property.

7 (iii) Claims arising out of a default in the payment of sums  
8 payable for the right to possess or occupy real property of another  
9 person.

10 (iv) Sums payable to terminate an agreement to possess or  
11 occupy real property of another person.

12 (v) Sums payable to a mortgagor for payment or reimbursement  
13 of expenses incurred in owning, operating, and maintaining real  
14 property or constructing or installing improvements on real  
15 property.

16 (vi) Other sums payable under an agreement relating to the  
17 real property of another person that constitute rents under law of  
18 this state other than this act.

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

21 (t) "Security agreement" means an agreement that creates or  
22 provides for a lien.

23 (u) "Sign" means to do any of the following with present  
24 intent to authenticate or adopt a record:

25 (i) Execute or adopt a tangible symbol.

26 (ii) Attach to or logically associate with the record an  
27 electronic sound, symbol, or process.

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

5 Sec. 3. (1) Except as otherwise provided in subsection (2),  
6 the court may issue an order under this act only after notice and  
7 opportunity for a hearing appropriate in the circumstances.

8 (2) The court may issue an order under this act under the  
9 following circumstances:

10 (a) Without prior notice if the circumstances require issuance  
11 of an order before notice is given.

12 (b) After notice and without a prior hearing if the  
13 circumstances require issuance of an order before a hearing is  
14 held.

15 (c) After notice and without a hearing if no interested party  
16 timely requests a hearing.

17 Sec. 4. (1) Except as otherwise provided in subsection (2) or  
18 (3), this act applies to a receivership for an interest in real  
19 property and any personal property related to or used in operating  
20 the real property.

21 (2) This act does not apply to a receivership for an interest  
22 in real property improved by 1 to 4 dwelling units unless 1 or more  
23 of the following applies:

24 (a) The interest is used for agricultural, commercial,  
25 industrial, or mineral-extraction purposes, other than incidental  
26 uses by an owner occupying the property as the owner's primary  
27 residence.

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

4 (c) The owner planned or is planning to develop the property  
5 into 1 or more dwelling units to be sold or leased in the ordinary  
6 course of the owner's business.

7 (d) The owner is collecting or has the right to collect rents  
8 or other income from the property from a person other than an  
9 affiliate of the owner.

10 (3) This act does not apply to a receivership authorized by  
11 law of this state other than this act in which the receiver is a  
12 governmental unit or an individual acting in an official capacity  
13 on behalf of the unit except to the extent provided by the other  
14 law.

15 (4) This act does not limit the authority of a court to  
16 appoint a receiver under law of this state other than this act.

17 (5) Unless displaced by a particular provision of this act,  
18 the principles of law and equity supplement this act.

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

22 Sec. 6. (1) The court may appoint a receiver as follows:

23 (a) Before judgment, to protect a party that demonstrates an  
24 apparent right, title, or interest in real property that is the  
25 subject of the action, under either of the following circumstances:

26 (i) The property or its revenue-producing potential is being  
27 subjected to or is in danger of waste, loss, dissipation, or

1 impairment.

2 (ii) The property or its revenue-producing potential has been  
3 or is about to be the subject of a voidable transaction.

4 (b) After judgment for any of the following reasons:

5 (i) To carry the judgment into effect.

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

9 (c) In an action in which a receiver for real property may be  
10 appointed on equitable grounds.

11 (d) During the time allowed for redemption, to preserve real  
12 property sold in an execution or foreclosure sale and secure its  
13 rents to the person entitled to the rents.

14 (2) In connection with the foreclosure or other enforcement of  
15 a mortgage, the court may appoint a receiver for the mortgaged  
16 property under any of the following circumstances:

17 (a) Appointment is necessary to protect the property from  
18 waste, loss, transfer, dissipation, or impairment.

19 (b) The mortgagor agreed in a signed record to appointment of  
20 a receiver on default.

21 (c) The owner agreed, after default and in a signed record, to  
22 appointment of a receiver.

23 (d) The property and any other collateral held by the  
24 mortgagee are not sufficient to satisfy the secured obligation.

25 (e) The owner fails to turn over to the mortgagee proceeds or  
26 rents the mortgagee was entitled to collect.

