

DEBTOR/CREDITOR RIGHTS COMMITTEE
REPORT PREPARED FOR THE DECEMBER 1, 2018 COUNCIL
MEETING

1. Next Scheduled Meeting of the Committee.

The Debtor/Creditor Rights Committee (the "Committee") will host its next meeting on January 16, 2019 at the offices of Miller Canfield Paddock & Stone, 840 W Long Lake Rd # 200, Troy, MI 48098. The meeting will be a business meeting where we will discuss, among other things, prospective programs for the 2019 calendar year, proposed revisions to Bankruptcy Rule 2004 and transition of committee leadership. There will also be a presentation of recent case law relevant to our membership.

2. Council Approval.

The Committee has been working on an amendment to the Uniform Commercial Real Estate Receivership Act, to make it apply to practically all kinds of receiverships, not just commercial real estate receiverships. The work is almost, but not completely done. Attached is the current draft of the amendment showing the proposed changes. The unresolved issue has to do with notice to be given by a receiver to parties with an interest in the receivership estate and when it is to be given. We would like Council approval of the amendment, as we complete it.

3. Membership.

The Committee communicates regularly with its membership through its email list, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. In addition, holding regular meetings and educational events increases the interest of the bar in becoming members. The Committee works with other bankruptcy/insolvency bar groups, which exposes the members of those groups to the Committee and its activities, also increasing interest in the committee.

The Committee has an active membership, and generally enjoys healthy attendance at its meetings and events.

4. Accomplishments Toward Committee Objectives.

The Committee's most recent program was presented in conjunction with the Real Property Law Section of the State Bar of Michigan and the Bankruptcy Committee of the Federal Bar Association for the Eastern District of Michigan. The topic of the program was *Michigan's "New" Uniform Commercial Real Estate Receivership Act*. Presenters included Michael Leib (Leib ADR), the Chief Judge Phillip J. Shefferly (U.S. Bankruptcy Ct. E.D. Mich.), the Hon. Christopher P. Yates, (Kent County Business Court), J. Adam Behrendt (Bodman) and Kay S. Kress (Pepper Hamilton).

5. Meetings and Programs.

The Committee leadership is evaluating topics for our next program, to be held in early 2019. Examples of topics that we are considering include a program on the basics of accounting and financial reporting for lawyers and a program discussing the unique issues that arise in restructuring a health care business.

6. Publications.

The Committee did not have any new publications during the past quarter.

7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.

The Committee leadership is active in monitoring new statutes, rules and cases of interest to our members. Co Vice-Chair Paul Hage writes a case law update for the American Bankruptcy Institute's monthly magazine, and keeps the Committee apprised of new case law developments at business meetings.

8. Miscellaneous.

The Committee has an active and engaged membership and its meetings are well attended. In addition to bringing in guest speakers, the Committee discusses legislative developments and case law at its meetings, many of which are brought to our attention by our members.

Judy B. Calton, Co-Chair
Judith Greenstone Miller, Co-Chair
Paul R. Hage, Co-Vice Chair
Marc N. Swanson, Co-Vice Chair

MCLS Ch. 554, Act 16 Note

This document is current through 2018 Public Act 336, with gaps of Public Acts 227, 290, 311, 316-318 and 320-321.

Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

Act 16 of 2018 Uniform Receivership Act

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

The People of the State of Michigan enact:

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1011

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1011. Short title.

Sec. 1.

This act shall be known and may be cited as the “uniform receivership act”.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1012

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1012. Definitions.

Sec. 2.

As used in this act:

- (a) “Affiliate” means all of the following:
 - (i) With respect to an individual, any of the following:
 - (A) A companion of the individual.
 - (B) A lineal ancestor or descendant, whether by blood or adoption, of either of the following:
 - (I) The individual.
 - (II) A companion of the individual.
 - (C) A companion of an ancestor or descendant described in sub-subparagraph (B).
 - (D) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them.
 - (E) Any other individual occupying the residence of the individual.
 - (ii) With respect to a person other than an individual, any of the following:
 - (A) Another person that directly or indirectly controls, is controlled by, or is under common control with the person.
 - (B) An officer, director, manager, member, partner, employee, or trustee or other fiduciary of the person.
 - (C) A companion of, or an individual occupying the residence of, an individual described in sub-subparagraph (A) or (B).
- (b) “Companion” means any of the following:
 - (i) The spouse of an individual.
 - (ii) The domestic partner of an individual.
 - (iii) Another individual in a civil union with an individual.

