

1 **UTAH UNIFORM COMMERCIAL REAL ESTATE**
2 **RECEIVERSHIP ACT**

3 2017 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Brian S. King

7
8 **LONG TITLE**

9 **General Description:**

10 This bill enacts provisions related to commercial real estate receivership.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides for the appointment of a receiver to dispose of commercial property
14 subject to dispute under certain circumstances;
15 ▶ provides rules of conduct for a court-appointed receiver;
16 ▶ provides rules of conduct for an owner of property subject to receivership;
17 ▶ provides an applicability date; and
18 ▶ defines terms.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 ENACTS:

25 **78B-21-101**, Utah Code Annotated 1953

26 **78B-21-102**, Utah Code Annotated 1953

27 **78B-21-103**, Utah Code Annotated 1953



- 28 **78B-21-104**, Utah Code Annotated 1953
- 29 **78B-21-105**, Utah Code Annotated 1953
- 30 **78B-21-106**, Utah Code Annotated 1953
- 31 **78B-21-107**, Utah Code Annotated 1953
- 32 **78B-21-108**, Utah Code Annotated 1953
- 33 **78B-21-109**, Utah Code Annotated 1953
- 34 **78B-21-110**, Utah Code Annotated 1953
- 35 **78B-21-111**, Utah Code Annotated 1953
- 36 **78B-21-112**, Utah Code Annotated 1953
- 37 **78B-21-113**, Utah Code Annotated 1953
- 38 **78B-21-114**, Utah Code Annotated 1953
- 39 **78B-21-115**, Utah Code Annotated 1953
- 40 **78B-21-116**, Utah Code Annotated 1953
- 41 **78B-21-117**, Utah Code Annotated 1953
- 42 **78B-21-118**, Utah Code Annotated 1953
- 43 **78B-21-119**, Utah Code Annotated 1953
- 44 **78B-21-120**, Utah Code Annotated 1953
- 45 **78B-21-121**, Utah Code Annotated 1953
- 46 **78B-21-122**, Utah Code Annotated 1953
- 47 **78B-21-123**, Utah Code Annotated 1953
- 48 **78B-21-124**, Utah Code Annotated 1953
- 49 **78B-21-125**, Utah Code Annotated 1953
- 50 **78B-21-126**, Utah Code Annotated 1953
- 51 **78B-21-127**, Utah Code Annotated 1953
- 52 **78B-21-128**, Utah Code Annotated 1953
- 53 **78B-21-129**, Utah Code Annotated 1953



55 *Be it enacted by the Legislature of the state of Utah:*

56 Section 1. Section **78B-21-101** is enacted to read:

57 **CHAPTER 21. UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT**

58 **78B-21-101. Title.**

59 This chapter is known as the "Uniform Commercial Real Estate Receivership Act."

60 Section 2. Section **78B-21-102** is enacted to read:

61 **78B-21-102. Definitions.**

62 (1) "Affiliate" means:

63 (a) with respect to an individual:

64 (i) a companion of the individual;

65 (ii) a lineal ancestor or descendant, whether by blood or adoption, of:

66 (A) the individual; or

67 (B) a companion of the individual;

68 (iii) a companion of an ancestor or descendant described in Subsection (1)(a)(ii);

69 (iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,

70 grandniece, or grandnephew of the individual, whether related by the whole or the half blood or

71 adoption, or a companion of a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece,

72 nephew, grandniece, or grandnephew of the individual; or

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

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

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

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

79 (iii) a companion of, or an individual occupying the residence of, an individual
80 described in Subsection (1)(b)(i) or (ii).

81 (2) "Companion" means:

82 (a) the spouse of an individual;

83 (b) the domestic partner of an individual; or

84 (c) another individual in a civil union with an individual.

85 (3) "Court" means a district court in the state.

86 (4) "Executory contract" means a contract, including a lease, under which each party
87 has an unperformed obligation and the failure of a party to complete performance would
88 constitute a material breach.

89 (5) "Governmental unit" means an office, department, division, bureau, board,

90 commission, or other agency of this state or a subdivision of this state.

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

93 (7) "Mortgage" means a record, however denominated, that creates or provides for a
94 consensual lien on real property or rents, even if the mortgage also creates or provides for a lien
95 on personal property.