27 (f) The holder of a subordinate lien obtains appointment of a



1 receiver for the property.

2 (3) The court may condition appointment of a receiver without  
3 prior notice under section 3(2)(a) or without a prior hearing under  
4 section 3(2)(b) on the giving of security by the person seeking the  
5 appointment for the payment of damages, reasonable attorney fees,  
6 and costs incurred or suffered by any person if the court later  
7 concludes that the appointment was not justified. If the court  
8 later concludes that the appointment was justified, the court shall  
9 release the security.

10 Sec. 7. (1) The court may not appoint a person as receiver  
11 unless the person submits to the court a statement under penalty of  
12 perjury that the person is not disqualified.

13 (2) Except as otherwise provided in subsection (3), a person  
14 is disqualified from appointment as receiver if 1 or more of the  
15 following apply:

16 (a) The person is an affiliate of a party.

17 (b) The person has an interest materially adverse to an  
18 interest of a party.

19 (c) The person has a material financial interest in the  
20 outcome of the action, other than compensation the court may allow  
21 the receiver.

22 (d) The person has a debtor-creditor relationship with a  
23 party.

24 (e) The person holds an equity interest in a party, other than  
25 a noncontrolling interest in a publicly traded company.

26 (3) A person is not disqualified from appointment as receiver  
27 solely because 1 or more of the following apply:

1 (a) The person was appointed receiver or is owed compensation  
2 in an unrelated matter involving a party or was engaged by a party  
3 in a matter unrelated to the receivership.

4 (b) The person is an individual obligated to a party on a debt  
5 that is not in default and was incurred primarily for personal,  
6 family, or household purposes.

7 (c) The person maintains with a party a deposit account as  
8 defined in section 9102 of the uniform commercial code, 1962 PA  
9 174, MCL 440.9102.

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

13 Sec. 8. (1) Except as otherwise provided in subsection (2), a  
14 receiver shall post with the court a bond that meets all of the  
15 following requirements:

16 (a) The bond is conditioned on the faithful discharge of the  
17 receiver's duties.

18 (b) The bond has 1 or more sureties approved by the court.

19 (c) The bond is in an amount the court specifies.

20 (d) The bond is effective as of the date of the receiver's  
21 appointment.

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

27 (3) The court may authorize a receiver to act before the

1 receiver posts the bond or alternative security required by this  
2 section.

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

6 Sec. 9. On appointment of a receiver, the receiver has the  
7 status of a lien creditor under both of the following:

8 (a) Article 9 of the uniform commercial code, 1962 PA 174, MCL  
9 440.9101 to 440.9809, as to receivership property that is personal  
10 property or fixtures.

11 (b) The recording statutes of this state as to receivership  
12 property that is real property.

13 Sec. 10. Except as otherwise provided by law of this state  
14 other than this act, property that a receiver or owner acquires  
15 after appointment of the receiver is subject to a security  
16 agreement entered into before the appointment to the same extent as  
17 if the court had not appointed the receiver.

18 Sec. 11. (1) Unless the court orders otherwise, a person shall  
19 do both of the following on demand by a receiver, as applicable:

20 (a) If the person owes a debt that is receivership property  
21 and is matured or payable on demand or on order, pay the debt to or  
22 on the order of the receiver, except to the extent the debt is  
23 subject to setoff or recoupment.

24 (b) Subject to subsection (3), if the person has possession,  
25 custody, or control of receivership property, turn the property  
26 over to the receiver.

27 (2) A person that has notice of the appointment of a receiver

1 and owes a debt that is receivership property may not satisfy the  
2 debt by payment to the owner.

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

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

13 Sec. 12. (1) Except as limited by court order or law of this  
14 state other than this act, a receiver may do all of the following:

15 (a) Collect, control, manage, conserve, and protect  
16 receivership property.

17 (b) Operate a business constituting receivership property,  
18 including preservation, use, sale, lease, license, exchange,  
19 collection, or disposition of the property in the ordinary course  
20 of business.

21 (c) In the ordinary course of business, incur unsecured debt  
22 and pay expenses incidental to the receiver's preservation, use,  
23 sale, lease, license, exchange, collection, or disposition of  
24 receivership property.

