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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE IN PARTICULAR
ACTIONS -- RHODE ISLAND COMMERCIAL RECEIVERSHIP ACT

Introduced By: Representative Robert E. Craven

Date Introduced: May 12, 2021

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 10 of the General Laws entitled "COURTS AND CIVIL PROCEDURE
2 - PROCEDURE IN PARTICULAR ACTIONS" is hereby amended by adding thereto the following
3 chapter:

4 CHAPTER 21

5 RHODE ISLAND COMMERCIAL RECEIVERSHIP ACT

6 **10-21-1. Short title.**

7 This chapter shall be known and may be cited as the "Rhode Island Commercial
8 Receivership Act."

9 **10-21-2. Definitions.**

10 As used in this chapter:

11 (1) "Affiliate" means:

12 (i) With respect to an individual:

13 (A) A companion of the individual;

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

15 (I) The individual; or

16 (II) A companion of the individual;

17 (C) A companion of an ancestor or descendant described in § 10-21-2(1)(i)(B);

18 (D) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece,

1 or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a
2 companion of any of them; or

3 (E) Any other individual occupying the residence of the individual; and
4 (ii) With respect to a person other than an individual:

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

7 (B) An officer, director, manager, member, partner, employee, or trustee or other fiduciary
8 of the person; or

9 (C) A companion of, or an individual occupying the residence of, an individual described
10 in §§10-21-2(1)(ii)(A) or (B).

11 (2) "Collateral" means the property subject to a lien.

12 (3) "Companion" means:

13 (i) The spouse of an individual;
14 (ii) The domestic partner of an individual; or
15 (iii) Another individual in a civil union with an individual.

16 (4) "Court" means the superior court.

17 (5) "Debtor" means a person having an interest, other than a lien, in collateral, whether or
18 not the person is liable for the secured obligation. The term "debtor" includes a mortgagor.

19 (6) "Executory contract" means a contract, including a lease, under which each party has
20 an unperformed obligation and the failure of a party to complete performance would constitute a
21 material breach.

22 (7) "Governmental unit" means an office, department, division, bureau, board,
23 commission, or other agency of this state or a subdivision of this state.

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

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

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

30 (11) "Mortgagor" means a person that grants a mortgage or a successor in ownership of the
31 real property described in the mortgage.

32 (12) "Owner" means the person for whose property a receiver is appointed.

33 (13) "Person" means an individual, estate, partnership, association, trust, business or
34 nonprofit entity, public corporation, government or governmental subdivision, agency, or

1 instrumentality, or other legal entity.

2 (14) "Proceeds" means the following property:

3 (i) Whatever is acquired on the sale, lease, license, exchange, or other disposition of

4 receivership property;

5 (ii) Whatever is collected on, or distributed on account of, receivership property;

6 (iii) Rights arising out of receivership property;

7 (iv) To the extent of the value of receivership property, claims arising out of the loss,

8 nonconformity, or interference with the use of, defects or infringement of rights in, or damage to

9 the property; or

10 (v) To the extent of the value of receivership property and to the extent payable to the

11 owner or secured party, insurance payable by reason of the loss or nonconformity of, defects or

12 infringement of rights in, or damage to the property.

13 (15) "Property" means all of a person's right, title, and interest, both legal and equitable, in

14 real and personal property, tangible and intangible, wherever located and however acquired. The

15 term includes proceeds, products, offspring, rents, or profits of or from the property.

16 (16) "Receiver" means a person appointed by the court as the court's agent, and subject to

17 the court's direction, to take possession of, manage, and, if authorized by this chapter or court order,

18 transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

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

20 (18) "Receivership property" means the property of an owner which is described in the

21 order appointing a receiver or a subsequent order. The term includes any proceeds, products,

22 offspring, rents, or profits of or from the property.

23 (19) "Record," used as a noun, means information that is inscribed on a tangible medium

24 or that is stored on an electronic or other medium and is retrievable in perceivable form.

