

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 216

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Read 1st time January 12, 2015, and ordered printed.

Read 2nd time February 2, 2015, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee March 5, 2015, with recommendation that the bill do pass.

Taken up for Perfection March 11, 2015. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

0789S.02P

AN ACT

To repeal sections 515.240, 515.250, and 515.260, RSMo, and to enact in lieu thereof thirty-four new sections relating to commercial receiverships.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 515.240, 515.250, and 515.260, RSMo, are repealed
2 and thirty-four new sections enacted in lieu thereof, to be known as sections
3 515.500, 515.505, 515.510, 515.515, 515.520, 515.525, 515.530, 515.535, 515.540,
4 515.545, 515.550, 515.555, 515.560, 515.565, 515.570, 515.575, 515.580, 515.585,
5 515.590, 515.595, 515.600, 515.605, 515.610, 515.615, 515.620, 515.625, 515.630,
6 515.635, 515.640, 515.645, 515.650, 515.655, 515.660, and 515.665, to read as
7 follows:

515.500. Sections 515.500 to 515.665 may be cited as the "Missouri
2 Commercial Receivership Act".

515.505. As used in sections 515.500 to 515.665, the following
2 terms shall mean:

3 (1) "Affiliate":

4 (a) A person that directly or indirectly owns, controls, or holds
5 with power to vote twenty percent or more of the outstanding voting
6 interests of a debtor, other than:

7 a. An entity that holds such securities in a fiduciary or agency
8 capacity without sole discretionary power to vote such interests; or

9 b. Solely to secure a debt, if such entity has not in fact exercised

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

10 such power to vote;

11 (b) A person whose business is operated under a lease or
12 operating agreement by a debtor, or a person substantially all of whose
13 property is operated under an operating agreement with a debtor; or

14 (c) A person that directly or indirectly operates the business or
15 substantially all of the property of the debtor under a lease or
16 operating agreement or similar arrangement;

17 (2) "Claim", a right to payment whether or not such right is
18 reduced to judgment, liquidated, unliquidated, fixed, contingent,
19 matured, unmatured, disputed, undisputed, legal, equitable, secured or
20 unsecured, or a right to an equitable remedy for breach of performance
21 if such breach gives rise to a right to payment, whether or not such
22 right to an equitable remedy is reduced to judgment, fixed, contingent,
23 matured, unmatured, disputed, undisputed, secured, or unsecured;

24 (3) "Court", a circuit court of the state of Missouri before which
25 an application to appoint a receiver under sections 515.500 to 515.665
26 has been made or granted, or before which a receivership action under
27 sections 515.500 to 515.665 is pending;

28 (4) "Creditor", a person that has a claim against the debtor that
29 arose at the time of or before the appointment of a receiver pursuant
30 to sections 515.500 to 515.665;

31 (5) "Debt", liability on a claim;

32 (6) "Debtor", a person as to which a receiver is sought to be
33 appointed or a court appoints pursuant to sections 515.500 to 515.665,
34 a person who owns property as to which a receiver is sought to be
35 appointed or a court appoints a receiver pursuant to sections 515.500
36 to 515.665, a person as to which a receiver has been appointed by a
37 court in a foreign jurisdiction, or a person who owns property as to
38 which a receiver has been appointed by a court in a foreign
39 jurisdiction;

40 (7) "Entity", a person other than a natural person;

41 (8) "Estate property", property as to which a court appoints a
42 receiver pursuant to sections 515.500 to 515.665;

43 (9) "Executory contract", a contract, including a lease, where the
44 obligations of the debtor and the counter party or counter parties to
45 the contract are unperformed to the extent that the failure of either
46 party to complete performance of its obligations would constitute a

47 **material breach of the contract, thereby excusing the other party's**
48 **performance of its obligations under the contract;**

49 **(10) "Foreign jurisdiction", any state or federal jurisdiction other**
50 **than that of this state;**

51 **(11) "Insolvent", a financial status or condition such that the sum**
52 **of the person's debts is greater than the value of such person's**
53 **property, at fair valuation;**

54 **(12) "Lien", a charge against property or an interest in property**
55 **to secure payment of a debt or performance of an obligation whether**
56 **created voluntarily or by operation of law;**

57 **(13) "Notice and a hearing", such notice as is appropriate and an**
58 **opportunity for hearing if one is requested. Absent request for hearing**
59 **by an appropriate person or party in interest, the term "notice and a**
60 **hearing" does not indicate a requirement for an actual hearing unless**
61 **the court so orders;**

62 **(14) "Party", a person who is a party to the action, becomes a**
63 **party to the action, or shall be joined or shall be allowed to intervene**
64 **in the action pursuant to the rules of the Missouri supreme court,**
65 **including, without limitation, any person needed for just adjudication**
66 **of the action;**

67 **(15) "Party in interest", the debtor, any party, the receiver, any**
68 **person with an ownership interest in or lien against estate property or**
69 **property sought to become estate property, any person that, with**
70 **respect to particular matters presented in the receivership, has an**
71 **interest that will be affected, and, in a general receivership, any**
72 **creditor of the debtor;**

73 **(16) "Person", includes natural persons, partnerships, limited**
74 **liability companies, corporations, and other entities recognized under**
75 **the laws of this state;**

76 **(17) "Property", any right, title, and interest, of the debtor,**
77 **whether legal or equitable, tangible or intangible, in real and personal**
78 **property, regardless of the manner by which such rights were or are**
79 **acquired, but does not include property of an individual person exempt**
80 **from execution under the laws of this state; provided however, that**
81 **estate property includes any nonexempt interest in property that is**
82 **partially exempt. Property includes, but is not limited to, any proceeds,**
83 **products, offspring, rents, or profits of or from property. Property does**