- (c) “Court” means the circuit court.
- (d) “Executory contract” means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.
- (e) “Governmental unit” means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.
- (f) “Lien” means an interest in property that secures payment or performance of an obligation.
- (g) “Mortgage” means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if it also creates or provides for a lien on personal property.
- (h) “Mortgagee” means a person entitled to enforce an obligation secured by a mortgage.
- (i) “Mortgagor” means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.
- (j) “Owner” means the person for whose property a receiver is appointed.
- (k) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.
- (l) “Proceeds” means any of the following property:
 - (i) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property.
 - (ii) Whatever is collected on, or distributed on account of, receivership property.
 - (iii) Rights arising out of receivership property.
 - (iv) To the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property.
 - (v) To the extent of the value of receivership property and to the extent payable to the owner, secured party, or a holder of an interest in real property, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.
- (m) “Property” means all of a person’s right, title, and interest, both legal and equitable, in real property, personal property, and fixtures, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.
- (n) “Receiver” means a person appointed by the court as the court’s agent, and subject to the court’s direction, to take possession of, manage, and, if authorized by this act or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.
- (o) “Receivership” means a proceeding in which a receiver is appointed.

- (p) “Receivership property” means the property of an owner that is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.
- (q) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.
- (r) “Rents” means all of the following:
- (i) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person.
 - (ii) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property.
 - (iii) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person.
 - (iv) Sums payable to terminate an agreement to possess or occupy real property of another person.
 - (v) Sums payable to a mortgagor for payment or reimbursement of expenses incurred in owning, operating, and maintaining real property or constructing or installing improvements on real property.
 - (vi) Other sums payable under an agreement relating to the real property of another person that constitute rents under law of this state other than this act.
- (s) “Secured obligation” means an obligation the payment or performance of which is secured by a security agreement.
- (t) “Secured party” means a person entitled to enforce a secured obligation or lien.
- (u) “Security agreement” means an agreement that creates or provides for a lien.
- (v) “Sign” means to do any of the following with present intent to authenticate or adopt a record:
- (i) Execute or adopt a tangible symbol.
 - (ii) Attach to or logically associate with the record an electronic sound, symbol, or process.
- (w) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

End of Document

MCLS § 554.1013

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1013. Court order; notice and hearing required; circumstances.

Sec. 3.

- (1) Except as otherwise provided in subsection (2), the court may issue an order under this act only after notice and opportunity for a hearing appropriate in the circumstances.
- (2) The court may issue an order under this act under the following circumstances:
 - (a) Without prior notice if the circumstances require issuance of an order before notice is given.
 - (b) After notice and without a prior hearing if the circumstances require issuance of an order before a hearing is held.
 - (c) After notice and without a hearing if no interested party timely requests a hearing.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1014

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§ 554.1014. Applicability of act.

Sec. 4.

- (1) Except as otherwise provided in subsection (2) or (3), this act applies to a receivership for an interest in any one or more of the following:
 - (a) real property and any personal property related to or used in operating the real property;
 - (b) personal property and fixtures.
- (2) This act does not apply to a receivership for an interest in real property improved by 1 to 4 dwelling units unless 1 or more of the following applies:
 - (a) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence.
 - (b) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes.
 - (c) The owner planned or is planning to develop the property into 1 or more dwelling units to be sold or leased in the ordinary course of the owner's business.
 - (d) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.
- (3) This act does not apply to a receivership authorized by law of this state other than this act in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit except to the extent provided by the other law.
- (4) This act does not limit the authority of a court to appoint a receiver under law of this state other than this act.
- (5) Unless displaced by a particular provision of this act, the principles of law and equity supplement this act.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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§ 554.1015. Procedure for the selection, appointment, removal, and compensation of a receiver.

Sec. 5.