25 (20) "Rents" means:

26 (i) Sums payable for the right to possess or occupy, or for the actual possession or

27 occupation of, real property of another person;

28 (ii) Sums payable to a mortgagor under a policy of rental-interruption insurance covering

29 real property;

30 (iii) Claims arising out of a default in the payment of sums payable for the right to possess

31 or occupy real property of another person;

32 (iv) Sums payable to terminate an agreement to possess or occupy real property of another

33 person;

34 (v) Sums payable to a mortgagor for payment or reimbursement of expenses incurred in

1 owning, operating, and maintaining real property or constructing or installing improvements on
2 real property; or

3 (vi) Other sums payable under an agreement relating to the real property of another person
4 which constitute rents under law of this state other than this chapter.

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

7 (22) "Secured party" means a person entitled to enforce a secured obligation. The term
8 includes a mortgagee.

9 (23) "Security agreement" means an agreement that creates or provides for a lien. The term
10 includes a mortgage.

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

12 (i) To execute or adopt a tangible symbol; or

13 (ii) To attach to or logically associate with the record an electronic sound, symbol, or
14 process.

15 (25) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
16 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
17 United States.

18 **10-21-2.1. Additional definitions for emergency declaration temporary non-**
19 **liquidating receivership.**

20 In this chapter:

21 (1) "Emergency" means a serious, dangerous or unexpected situation that causes or
22 potentially causes widespread or substantial loss of life, injury, damage or public health concern
23 for a significant number of persons or substantial loss of property, including a "disaster" as defined
24 in § 30-15-3.

25 (2) "Emergency declaration" means a declaration of disaster emergency issued by the
26 governor pursuant to § 30-15-9.

27 (3) "Emergency declaration provisions" means §§ 10-21-2.1, 10-21-3.1, 10-21-6.1, 10-21-
28 12.1, 10-21-13.1, 10-21-14.1, 10-21-16.1, 10-21-19.1, 10-21-21.1, and 10-21-28.1.

29 (4) "Temporary non-liquidating receiver" means a receiver appointed under the emergency
30 declaration provisions.

31 (5) "Temporary non-liquidating receivership" means a receivership in which a temporary
32 non-liquidating receiver has been appointed.

33 **10-21-3. Notice and opportunity for hearing.**

34 (a) Except as otherwise provided in subsection (b) of this section, the court may issue an

1 order under this chapter only after notice and opportunity for a hearing appropriate in the
2 circumstances.

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

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

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

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

9 **10-21-3.1. Administrative and procedural orders in temporary non-liquidating**
10 **receivership.**

11 The general assembly acknowledges that:

12 (1) The presiding justice of the superior court may issue administrative orders governing
13 the procedures in temporary non-liquidating receiverships.

14 (2) The business calendar justice to whom a temporary non-liquidating receivership has
15 been assigned may issue procedural orders in the temporary non-liquidating receivership.

16 **10-21-4. Scope -- Exclusions.**

17 (a) Except as otherwise provided in subsections (b) or (c) of this section, this chapter
18 applies to a receivership for an interest in any one or more of the following:

19 (1) Real property and any personal property related to or used in operating the real property;
20 or

21 (2) Personal property and fixtures.

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

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

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

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

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

33 (c) This chapter does not apply to a receivership authorized by law of this state other than
34 this chapter in which the receiver is a governmental unit or an individual acting in an official

1 capacity on behalf of the unit except to the extent provided by the other law.

2 (d) This chapter does not limit the authority of a court to appoint a receiver under law of
3 this state other than this chapter.

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

6 **10-21-5. Power of court.**

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

9 **10-21-6. Appointment of receiver.**

10 (a) The court may appoint a receiver:

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

13 (i) Is being subjected to or is in danger of waste, loss, dissipation, misapplication, or
14 impairment; or

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

16 (2) After judgment:

17 (i) To carry the judgment into effect; or

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

20 (3) In an action against a person that is not an individual if:

21 (i) The object of the action is the dissolution of the person;

22 (ii) The person is not an individual, and the person has been dissolved or revoked;

23 (iii) The persons responsible for management of the person are deadlocked in the
24 management of the person's affairs;

25 (iv) The acts of the persons in control of the person are illegal, oppressive, or fraudulent;
26 or

27 (v) The person is insolvent or generally is not paying the person's debts as those debts
28 become due; or

29 (4) In an action in which a receiver may be appointed on equitable grounds.