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

98 (9) "Mortgagor" means a person that grants a mortgage or a successor in ownership of
99 the real property described in the mortgage.

100 (10) "Owner" means the person for whose property a receiver is appointed.

101 (11) "Person" means an individual, estate, business or nonprofit entity, public
102 corporation, government or governmental subdivision, agency, or instrumentality, or other
103 legal entity.

104 (12) "Proceeds" means the following property:

105 (a) whatever is acquired on the sale, lease, license, exchange, or other disposition of
106 receivership property;

107 (b) whatever is collected on, or distributed on account of, receivership property;

108 (c) rights arising out of receivership property;

109 (d) to the extent of the value of receivership property, claims arising out of the loss,
110 nonconformity, or interference with the use of, defects or infringement of rights in, or damage
111 to the property; or

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

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

119 (14) "Receiver" means a person appointed by the court as the court's agent, and subject
120 to the court's direction, to take possession of, manage, and, if authorized by this chapter or

121 court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership
122 property.

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

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

127 (17) "Record" means, when used as a noun, information that is inscribed on a tangible
128 medium or that is stored on an electronic or other medium and is retrievable in perceivable
129 form.

130 (18) "Rents" means:

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

133 (b) sums payable to a mortgagor under a policy of rental-interruption insurance
134 covering real property;

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

137 (d) sums payable to terminate an agreement to possess or occupy real property of
138 another person;

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

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

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

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

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

148 (a) to execute or adopt a tangible symbol; or

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

151 Section 3. Section **78B-21-103** is enacted to read:

152 **78B-21-103. Notice and opportunity for a hearing.**

153 (1) Except as otherwise provided in Subsection (2), the court may issue an order under
154 this chapter only after notice and opportunity for a hearing, as appropriate in the circumstances.

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

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

158 (b) after notice and without a prior hearing if the circumstances require issuance of an
159 order before a hearing is held; or

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

161 Section 4. Section **78B-21-104** is enacted to read:

162 **78B-21-104. Scope -- Exclusions.**

163 (1) Except as otherwise provided in Subsection (2) or (3), this chapter applies to a
164 receivership for an interest in real property and any personal property related to or used in
165 operating the real property.

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

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

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

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

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

177 (3) This chapter does not apply to a receivership authorized by law of this state other
178 than this chapter in which the receiver is a governmental unit or an individual acting in an
179 official capacity on behalf of the governmental unit.

180 (4) This chapter does not limit the authority of a court to appoint a receiver under other
181 state law.

182 (5) Unless displaced by a particular provision of this chapter, the principles of law and

183 equity supplement this chapter.

184 Section 5. Section **78B-21-105** is enacted to read:

185 **78B-21-105. Power of court.**

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

188 Section 6. Section **78B-21-106** is enacted to read:

189 **78B-21-106. Appointment of receiver.**

190 (1) The court may appoint a receiver:

191 (a) before judgment, to protect a party that demonstrates an apparent right, title, or
192 interest in real property that is the subject of the action, if the property or the property's
193 revenue-producing potential:

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

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

196 (b) after judgment:

197 (i) to carry the judgment into effect; or

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

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

202 (d) during the time allowed for redemption, to preserve a property sold in an execution
203 or foreclosure sale and secure the property's rents to the person entitled to the property's rents.

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

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

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

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

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

212 (e) the owner fails to turn over to the mortgagee proceeds or rents the mortgagee was
213 entitled to collect; or

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

215 (3) (a) The court may condition appointment of a receiver without prior notice under
216 Subsection 78B-21-103(2)(a) or without a prior hearing under Subsection 78B-21-103(2)(b) on
217 the giving of security by the person seeking the appointment for the payment of damages,
218 reasonable attorney fees, and costs incurred or suffered by any person if the court later
219 concludes that the appointment was not justified.

220 (b) If the court later concludes that the appointment described in Subsection (3)(a) was
221 justified, the court shall release the security.