- (1) The procedure for the selection, appointment, removal, and compensation of a receiver, and any professional engaged under Section 15, under this act is as established by rule of the supreme court.
- (2) The court that appoints a receiver under this act has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1016

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§ 554.1016. Appointment of receiver; circumstances; security.

Sec. 6.

(1) The court may appoint a receiver as follows:

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

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

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

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

(i) To carry the judgment into effect.

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

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

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

(2) In connection with the foreclosure or other enforcement of a security agreement or lien, the court may appoint a receiver for the property if:

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

(b) The person who granted a lien in the property agreed in a signed record to appointment of a receiver on default.

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

(d) The property held by the secured party is not sufficient to satisfy the secured obligation.

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

- (f) The holder of a subordinate lien obtains appointment of a receiver for the property.
- (3) The court may condition appointment of a receiver without prior notice under section 3(2)(a) or without a prior hearing under section 3(2)(b) on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

History

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§ 554.1017. Intentionally Omitted.

Sec. 7. Intentionally Omitted

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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§ 554.1018. Bond; requirements; alternative security.

Sec. 8.

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

- (a) The bond is conditioned on the faithful discharge of the receiver's duties.
- (b) The bond has 1 or more sureties approved by the court.
- (c) The bond is in an amount the court specifies.
- (d) The bond is effective as of the date of the receiver's appointment.

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

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

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

History

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MCLS § 554.1019

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§ 554.1019. Receiver's status as lien creditor.

Sec. 9.

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

- (a) Article 9 of the uniform commercial code, 1962 PA 174, MCL 440.9101 to 440.9809, as to receivership property that is personal property or fixtures.
- (b) The recording statutes of this state as to receivership property that is real property.

History

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MCLS § 554.1020

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§ 554.1020. Property subject to security agreement.

Sec. 10.

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

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1021

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§ 554.1021. Duties upon demand of receiver.

Sec. 11.

- (1) Unless the court orders otherwise, a person shall do both of the following on demand by a receiver, as applicable:
 - (a) If the person owes a debt that is receivership property and is matured or payable on demand or on order, pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment.
 - (b) Subject to subsection (3), if the person has possession, custody, or control of receivership property, turn the property over to the receiver.
- (2) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.
- (3) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.
- (4) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

History

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MCLS § 554.1022

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§ 554.1022. Powers of a receiver.

Sec. 12.

- (1) Except as limited by court order or law of this state other than this act, a receiver may do all of the following:
 - (a) Collect, control, manage, conserve, and protect receivership property.
 - (b) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business.
 - (c) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property.
 - (d) Assert a right, claim, cause of action, or defense of the owner that relates to receivership property.
 - (e) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties.
 - (f) On subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership.
 - (g) Engage a professional as provided in section 15.
 - (h) Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state.
 - (i) Exercise any power conferred by court order, this act, or law of this state other than this act.
- (2) With court approval, a receiver may do any of the following:
 - (a) Incur debt for the use or benefit of receivership property other than in the ordinary course of business.
 - (b) Make improvements to receivership property.

- (c) Use or transfer receivership property other than in the ordinary course of business as provided in section 16.
 - (d) Adopt or reject an executory contract of the owner as provided in section 17.
 - (e) Pay compensation to the receiver as provided in section 21, and to each professional engaged by the receiver as provided in section 15.
 - (f) Recommend allowance or disallowance of a claim of a creditor as provided in section 20.
 - (g) Make a distribution of receivership property as provided in section 20.
- (3) A receiver shall do all of the following:
- (a) Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property.
 - (b) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property.
 - (c) File with the appropriate real property recording office a copy of the order appointing the receiver and, if a legal description of the real property is not included in the order, the legal description.
 - (d) Disclose to the court any fact arising during the receivership that would disqualify the receiver under the rules of the supreme court.
 - (e) Perform any duty imposed by court order, this act, or law of this state other than this act.
- (4) The powers and duties of a receiver may be expanded, modified, or limited by court order.

History

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MCLS § 554.1023

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§ 554.1023. Duties of owner.

Sec. 13.

- (1) An owner shall do all of the following:
 - (a) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties.
 - (b) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control.
 - (c) Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control.
 - (d) On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership.
 - (e) Perform any duty imposed by court order, this act, or law of this state other than this act.
- (2) If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.
- (3) If a person knowingly fails to perform a duty imposed by this section, the court may do 1 or both of the following:
 - (a) Award the receiver actual damages caused by the person's failure, reasonable attorney fees, and costs.
 - (b) Sanction the failure as civil contempt.