30 (b) In connection with the foreclosure or other enforcement of a security agreement, the
31 court may appoint a receiver for the collateral if:

32 (1) Appointment is necessary to protect the collateral from waste, loss, transfer, dissipation,
33 misapplication, or impairment;

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

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

2 (4) The collateral and any other security held by the secured party are not reasonably
3 expected to be sufficient to satisfy the secured obligation; or

4 (5) The owner fails to turn over to the secured party proceeds or rents the secured party
5 was entitled to collect.

6 (c) The court may condition appointment of a receiver without prior notice under § 10-21-
7 3(b)(1) or without a prior hearing under § 10-21-3(b)(2) on the giving of security by the person
8 seeking the appointment for the payment of damages, reasonable attorneys' fees, and costs incurred
9 or suffered by any person if the court later concludes that the appointment was not justified. If the
10 court later concludes that the appointment was justified, the court shall release the security.

11 **10-21-6.1. Appointment of temporary non-liquidating receiver.**

12 (a) The court may appoint a temporary non-liquidating receiver on the request of the owner
13 if:

14 (1) As of the date of an emergency declaration, the owner was not insolvent;

15 (2) As of the date of an emergency declaration, the owner was generally paying its debts
16 as those debts became due;

17 (3) As of the date of an emergency declaration, the owner was not in material default of its
18 obligations to a secured party; and

19 (4) Either:

20 (i) Because of the events giving rise to the emergency, the owner's gross revenue has
21 declined by more than twenty percent (20%), in a sixty (60) day period beginning on or after the
22 date of an emergency declaration, as compared to the same period of the previous year; or

23 (ii) Because of action by a governmental unit exercising its police or regulatory power to
24 mitigate or otherwise address the emergency, the owner suspended or ceased a substantial part of
25 its business operations.

26 **10-21-7. Disqualification from appointment as receiver -- Disclosure of interest.**

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

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

31 (1) Is an affiliate of a party;

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

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

1 (4) Has a debtor-creditor relationship with a party; or
2 (5) Holds an equity interest in a party, other than a non-controlling interest in a publicly-
3 traded company.

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

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

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

9 (3) Maintains with a party a deposit account as defined in § 6A-9-102(a)(29).

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

12 **10-21-8. Receiver's bond -- Alternative security.**

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

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

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

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

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

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

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

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

27 **10-21-9. Status of receiver as lien creditor.**

28 On appointment of a receiver, in addition to the receiver's other status under this chapter,
29 the receiver has the status of a lien creditor under:

30 (1) Chapter 9 of title 6A as to receivership property that is personal property or fixtures;
31 and

32 (2) Section 34-13-2 as to receivership property that is real property.

33 **10-21-10. Security interest covering after-acquired property.**

34 Except as otherwise provided by law of this state other than this chapter, property that a

1 receiver or owner acquires after appointment of the receiver is subject to a security agreement
2 entered into before the appointment to the same extent as if the court had not appointed the receiver.

3 **10-21-11. Collection and turnover of receivership property.**

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

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

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

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

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

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

19 **10-21-12. Powers and duties of receiver.**

20 (a) Except as limited by court order or law of this state other than this chapter, a receiver
21 may:

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

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

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

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

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

33 (6) On subpoena, compel a person to submit to examination under oath, or to produce and
34 permit inspection and copying of designated records or tangible things, with respect to receivership