222 Section 7. Section 78B-21-107 is enacted to read:

223 **78B-21-107. Disqualification from appointment as receiver -- Disclosure of**
224 **interest.**

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

227 (2) Except as otherwise provided in Subsection (3), a person is disqualified from
228 appointment as receiver if the person:

229 (a) is an affiliate of a party;

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

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

233 (d) has a debtor-creditor relationship with a party; or

234 (e) holds an equity interest in a party, other than a noncontrolling interest in a
235 publicly-traded company.

236 (3) A person is not disqualified from appointment as receiver solely because the
237 person:

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

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

242 (c) maintains with a party a deposit account as defined in Section 70A-9a-102.

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

245 Section 8. Section **78B-21-108** is enacted to read:

246 **78B-21-108. Receiver's bond -- Alternative security.**

247 (1) Except as otherwise provided in Subsection (1)(b), a receiver shall post with the
248 court a bond that:

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

250 (b) has one or more sureties approved by the court;

251 (c) is in an amount the court specifies; and

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

253 (2) (a) The court may approve the posting by a receiver with the court of alternative
254 security, such as a letter of credit or deposit of funds.

255 (b) The receiver may not use receivership property as alternative security.

256 (c) Interest that accrues on deposited funds must be paid to the receiver on the
257 receiver's discharge.

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

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

262 Section 9. Section **78B-21-109** is enacted to read:

263 **78B-21-109. Status of receiver as lien creditor.**

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

265 (1) Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions, as to
266 receivership property that is personal property or fixtures; and

267 (2) Title 57, Chapter 9, Marketable Record Title, as to receivership property that is real
268 property.

269 Section 10. Section **78B-21-110** is enacted to read:

270 **78B-21-110. Security agreement covering after-acquired property.**

271 Except as otherwise provided by law of this state other than this chapter, property that a
272 receiver or owner acquires after appointment of the receiver is subject to a security agreement
273 entered into before the appointment to the same extent as if the court had not appointed the
274 receiver.

275 Section 11. Section **78B-21-111** is enacted to read:

276 **78B-21-111. Collection and turnover of receivership property.**

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

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

281 (b) subject to Subsection (3), a person that has possession, custody, or control of
282 receivership property shall turn the property over to the receiver.

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

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

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

292 Section 12. Section **78B-21-112** is enacted to read:

293 **78B-21-112. Powers and duties of receiver.**

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

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

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

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

303 (d) assert a right, claim, cause of action, or defense of the owner that relates to
304 receivership property;

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

307 (f) on subpoena, compel a person to submit to examination under oath, or to produce
308 and permit inspection and copying of designated records or tangible things, with respect to
309 receivership property or any other matter that may affect administration of the receivership;
310 (g) engage a professional as provided in Section 78B-21-115;
311 (h) apply to a court of another state for appointment as ancillary receiver with respect
312 to receivership property located in that state; and
313 (i) exercise any power conferred by court order, this chapter, or a law of the state other
314 than this chapter.

315 (2) With court approval, a receiver may:

316 (a) incur debt for the use or benefit of receivership property other than in the ordinary
317 course of business;
318 (b) make improvements to receivership property;
319 (c) use or transfer receivership property other than in the ordinary course of business as
320 provided in Section 78B-21-116;
321 (d) adopt or reject an executory contract of the owner as provided in Section
322 78B-21-117;
323 (e) pay compensation to the receiver as provided in Section 78B-21-121, and to each
324 professional engaged by the receiver as provided in Section 78B-21-115;
325 (f) recommend allowance or disallowance of a claim of a creditor as provided in
326 Section 78B-21-120; and
327 (g) make a distribution of receivership property as provided in Section 78B-21-120.

328 (3) A receiver shall:

329 (a) prepare and retain appropriate business records, including a record of each receipt,
330 disbursement, and disposition of receivership property;
331 (b) account for receivership property, including the proceeds of a sale, lease, license,
332 exchange, collection, or other disposition of the property;
333 (c) file with the county recorder of the county where the property is located a copy of
334 the order appointing the receiver and, if a legal description of the real property is not included
335 in the order, the legal description;
336 (d) disclose to the court any fact arising during the receivership that would disqualify
337 the receiver under Section 78B-21-107; and

338 (e) perform any duty imposed by court order, this chapter, or a law of the state other
339 than this chapter.