25 (d) Assert a right, claim, cause of action, or defense of the  
26 owner that relates to receivership property.

27 (e) Seek and obtain instruction from the court concerning

1 receivership property, exercise of the receiver's powers, and  
2 performance of the receiver's duties.

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

8 (g) Engage a professional as provided in section 15.

9 (h) Apply to a court of another state for appointment as  
10 ancillary receiver with respect to receivership property located in  
11 that state.

12 (i) Exercise any power conferred by court order, this act, or  
13 law of this state other than this act.

14 (2) With court approval, a receiver may do any of the  
15 following:

16 (a) Incur debt for the use or benefit of receivership property  
17 other than in the ordinary course of business.

18 (b) Make improvements to receivership property.

19 (c) Use or transfer receivership property other than in the  
20 ordinary course of business as provided in section 16.

21 (d) Adopt or reject an executory contract of the owner as  
22 provided in section 17.

23 (e) Pay compensation to the receiver as provided in section  
24 21, and to each professional engaged by the receiver as provided in  
25 section 15.

26 (f) Recommend allowance or disallowance of a claim of a  
27 creditor as provided in section 20.

1 (g) Make a distribution of receivership property as provided  
2 in section 20.

3 (3) A receiver shall do all of the following:

4 (a) Prepare and retain appropriate business records, including  
5 a record of each receipt, disbursement, and disposition of  
6 receivership property.

7 (b) Account for receivership property, including the proceeds  
8 of a sale, lease, license, exchange, collection, or other  
9 disposition of the property.

10 (c) File with the appropriate real property recording office a  
11 copy of the order appointing the receiver and, if a legal  
12 description of the real property is not included in the order, the  
13 legal description.

14 (d) Disclose to the court any fact arising during the  
15 receivership that would disqualify the receiver under section 7.

16 (e) Perform any duty imposed by court order, this act, or law  
17 of this state other than this act.

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

20 Sec. 13. (1) An owner shall do all of the following:

21 (a) Assist and cooperate with the receiver in the  
22 administration of the receivership and the discharge of the  
23 receiver's duties.

24 (b) Preserve and turn over to the receiver all receivership  
25 property in the owner's possession, custody, or control.

26 (c) Identify all records and other information relating to the  
27 receivership property, including a password, authorization, or

1 other information needed to obtain or maintain access to or control  
2 of the receivership property, and make available to the receiver  
3 the records and information in the owner's possession, custody, or  
4 control.

5 (d) On subpoena, submit to examination under oath by the  
6 receiver concerning the acts, conduct, property, liabilities, and  
7 financial condition of the owner or any matter relating to the  
8 receivership property or the receivership.

9 (e) Perform any duty imposed by court order, this act, or law  
10 of this state other than this act.

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

15 (3) If a person knowingly fails to perform a duty imposed by  
16 this section, the court may do 1 or both of the following:

17 (a) Award the receiver actual damages caused by the person's  
18 failure, reasonable attorney fees, and costs.

19 (b) Sanction the failure as civil contempt.

20 Sec. 14. (1) Except as otherwise provided in subsection (4) or  
21 ordered by the court, an order appointing a receiver operates as a  
22 stay, applicable to all persons, of an act, action, or proceeding  
23 to do any of the following:

24 (a) Obtain possession of, exercise control over, or enforce a  
25 judgment against receivership property.

26 (b) Enforce a lien against receivership property to the extent  
27 the lien secures a claim against the owner that arose before entry

1 of the order.

2 (2) Except as otherwise provided in subsection (4), the court  
3 may enjoin an act, action, or proceeding against or relating to  
4 receivership property if the injunction is necessary to protect the  
5 property or facilitate administration of the receivership.

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

9 (4) An order under subsection (1) or (2) does not operate as a  
10 stay or injunction of any of the following:

11 (a) An act, action, or proceeding to foreclose or otherwise  
12 enforce a mortgage by the person seeking appointment of the  
13 receiver.

14 (b) An act, action, or proceeding to perfect, or maintain or  
15 continue the perfection of, an interest in receivership property.

16 (c) Commencement or continuation of a criminal proceeding.