History

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MCLS § 554.1024

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§ 554.1024. Stay or injunction.

Sec. 14.

- (1) Except as otherwise provided in subsection (4) or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding to do any of the following:
 - (a) Obtain possession of, exercise control over, or enforce a judgment against receivership property.
 - (b) Enforce a lien against receivership property to the extent the lien secures a claim against the owner that arose before entry of the order.
- (2) Except as otherwise provided in subsection (4), the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.
- (3) A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.
- (4) An order under subsection (1) or (2) does not operate as a stay or injunction of any of the following:
 - (a) An act, action, or proceeding to foreclose or otherwise enforce a security agreement or lien by the person seeking appointment of the receiver.
 - (b) An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property.
 - (c) Commencement or continuation of a criminal proceeding.
 - (d) Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power.
 - (e) Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.
- (5) The court may void an act that violates a stay or injunction under this section.

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

- (a) Award actual damages caused by the violation, reasonable attorney fees, and costs.
- (b) Sanction the violation as civil contempt.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1025

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1025. Engagement of professional to help receiver.

Sec. 15.

- (1) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose all of the following to the court:
 - (a) The identity and qualifications of the professional.
 - (b) The scope and nature of the proposed engagement.
 - (c) Any potential conflict of interest.
 - (d) The proposed compensation.
- (2) A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party. This act does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.
- (3) A receiver or professional engaged under subsection (1) shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1026

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1026. Use or transfer of receivership property not in ordinary course of business.

Sec. 16.

- (1) As used in this section, “good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (2) With court approval, a receiver may use receivership property other than in the ordinary course of business.
- (3) With court approval, a receiver may transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption but is subject to a senior lien.
- (4) A lien on receivership property that is extinguished by a transfer under subsection (3) attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.
- (5) A transfer under subsection (3) may occur by means other than a public auction sale. A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.
- (6) A reversal or modification of an order approving a transfer under subsection (3) does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1027

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1027. Executory contract.

Sec. 17.

- (1) As used in this section, “timeshare interest” means either of the following, as applicable:
 - (a) Unless subdivision (b) applies, an interest having a duration of more than 3 years that grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.
 - (b) If the condominium act, 1978 PA 59, MCL 559.101 to 559.276, applies, a time-share estate or a time-share license, as those terms are defined in section 10 of the condominium act, 1978 PA 59, MCL 559.110.
- (2) Except as otherwise provided in subsection (8), with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver’s adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver’s appointment, the receiver is deemed to have rejected the contract.
- (3) A receiver’s performance of an executory contract before court approval under subsection (2) of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.
- (4) A provision in an executory contract that requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver’s power under subsection (2) to adopt the contract.
- (5) A receiver’s right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (2). Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of the following:
 - (a) The time set for submitting a claim in the receivership.
 - (b) Thirty days after the court approves the rejection.

- (6) If, at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this act, the receiver may assign the contract with court approval.
- (7) If a receiver rejects under subsection (2) an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may do either of the following:
- (a) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid.
 - (b) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.
- (8) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if 1 or more of the following apply:
- (a) The tenant occupies the leased premises as the tenant's primary residence.
 - (b) The receiver was appointed at the request of a person other than a mortgagee.
 - (c) The receiver was appointed at the request of a mortgagee and 1 or more of the following apply:
 - (i) The lease is superior to the lien of the mortgage.
 - (ii) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease.
 - (iii) The mortgagee has consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage.
 - (iv) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1028

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1028. Liability of receiver; defenses and immunities.

Sec. 18.

- (1) A receiver is entitled to all defenses and immunities provided by law of this state other than this act for an act or omission within the scope of the receiver's appointment.
- (2) A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1029

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§ 554.1029. Interim report.

Sec. 19.

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

- (a) The activities of the receiver since appointment or a previous report.
- (b) Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver.
- (c) Receipts and dispositions of receivership property.
- (d) Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses.
- (e) Any other information required by the court.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1030

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§ 554.1030. Notice of appointment of receiver.