1 property or any other matter that may affect administration of the receivership;
2 (7) Engage a professional as provided in § 10-21-15;
3 (8) Apply to a court of another state for appointment as ancillary receiver with respect to
4 receivership property located in that state; and
5 (9) Exercise any power conferred by court order, this chapter, or law of this state other than
6 this chapter.
7 (b) With court approval, a receiver may:
8 (1) Incur debt for the use or benefit of receivership property other than in the ordinary
9 course of business;
10 (2) Make improvements to receivership property;
11 (3) Use or transfer receivership property other than in the ordinary course of business as
12 provided in § 10-21-16;
13 (4) Adopt or reject an executory contract of the owner as provided in § 10-21-17;
14 (5) Pay compensation to the receiver as provided in § 10-21-21, and to each professional
15 engaged by the receiver as provided in § 10-21-15;
16 (6) Recommend allowance or disallowance of a claim of a creditor as provided in §10-21-
17 20; and
18 (7) Make a distribution of receivership property as provided in §10-21-20.
19 (c) A receiver shall:
20 (1) Prepare and retain appropriate business records, including a record of each receipt,
21 disbursement, and disposition of receivership property;
22 (2) Account for receivership property, including the proceeds of a sale, lease, license,
23 exchange, collection, or other disposition of the property;
24 (3) Record with the land evidence records of each city or town in which the property is
25 located a copy of the order appointing the receiver and, if a legal description of the real property is
26 not included in the order, the legal description;
27 (4) Disclose to the court any fact arising during the receivership which would disqualify
28 the receiver under § 10-21-7; and
29 (5) Perform any duty imposed by court order, this chapter, or law of this state other than
30 this chapter.
31 (d) The powers and duties of a receiver may be expanded, modified, or limited by court
32 order.
33 **10-21-12.1. Powers and duties of temporary non-liquidating receiver -- Operating**
34 **plan.**

- 1 (a) A temporary non-liquidating receiver shall:
- 2 (1) Assist the owner in developing an operating plan in consultation;
- 3 (2) Present the operating plan to the court for approval; and
- 4 (3) Monitor the owner’s business operations and the owner’s compliance with the plan.
- 5 (b) An operating plan must:
- 6 (1) Except to the extent that a particular creditor has agreed to a different treatment of its
- 7 claim:
- 8 (i) Provide for the payment of any secured obligation of the owner on the terms of the
- 9 secured obligation;
- 10 (ii) Provide for the payment of the owner’s debts accruing or arising after the appointment
- 11 of the receiver when such debts become due; and
- 12 (iii) Provide for the payment of each of the owner’s other debts either:
- 13 (A) In periodic installments over a term of not more than three (3) years after the court
- 14 approves the plan; or
- 15 (B) As to a particular debt, in such other manner as the owner and the creditor may agree
- 16 in a record; and
- 17 (2) Include such other measures as necessary to justify the termination of the receivership.
- 18 (c) The court may modify the operating plan.
- 19 (d) A temporary non-liquidating receiver may not exercise any of the powers under §§ 10-
- 20 21-12(a)(1) through (4) unless:
- 21 (1) The court directs otherwise for cause; or
- 22 (2) The owner defaults on an approved operating plan after such notice and opportunity to
- 23 cure the default as the court specifies.
- 24 **10-21-13. Duties of owner.**
- 25 (a) An owner shall:
- 26 (1) Assist and cooperate with the receiver in the administration of the receivership and the
- 27 discharge of the receiver's duties;
- 28 (2) Preserve and turn over to the receiver all receivership property in the owner's
- 29 possession, custody, or control;
- 30 (3) Identify all records and other information relating to the receivership property,
- 31 including a password, authorization, or other information needed to obtain or maintain access to or
- 32 control of the receivership property, and make available to the receiver the records and information
- 33 in the owner's possession, custody, or control;
- 34 (4) On subpoena, submit to examination under oath by the receiver concerning the acts,

1 conduct, property, liabilities, and financial condition of the owner or any matter relating to the
2 receivership property or the receivership; and

3 (5) Perform any duty imposed by court order, this chapter, or law of this state other than
4 this chapter.

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

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

9 (1) Award the receiver actual damages caused by the person's failure, reasonable attorneys'
10 fees, and costs; and

11 (2) Sanction the failure as civil contempt.

12 **10-21-13.1. Owner's duties in temporary non-liquidating receivership.**

13 Unless the court orders otherwise, the owner shall:

14 (1) Develop an operating plan and any modifications to the plan that the temporary non-
15 liquidating receiver may propose;

16 (2) Obtain court approval of the operating plan; and

17 (3) Timely perform the owner's duties under the operating plan.