17 (d) Commencement or continuation of an action or proceeding,  
18 or enforcement of a judgment other than a money judgment in an  
19 action or proceeding, by a governmental unit to enforce its police  
20 or regulatory power.

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

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

26 (6) If a person knowingly violates a stay or injunction under  
27 this section, the court may do 1 or both of the following:



1 (a) Award actual damages caused by the violation, reasonable  
2 attorney fees, and costs.

3 (b) Sanction the violation as civil contempt.

4 Sec. 15. (1) With court approval, a receiver may engage an  
5 attorney, accountant, appraiser, auctioneer, broker, or other  
6 professional to assist the receiver in performing a duty or  
7 exercising a power of the receiver. The receiver shall disclose all  
8 of the following to the court:

9 (a) The identity and qualifications of the professional.

10 (b) The scope and nature of the proposed engagement.

11 (c) Any potential conflict of interest.

12 (d) The proposed compensation.

13 (2) A person is not disqualified from engagement under this  
14 section solely because of the person's engagement by,  
15 representation of, or other relationship with the receiver, a  
16 creditor, or a party. This act does not prevent the receiver from  
17 serving in the receivership as an attorney, accountant, auctioneer,  
18 or broker when authorized by law.

19 (3) A receiver or professional engaged under subsection (1)  
20 shall file with the court an itemized statement of the time spent,  
21 work performed, and billing rate of each person that performed the  
22 work and an itemized list of expenses. The receiver shall pay the  
23 amount approved by the court.

24 Sec. 16. (1) As used in this section, "good faith" means  
25 honesty in fact and the observance of reasonable commercial  
26 standards of fair dealing.

27 (2) With court approval, a receiver may use receivership

1 property other than in the ordinary course of business.

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

9 (4) A lien on receivership property that is extinguished by a  
10 transfer under subsection (3) attaches to the proceeds of the  
11 transfer with the same validity, perfection, and priority the lien  
12 had on the property immediately before the transfer, even if the  
13 proceeds are not sufficient to satisfy all obligations secured by  
14 the lien.

15 (5) A transfer under subsection (3) may occur by means other  
16 than a public auction sale. A creditor holding a valid lien on the  
17 property to be transferred may purchase the property and offset  
18 against the purchase price part or all of the allowed amount  
19 secured by the lien, if the creditor tenders funds sufficient to  
20 satisfy in full the reasonable expenses of transfer and the  
21 obligation secured by any senior lien extinguished by the transfer.

22 (6) A reversal or modification of an order approving a  
23 transfer under subsection (3) does not affect the validity of the  
24 transfer to a person that acquired the property in good faith or  
25 revive against the person any lien extinguished by the transfer,  
26 whether the person knew before the transfer of the request for  
27 reversal or modification, unless the court stayed the order before

1 the transfer.

2 Sec. 17. (1) As used in this section, "timeshare interest"  
3 means either of the following, as applicable:

4 (a) Unless subdivision (b) applies, an interest having a  
5 duration of more than 3 years that grants its holder the right to  
6 use and occupy an accommodation, facility, or recreational site,  
7 whether improved or not, for a specific period less than a full  
8 year during any given year.

9 (b) If the condominium act, 1978 PA 59, MCL 559.101 to  
10 559.276, applies, a time-share estate or a time-share license, as  
11 those terms are defined in section 10 of the condominium act, 1978  
12 PA 59, MCL 559.110.

13 (2) Except as otherwise provided in subsection (8), with court  
14 approval, a receiver may adopt or reject an executory contract of  
15 the owner relating to receivership property. The court may  
16 condition the receiver's adoption and continued performance of the  
17 contract on terms appropriate under the circumstances. If the  
18 receiver does not request court approval to adopt or reject the  
19 contract within a reasonable time after the receiver's appointment,  
20 the receiver is deemed to have rejected the contract.

21 (3) A receiver's performance of an executory contract before  
22 court approval under subsection (2) of its adoption or rejection is  
23 not an adoption of the contract and does not preclude the receiver  
24 from seeking approval to reject the contract.