Sec. 20.

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

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

(b) Publication as directed by the court.

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

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

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

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

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

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

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

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

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

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

- (a) That the receiver need not give notice under subsection (1) of the appointment to all creditors of the owner, but only such creditors as the court directs.
 - (b) That unsecured creditors need not submit claims under this section.
- (7) Subject to section 21, both of the following apply to a distribution of receivership property:
 - (a) If the distribution is to a creditor holding a perfected lien on the property, the distribution must be made in accordance with the creditor's priority under law of this state other than this act.
 - (b) If the distribution is to a creditor with an allowed unsecured claim, the distribution must be made as the court directs according to law of this state other than this act.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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§ 554.1031. Fees and expenses of receivership.

Sec. 21.

- (1) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.
- (2) The court may order 1 or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney fees and costs, and any fees and expenses of professionals engaged under Section 15:
 - (a) A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses.
 - (b) A person whose conduct justified or would have justified the appointment of the receiver under section 6(1)(a).

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1032

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§ 554.1032. Removal of receiver; replacement; discharge of replaced receiver.

Sec. 22.

- (1) The court may remove a receiver for cause.
- (2) The court shall replace a receiver that dies, resigns, or is removed.
- (3) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.
- (4) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess both of the following against the person that sought the appointment:
 - (a) The fees and expenses of the receivership, including reasonable attorney fees and costs.
 - (b) Actual damages caused by the appointment, including reasonable attorney fees and costs.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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Michigan Compiled Laws Service > Chapter 554 Real And Personal Property (§§ 554.1 — 554.1040) > Act 16 of 2018 Uniform Receivership Act (§§ 554.1011 — 554.1040)

§ 554.1033. Final report; contents; approval by court.

Sec. 23.

- (1) On completion of a receiver's duties, the receiver shall file a final report including all of the following:
- (a) A description of the activities of the receiver in the conduct of the receivership.
 - (b) A list of receivership property at the commencement of the receivership and any receivership property received during the receivership.
 - (c) A list of disbursements, including payments to professionals engaged by the receiver.
 - (d) A list of dispositions of receivership property.
 - (e) A list of distributions made or proposed to be made from the receivership for creditor claims.
 - (f) If not filed separately, a request for approval of the payment of fees and expenses of the receiver.
 - (g) Any other information required by the court.
- (2) If the court approves a final report filed under subsection (1) and the receiver distributes all receivership property, the receiver is discharged.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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§ 554.1034. Ancillary receiver with respect to property in another state.

Sec. 24.

- (1) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this act, if both of the following apply:
 - (a) The person or nominee would be eligible to serve as receiver under the rules of the supreme court.
 - (b) The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.
- (2) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.
- (3) Unless the court orders otherwise, an ancillary receiver appointed under subsection (1) has the rights, powers, and duties of a receiver appointed under this act.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1035

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§ 554.1035. Enforcement by secured party.

Sec. 25.

A request by a secured party for appointment of a receiver, the appointment of a receiver, or application by a secured party of receivership property or proceeds to the secured obligation does not do any of the following:

- (a) Make the secured party a mortgagee in possession of the real property.
- (b) Impose any duty on the secured party under MCL 440.9207.
- (c) Make the secured party an agent of the owner.
- (d) Constitute an election of remedies that precludes a later action to enforce the secured obligation.
- (e) Make the secured obligation unenforceable.
- (f) Limit any right available to the secured party with respect to the secured obligation.
- (f) Constitute an action within the meaning of section 3204(1)(b) of the revised judicature act of 1961, 1961 PA 236, MCL 600.3204.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1036

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§ 554.1036. Uniformity of law.

Sec. 26.

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

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1037

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§ 554.1037. Effect on electronic signatures in global and national commerce act.

Sec. 27.

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

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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MCLS § 554.1038

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§ 554.1038. Exemption for receivership for which the receiver was appointed before the effective date of act.

Sec. 28.

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

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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§ 554.1040. Effective date.

Sec. 30.

This act takes effect 90 days after the date it is enacted into law.

History

Added by Pub Acts 2018, No. 16, effective May 7, 2018.

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