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

342 Section 13. Section **78B-21-113** is enacted to read:

343 **78B-21-113. Duties of owner.**

344 (1) An owner shall:

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

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

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

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

356 (e) perform any duty imposed by court order, this chapter, or a law of the state other
357 than this chapter.

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

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

363 (a) award the receiver actual damages caused by the person's failure, reasonable
364 attorney fees, and costs; and

365 (b) sanction the failure as civil contempt.

366 Section 14. Section **78B-21-114** is enacted to read:

367 **78B-21-114. Stay -- Injunction.**

368 (1) Except as otherwise provided in Subsection (4) or ordered by the court, an order

369 appointing a receiver operates as a stay, applicable to all persons, of an act, action, or
370 proceeding:

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

373 (b) to enforce a lien against receivership property to the extent the lien secures a claim
374 against the owner that arose before entry of the order.

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

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

380 (4) An order under Subsection (1) or (2) does not operate as a stay or injunction of:

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

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

385 (c) commencement or continuation of a criminal proceeding;

386 (d) commencement or continuation of an action or proceeding, or enforcement of a
387 judgment other than a money judgment in an action or proceeding, by a governmental unit to
388 enforce the governmental unit's police or regulatory power; or

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

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

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

393 (a) award actual damages caused by the violation, reasonable attorney fees, and costs;

394 and

395 (b) sanction the violation as civil contempt.

396 Section 15. Section **78B-21-115** is enacted to read:

397 **78B-21-115. Engagement and compensation of professional.**

398 (1) (a) With court approval, a receiver may engage an attorney, accountant, appraiser,
399 auctioneer, broker, or other professional to assist the receiver in performing a duty or

400 exercising a power of the receiver.

401 (b) The receiver shall disclose to the court:

402 (i) the identity and qualifications of the professional;

403 (ii) the scope and nature of the proposed engagement;

404 (iii) any potential conflict of interest; and

405 (iv) the proposed compensation.

406 (2) (a) A person is not disqualified from engagement under this section solely because

407 of the person's engagement by, representation of, or other relationship with the receiver, a

408 creditor, or a party.

409 (b) This chapter does not prevent the receiver from serving in the receivership as an

410 attorney, accountant, auctioneer, or broker when authorized by law.

411 (3) (a) A receiver or professional engaged under Subsection (1) shall file with the court

412 an itemized statement of the time spent, work performed, and billing rate of each person that

413 performed the work and an itemized list of expenses.

414 (b) The receiver shall pay the amount approved by the court.

415 Section 16. Section **78B-21-116** is enacted to read:

416 **78B-21-116. Use or transfer of receivership property not in ordinary course of**
417 **business.**

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

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

422 (3) (a) With court approval, a receiver may transfer receivership property other than in
423 the ordinary course of business by sale, lease, license, exchange, or other disposition.

424 (b) Unless the agreement of sale provides otherwise, a sale under this section is:

425 (i) free and clear of a lien of the person that obtained appointment of the receiver, any
426 subordinate lien, and any right of redemption; and

427 (ii) subject to a senior lien.

428 (4) A lien on receivership property that is extinguished by a transfer under Subsection

429 (3) attaches to the proceeds of the transfer with the same validity, perfection, and priority the

430 lien had on the property immediately before the transfer, even if the proceeds are not sufficient

431 to satisfy all obligations secured by the lien.

432 (5) (a) A transfer under Subsection (3) may occur by means other than a public auction
433 sale.

434 (b) A creditor holding a valid lien on the property to be transferred may purchase the
435 property and offset against the purchase price part or all of the allowed amount secured by the
436 lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer
437 and the obligation secured by any senior lien extinguished by the transfer.

438 (6) A reversal or modification of an order approving a transfer under Subsection (3)
439 does not affect the validity of the transfer to a person that acquired the property in good faith or
440 revive against the person any lien extinguished by the transfer, whether the person knew before
441 the transfer of the request for reversal or modification, unless the court stayed the order before
442 the transfer.

443 Section 17. Section **78B-21-117** is enacted to read:

444 **78B-21-117. Executory contract.**

445 (1) As used in this section, "timeshare interest" means the same as that term is defined
446 in Section 57-19-2.

447 (2) (a) Except as otherwise provided in Subsection (8), with court approval, a receiver
448 may adopt or reject an executory contract of the owner relating to receivership property.