18 **10-21-14. Stay -- Injunction.**

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

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

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

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

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

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

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

1 (2) Commencement or continuation of a criminal proceeding;

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

5 (4) Establishment by a governmental unit of a tax liability against the owner or receivership
6 property or an appeal of the liability; or

7 (5) Exercise of rights of a party to a swap agreement, securities contract, repurchase
8 agreement, commodity contract, forward contract or master netting agreement, as those terms are
9 defined in the federal Bankruptcy Code, to the extent that a court would not have the power to stay
10 the exercise if the defendant were a debtor under the Bankruptcy Code.

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

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

13 (1) Award actual damages caused by the violation, reasonable attorneys' fees, and costs;
14 and

15 (2) Sanction the violation as civil contempt.

16 **10-21-14.1. Stay in a temporary non-liquidating receivership.**

17 On appointment of a temporary non-liquidating receiver, the stay under § 10-21-14(a) is
18 effective for the period that the court considers necessary, but not more than ninety (90) days. The
19 court may extend the stay in increments of not more than thirty (30) days.

20 **10-21-15. Engagement and compensation of professional.**

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

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

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

26 (3) Any potential conflict of interest; and

27 (4) The proposed compensation.

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

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

1 approved by the court.

2 **10-21-16. Use or transfer of receivership property not in the ordinary course of**
3 **business.**

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

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

8 (c) With court approval, a receiver may transfer receivership property other than in the
9 ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the
10 agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the
11 person that obtained appointment of the receiver, any subordinate lien, and any right of redemption.
12 However, unless the holder of a senior lien consents, such a sale:

13 (1) Is subject to the senior lien and to the rights and remedies of the holder of the senior
14 lien under law other than this chapter; and

15 (2) Does not affect the obligation secured by the senior lien.

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

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

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

30 **10-21-16.1. Use or transfer of receivership property in a temporary non-liquidating**
31 **receivership.**

32 The owner may use or transfer receivership property, by sale, lease, license, exchange or
33 other disposition, only:

34 (1) With court approval; and

1 (2) After the court approves the operating plan, in accordance with the plan.

2 **10-21-17. Executory contract.**

3 (a) In this section, "timeshare interest" means a "time share" as defined in § 34-41-1.02.

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

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

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

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

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

22 (2) Thirty (30) days after the court approves the rejection.

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

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

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

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

1 of the damages.

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

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

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

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

7 (i) The lease is superior to the lien of the mortgage;

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

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

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

15 **10-21-18. Defenses and immunities of receiver.**

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

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

20 **10-21-19. Interim report of receiver.**

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

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

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

25 (3) Receipts and dispositions of receivership property;

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

28 (5) Any other information required by the court.

29 **10-21-19.1. Interim report of temporary non-liquidating receiver.**

30 In addition to the any interim report required by § 10-21-19, unless the court orders
31 otherwise, a temporary non-liquidating receiver shall file a monthly report that includes:

32 (1) Development and implementation of the operating plan; and

33 (2) The owner's compliance with the operating plan and with this chapter.

34 **10-21-20. Notice of appointment -- Claim against receivership -- Distribution to**

1 **creditors.**

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

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

6 (2) Publication as directed by the court.

7 (b) Except as otherwise provided in subsection (f) of this section, the notice required by
8 subsection (a) of this section must specify the date by which each creditor holding a claim against
9 the owner which arose before appointment of the receiver must submit the claim to the receiver.
10 The date specified must be at least four (4) months after the later of notice under subsection (a)(1)
11 of this section or last publication under subsection (a)(2) of this section. The court may extend the
12 period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted
13 timely is not entitled to a distribution from the receivership.

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

15 (1) State the name and address of the creditor;

16 (2) State the amount and basis of the claim;

17 (3) Identify any property securing the claim;

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

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

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

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

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

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

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

30 (g) Subject to §10-21-21:

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

34 (2) A distribution of receivership property to a creditor with an allowed unsecured claim

1 must be made as the court directs according to law of this state other than this chapter.