25 (4) A provision in an executory contract that requires or  
26 permits a forfeiture, modification, or termination of the contract  
27 because of the appointment of a receiver or the financial condition

1 of the owner does not affect a receiver's power under subsection  
2 (2) to adopt the contract.

3 (5) A receiver's right to possess or use receivership property  
4 pursuant to an executory contract terminates on rejection of the  
5 contract under subsection (2). Rejection is a breach of the  
6 contract effective immediately before appointment of the receiver.  
7 A claim for damages for rejection of the contract must be submitted  
8 by the later of the following:

9 (a) The time set for submitting a claim in the receivership.

10 (b) Thirty days after the court approves the rejection.

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

15 (7) If a receiver rejects under subsection (2) an executory  
16 contract for the sale of receivership property that is real  
17 property in possession of the purchaser or a real-property  
18 timeshare interest, the purchaser may do either of the following:

19 (a) Treat the rejection as a termination of the contract, and  
20 in that case the purchaser has a lien on the property for the  
21 recovery of any part of the purchase price the purchaser paid.

22 (b) Retain the purchaser's right to possession under the  
23 contract, and in that case the purchaser shall continue to perform  
24 all obligations arising under the contract and may offset any  
25 damages caused by nonperformance of an obligation of the owner  
26 after the date of the rejection, but the purchaser has no right or  
27 claim against other receivership property or the receiver on

1 account of the damages.

2 (8) A receiver may not reject an unexpired lease of real  
3 property under which the owner is the landlord if 1 or more of the  
4 following apply:

5 (a) The tenant occupies the leased premises as the tenant's  
6 primary residence.

7 (b) The receiver was appointed at the request of a person  
8 other than a mortgagee.

9 (c) The receiver was appointed at the request of a mortgagee  
10 and 1 or more of the following apply:

11 (i) The lease is superior to the lien of the mortgage.

12 (ii) The tenant has an enforceable agreement with the  
13 mortgagee or the holder of a senior lien under which the tenant's  
14 occupancy will not be disturbed as long as the tenant performs its  
15 obligations under the lease.

16 (iii) The mortgagee has consented to the lease, either in a  
17 signed record or by its failure timely to object that the lease  
18 violated the mortgage.

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

22 Sec. 18. (1) A receiver is entitled to all defenses and  
23 immunities provided by law of this state other than this act for an  
24 act or omission within the scope of the receiver's appointment.

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

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

3           (a) The activities of the receiver since appointment or a  
4 previous report.

5           (b) Receipts and disbursements, including a payment made or  
6 proposed to be made to a professional engaged by the receiver.

7           (c) Receipts and dispositions of receivership property.

8           (d) Fees and expenses of the receiver and, if not filed  
9 separately, a request for approval of payment of the fees and  
10 expenses.

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

12          Sec. 20. (1) Except as otherwise provided in subsection (6), a  
13 receiver shall give notice of appointment of the receiver to  
14 creditors of the owner by both of the following:

15          (a) Deposit for delivery through first-class mail or other  
16 commercially reasonable delivery method to the last known address  
17 of each creditor.

18          (b) Publication as directed by the court.

19          (2) Except as otherwise provided in subsection (6), the notice  
20 required by subsection (1) must specify the date by which each  
21 creditor holding a claim against the owner that arose before  
22 appointment of the receiver must submit the claim to the receiver.  
23 The date specified must be at least 90 days after the later of  
24 notice under subsection (1)(a) or last publication under subsection  
25 (1)(b). The court may extend the period for submitting the claim.  
26 Unless the court orders otherwise, a claim that is not submitted  
27 timely is not entitled to a distribution from the receivership.

1 (3) A claim submitted by a creditor under this section must  
2 satisfy all of the following requirements:

3 (a) The claim must state the name and address of the creditor.

4 (b) The claim must state the amount and basis of the claim.

5 (c) The claim must identify any property securing the claim.

6 (d) The claim must be signed by the creditor under penalty of  
7 perjury.

8 (e) The claim must include a copy of any record on which the  
9 claim is based.

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

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

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

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

25 (b) That unsecured creditors need not submit claims under this  
26 section.