449 (b) The court may condition the receiver's adoption and continued performance of the
450 contract on terms appropriate under the circumstances.

451 (c) If the receiver does not request court approval to adopt or reject the executory
452 contract within a reasonable time after the receiver's appointment, the receiver is deemed to
453 have rejected the executory contract.

454 (3) A receiver's performance of an executory contract before court approval under
455 Subsection (2) of the executory contract's adoption or rejection is not an adoption of the
456 executory contract and does not preclude the receiver from seeking approval to reject the
457 executory contract.

458 (4) A provision in an executory contract that requires or permits a forfeiture,
459 modification, or termination of the executory contract because of the appointment of a receiver
460 or the financial condition of the owner does not affect a receiver's power under Subsection (2)
461 to adopt the executory contract.

462 (5) (a) A receiver's right to possess or use receivership property pursuant to an
463 executory contract terminates on rejection of the executory contract under Subsection (2).

464 (b) Rejection is a breach of the executory contract effective immediately before
465 appointment of the receiver.

466 (c) A claim for damages for rejection of the executory contract must be submitted by
467 the later of:

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

469 (ii) 30 days after the court approves the rejection.

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

473 (7) If a receiver rejects an executory contract for the sale of receivership property that
474 is real property in possession of the purchaser or a real-property timeshare interest under
475 Subsection (2), the purchaser may:

476 (a) treat the rejection as a termination of the executory contract, and in that case the
477 purchaser has a lien on the property for the recovery of any part of the purchase price the
478 purchaser paid; or

479 (b) retain the purchaser's right to possession under the executory contract, and in that
480 case the purchaser shall continue to perform all obligations arising under the executory contract
481 and may offset any damages caused by nonperformance of an obligation of the owner after the
482 date of the rejection, but the purchaser has no right or claim against other receivership property
483 or the receiver on account of the damages.

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

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

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

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

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

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

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

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

498 Section 18. Section **78B-21-118** is enacted to read:

499 **78B-21-118. Defenses and immunities of receiver.**

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

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

504 Section 19. Section **78B-21-119** is enacted to read:

505 **78B-21-119. Interim report of receiver.**

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

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

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

510 (3) receipts and dispositions of receivership property;

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

513 (5) any other information required by the court.

514 Section 20. Section **78B-21-120** is enacted to read:

515 **78B-21-120. Notice of appointment -- Claim against receivership -- Distribution to**
516 **creditors.**

517 (1) Except as otherwise provided in Subsection (6), a receiver shall give notice of
518 appointment of the receiver to creditors of the owner by:

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

521 (b) publication as directed by the court.

522 (2) (a) Except as otherwise provided in Subsection (6), the notice required by

523 Subsection (1) must specify the date by which each creditor holding a claim against the owner

524 that arose before appointment of the receiver must submit the claim to the receiver.

525 (b) The date specified must be at least 90 days after the later of the notice under
526 Subsection (1)(a) or the last publication under Subsection (1)(b).

527 (c) The court may extend the period for submitting the claim.

528 (d) Unless the court orders otherwise, a claim that is not submitted timely is not
529 entitled to a distribution from the receivership.

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

531 (a) state the name and address of the creditor;

532 (b) state the amount and basis of the claim;

533 (c) identify any property securing the claim;

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

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

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

539 (5) (a) At any time before entry of an order approving a receiver's final report, the
540 receiver may file with the court an objection to a claim of a creditor, stating the basis for the
541 objection.

542 (b) The court shall allow or disallow the claim according to law of this state other than
543 this chapter.

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

546 (a) the receiver need not give notice under Subsection (1) of the appointment to all
547 creditors of the owner, but only such creditors as the court directs; and

548 (b) unsecured creditors need not submit claims under this section.

549 (7) Subject to Section [78B-21-121](#):

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

553 (b) a distribution of receivership property to a creditor with an allowed unsecured
554 claim must be made as the court directs according to law of this state other than this chapter.