2 **10-21-21. Fees and expenses.**

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

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

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

10 (2) A person whose conduct justified or would have justified the appointment of the
11 receiver under § 10-21-6(a)(1).

12 **10-21-21.1. Emergency declaration receivership program coordinator.**

13 The presiding justice of the superior court may appoint an individual to serve as program
14 coordinator to identify and coordinate sources for funding, legal services, accounting services, and
15 other appropriate services for temporary non-liquidating receiverships. The individual must have
16 appropriate qualifications for the position and shall serve at the pleasure of the presiding justice.
17 The program coordinator is not a judicial officer, but may be sued personally for an act or omission
18 in performing his or her duties only with the approval of the presiding justice. On application to the
19 presiding justice after notice and opportunity for hearing, the program coordinator may be awarded
20 reasonable compensation through an equitable charge on receivership property in temporary non-
21 liquidating receiverships.

22 **10-21-22. Removal of receiver -- Replacement -- Termination of receivership.**

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

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

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

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

34 (1) The fees and expenses of the receivership, including reasonable attorneys' fees and

1 costs; and

2 (2) Actual damages caused by the appointment, including reasonable attorneys' fees and
3 costs.

4 **10-21-23. Final report of receiver -- Discharge.**

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

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

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

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

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

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

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

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

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

18 **10-21-24. Receivership in another state -- Ancillary proceeding.**

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

22 (1) The person or nominee would be eligible to serve as receiver under this chapter; and

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

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

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

29 **10-21-25. Effect of enforcement by secured party.**

30 A request by a secured party for appointment of a receiver, the appointment of a receiver,
31 or application by a secured party of receivership property or proceeds to the secured obligation
32 does not:

33 (1) Make the secured party a mortgagee in possession of the real property;

34 (2) Impose any duty on the secured party under § 6A-9-207;

- 1 (3) Make the secured party an agent of the owner;
2 (4) Constitute an election of remedies that precludes a later action to enforce the secured
3 obligation;
4 (5) Make the secured obligation unenforceable; or
5 (6) Limit any right available to the secured party with respect to the secured obligation.

6 **10-21-26. Uniformity of application and construction.**

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

9 **10-21-27. Relation to electronic signatures in global and national commerce act.**

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

14 **10-21-28. Transition.**

15 This chapter does not apply to a receivership for which the receiver was appointed before
16 the effective date of this chapter.

17 **10-21-28.1. Emergency declaration temporary non-liquidating receivership**
18 **transition provisions.**

19 (a) Notwithstanding § 10-21-28, the court may for cause apply this chapter to a receivership
20 for which a receiver was appointed before the effective date of this chapter, if the owner would
21 otherwise be eligible for a temporary non-liquidating receivership.

22 (b) Unless extended by the general assembly, the emergency declaration provisions apply
23 only to a receivership in which the court first appoints a receiver:

24 (1) If because of the COVID-19 pandemic, during the period beginning on the effective
25 date of this chapter and ending on June 30, 2021; or

26 (2) If because of any other emergency, during the period beginning on the date the
27 emergency declaration is issued and ending ninety (90) days after the end of the emergency.

28 **10-21-29. Official comments.**

29 It is the intention of the general assembly that the official comments to the Uniform
30 Commercial Real Estate Receivership Act as approved and recommended for enactment in all the
31 States by the National Conference of Commissioners on Uniform State Laws in 2015 represent the
32 express legislative intent of the general assembly and shall be used as a guide for interpretation of
33 this chapter.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE -- PROCEDURE IN PARTICULAR
ACTIONS -- RHODE ISLAND COMMERCIAL RECEIVERSHIP ACT

1 This act would create a temporary non-liquidating receivership program for businesses that
2 have had a substantial decline in revenue after an emergency declaration by the government or for
3 businesses that have suspended or ceased a substantial part of their operations because of action by
4 a governmental unit exercising its police or regulatory powers to address an emergency.

5 This act would take effect upon passage.

6

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