27 (7) Subject to section 21, both of the following apply to a

1 distribution of receivership property:

2 (a) If the distribution is to a creditor holding a perfected  
3 lien on the property, the distribution must be made in accordance  
4 with the creditor's priority under law of this state other than  
5 this act.

6 (b) If the distribution is to a creditor with an allowed  
7 unsecured claim, the distribution must be made as the court directs  
8 according to law of this state other than this act.

9 Sec. 21. (1) The court may award a receiver from receivership  
10 property the reasonable and necessary fees and expenses of  
11 performing the duties of the receiver and exercising the powers of  
12 the receiver.

13 (2) The court may order 1 or more of the following to pay the  
14 reasonable and necessary fees and expenses of the receivership,  
15 including reasonable attorney fees and costs:

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

19 (b) A person whose conduct justified or would have justified  
20 the appointment of the receiver under section 6(1)(a).

21 Sec. 22. (1) The court may remove a receiver for cause.

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

24 (3) If the court finds that a receiver that resigns or is  
25 removed, or the representative of a receiver that is deceased, has  
26 accounted fully for and turned over to the successor receiver all  
27 receivership property and has filed a report of all receipts and



1 disbursements during the service of the replaced receiver, the  
2 replaced receiver is discharged.

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

10 (a) The fees and expenses of the receivership, including  
11 reasonable attorney fees and costs.

12 (b) Actual damages caused by the appointment, including  
13 reasonable attorney fees and costs.

14 Sec. 23. (1) On completion of a receiver's duties, the  
15 receiver shall file a final report including all of the following:

16 (a) A description of the activities of the receiver in the  
17 conduct of the receivership.

18 (b) A list of receivership property at the commencement of the  
19 receivership and any receivership property received during the  
20 receivership.

21 (c) A list of disbursements, including payments to  
22 professionals engaged by the receiver.

23 (d) A list of dispositions of receivership property.

24 (e) A list of distributions made or proposed to be made from  
25 the receivership for creditor claims.

26 (f) If not filed separately, a request for approval of the  
27 payment of fees and expenses of the receiver.

1 (g) Any other information required by the court.

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

5 Sec. 24. (1) The court may appoint a receiver appointed in  
6 another state, or that person's nominee, as an ancillary receiver  
7 with respect to property located in this state or subject to the  
8 jurisdiction of the court for which a receiver could be appointed  
9 under this act, if both of the following apply:

10 (a) The person or nominee would be eligible to serve as  
11 receiver under section 7.

12 (b) The appointment furthers the person's possession, custody,  
13 control, or disposition of property subject to the receivership in  
14 the other state.

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

17 (3) Unless the court orders otherwise, an ancillary receiver  
18 appointed under subsection (1) has the rights, powers, and duties  
19 of a receiver appointed under this act.

20 Sec. 25. A request by a mortgagee for appointment of a  
21 receiver, the appointment of a receiver, or application by a  
22 mortgagee of receivership property or proceeds to the secured  
23 obligation does not do any of the following:

24 (a) Make the mortgagee a mortgagee in possession of the real  
25 property.

26 (b) Make the mortgagee an agent of the owner.

27 (c) Constitute an election of remedies that precludes a later

1 action to enforce the secured obligation.

2 (d) Make the secured obligation unenforceable.

3 (e) Limit any right available to the mortgagee with respect to  
4 the secured obligation.

5 (f) Constitute an action within the meaning of section  
6 3204(1)(b) of the revised judicature act of 1961, 1961 PA 236, MCL  
7 600.3204.

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

12 Sec. 27. This act modifies, limits, or supersedes the  
13 electronic signatures in global and national commerce act, 15 USC  
14 7001 to 7031, but does not modify, limit, or supersede 15 USC  
15 7001(c) or authorize electronic delivery of any of the notices  
16 described in 15 USC 7003(b).

17 Sec. 28. This act does not apply to a receivership for which  
18 the receiver was appointed before the effective date of this act.

19 Sec. 30. This act takes effect 90 days after the date it is  
20 enacted into law.

21 Enacting section 1. This act does not take effect unless  
22 Senate Bill No. \_\_\_\_ or House Bill No. 4470 (request no. 00179'17 a)  
23 of the 99th Legislature is enacted into law.