555 Section 21. Section **78B-21-121** is enacted to read:

556 **78B-21-121. Fees and expenses.**

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

560 (2) The court may order one or more of the following to pay the reasonable and
561 necessary fees and expenses of the receivership, including reasonable attorney fees and costs:

562 (a) a person that requested the appointment of the receiver, if the receivership does not
563 produce sufficient funds to pay the fees and expenses; or

564 (b) a person whose conduct justified or would have justified the appointment of the
565 receiver under Subsection [78B-21-106\(1\)\(a\)](#).

566 Section 22. Section **78B-21-122** is enacted to read:

567 **78B-21-122. Removal of receiver -- Replacement -- Termination of receivership.**

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

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

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

574 (4) (a) The court may discharge a receiver and terminate the court's administration of
575 the receivership property if the court finds that appointment of the receiver was improvident or
576 that the circumstances no longer warrant continuation of the receivership.

577 (b) If the court finds that the appointment was sought wrongfully or in bad faith, the
578 court may assess against the person that sought the appointment:

579 (i) the fees and expenses of the receivership, including reasonable attorney fees and
580 costs; and

581 (ii) actual damages caused by the appointment, including reasonable attorney fees and
582 costs.

583 Section 23. Section **78B-21-123** is enacted to read:

584 **78B-21-123. Final report of receiver -- Discharge.**

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

- 586 (a) a description of the activities of the receiver in the conduct of the receivership;
587 (b) a list of receivership property at the commencement of the receivership and any
588 receivership property received during the receivership;
589 (c) a list of disbursements, including payments to professionals engaged by the
590 receiver;
591 (d) a list of dispositions of receivership property;
592 (e) a list of distributions made or proposed to be made from the receivership for
593 creditor claims;
594 (f) if not filed separately, a request for approval of the payment of fees and expenses of
595 the receiver; and

596 (g) any other information required by the court.

597 (2) If the court approves a final report filed under Subsection (1) and the receiver
598 distributes all receivership property, the receiver is discharged.

599 Section 24. Section **78B-21-124** is enacted to read:

600 **78B-21-124. Receivership in another state -- Ancillary proceeding.**

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

604 (a) the person or nominee would be eligible to serve as receiver under Section
605 78B-21-107; and

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

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

610 (3) Unless the court orders otherwise, an ancillary receiver appointed under Subsection
611 (1) has the rights, powers, and duties of a receiver appointed under this chapter.

612 Section 25. Section **78B-21-125** is enacted to read:

613 **78B-21-125. Effect of enforcement by mortgagee.**

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

- 617 (a) make the mortgagee a mortgagee in possession of the real property;
618 (b) make the mortgagee an agent of the owner;
619 (c) constitute an election of remedies that precludes a later action to enforce the
620 secured obligation;
621 (d) make the secured obligation unenforceable;
622 (e) limit any right available to the mortgagee with respect to the secured obligation;
623 (f) constitute an action within the meaning of Section 78B-6-901; or
624 (g) except as otherwise provided in Subsection (2), bar a deficiency judgment pursuant
625 to law of this state other than this chapter governing or relating to a deficiency judgment.

626 (2) If a receiver sells receivership property that pursuant to Subsection 78B-21-116(3)
627 is free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured
628 by the lien is subject to law of the state other than this chapter relating to a deficiency
629 judgment.

630 Section 26. Section **78B-21-126** is enacted to read:

631 **78B-21-126. Uniformity of application and construction.**

632 In applying and construing this uniform act, consideration shall be given to the need to
633 promote uniformity of the law with respect to the law's subject matter among states that enact
634 it.

635 Section 27. Section **78B-21-127** is enacted to read:

636 **78B-21-127. Relation to Electronic Signatures in Global and National Commerce**
637 **Act.**

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

642 Section 28. Section **78B-21-128** is enacted to read:

643 **78B-21-128. Transition.**

644 This chapter does not apply to a receivership for which the receiver was appointed
645 before May 9, 2017.

646 Section 29. Section **78B-21-129** is enacted to read:

647 **78B-21-129. Finality of orders.**

648 A court order that is entered pursuant to this chapter and that resolves a discrete factual
649 dispute or legal issue is a final appealable order within the meaning of Utah Rules of Civil
650 Procedure, Rules 54(a), unless expressly stated otherwise in the court order.

Legislative Review Note
Office of Legislative Research and General Counsel