84 not include any power that a debtor may exercise solely for the benefit
85 of another person or property impressed with a trust except to the
86 extent that the debtor has a residual interest;

87 (18) "Receiver", a receiver appointed by a court pursuant to
88 sections 515.500 to 515.665;

89 (19) "Receivership", the estate created pursuant to the court's
90 order or orders appointing a receiver pursuant to sections 515.500 to
91 515.665, including all estate property and the interests, rights, powers,
92 and duties of the receiver and all parties in interest relating to estate
93 property;

94 (20) "Receivership action", the action as to which a receiver is
95 sought to be appointed or a court appoints a receiver pursuant to
96 sections 515.500 to 515.665;

97 (21) "Secured creditor", a creditor that has a security interest or
98 other lien on estate property.

515.510. 1. To the extent the appointment of a receiver is not
2 otherwise provided for pursuant to sections 49.555, 82.1026, 91.730,
3 198.099, 257.450, 276.501, 287.360, 287.875, 351.498, 351.1189, 354.357,
4 355.736, 369.354, 370.154, 375.650, 379.1336, 382.409, 393.145, 407.100,
5 425.030, 441.510, 443.893, 513.105, 513.110, 521.310, 537.500, 630.763, or
6 any other statute providing for the appointment of a receiver or
7 administration of a receivership estate in specific circumstances, the
8 court or any judge thereof in vacation, shall have the power to appoint
9 a receiver, whenever such appointment shall be deemed necessary,
10 whose duty it shall be to keep and preserve any money or other thing
11 deposited in court, or that may be subject of a tender, and to keep and
12 preserve all property and protect any business or business interest
13 entrusted to the receiver pending any legal or equitable action
14 concerning the same, subject to the order of the court, including in the
15 following instances:

16 (1) In an action brought to dissolve an entity the court may
17 appoint a receiver with the powers of a custodian to manage the
18 business affairs of the entity and to wind up and liquidate the entity;

19 (2) In an action in which the person seeking appointment of a
20 receiver has a lien on or interest in property or its revenue-producing
21 potential, and either:

22 (a) The appointment of a receiver with respect to the property

23 or its revenue-producing potential is necessary to keep and preserve
24 the property or its revenue-producing potential or to protect any
25 business or business interest concerning the property or its revenue-
26 producing potential; or

27 (b) The appointment of a receiver with respect to the property
28 or its revenue-producing potential is provided for by a valid and
29 enforceable contract or contract provision; or

30 (c) The appointment of a receiver is necessary to effectuate or
31 enforce an assignment of rents or other revenues from the property;

32 (3) After judgment, in order to give effect to the judgment,
33 provided that the party seeking the appointment demonstrates it has
34 no other adequate remedy to enforce the judgment;

35 (4) To dispose of property according to provisions of a judgment
36 dealing with its disposition;

37 (5) To the extent that property is not exempt from execution, at
38 the instance of a judgment creditor either before or after the issuance
39 of any execution, to preserve or protect it, or prevent its transfer;

40 (6) If and to the extent that property is subject to execution to
41 satisfy a judgment, to preserve the property during the pendency of an
42 appeal, or when an execution has been returned unsatisfied, or when
43 an order requiring a judgment debtor to appear for proceedings
44 supplemental to judgment has been issued and the judgment debtor
45 fails to submit to examination as ordered;

46 (7) Upon attachment of real or personal property when the
47 property attached is of a perishable nature or is otherwise in danger
48 of waste, impairment, or destruction or where a debtor has absconded
49 with, secreted, or abandoned the property, and it is necessary to
50 collect, conserve, manage, control, or protect it, or to dispose of it
51 promptly, or when the court determines that the nature of the property
52 or the exigency of the case otherwise provides cause for the
53 appointment of a receiver;

54 (8) In an action by a transferor of real or personal property to
55 avoid or rescind the transfer on the basis of fraud, or in an action to
56 subject property or a fund to the payment of a debt;

57 (9) In an action against any entity if that person is insolvent or
58 is not generally paying the entity's debts as those debts become due
59 unless they are the subject of bona fide dispute;

60 **(10) In an action where a mortgagee has posted and the court has**
61 **approved a redemption bond as provided pursuant to section 443.440;**

62 **(11) If a general assignment for the benefit of creditors has been**
63 **made;**

64 **(12) Pursuant to the terms of a valid and enforceable contract or**
65 **contract provision providing for the appointment of a receiver, other**
66 **than pursuant to a contract or contract provision providing for the**
67 **appointment of a receiver with respect to the primary residence of a**
68 **debtor who is a natural person;**

69 **(13) To enforce a valid and enforceable contractual assignment**
70 **of rents or other revenue from the property; and**

71 **(14) To prevent irreparable injury to the person or persons**
72 **requesting the appointment of a receiver with respect to the debtor's**
73 **property.**

74 **2. A court of this state shall appoint as receiver of property**
75 **located in this state a person appointed in a foreign jurisdiction as**
76 **receiver with respect to the property specifically or with respect to the**
77 **debtor's property generally, upon the application of the receiver**
78 **appointed in the foreign jurisdiction or of any party to that foreign**
79 **action, and following the appointment shall give effect to orders,**
80 **judgments, and decrees of the court in the foreign jurisdiction affecting**
81 **the property in this state held by a receiver appointed in the foreign**
82 **jurisdiction, unless the court determines that to do so would be**
83 **manifestly unjust or manifestly inequitable. The venue of such an**
84 **action may be any county in which the debtor resides or maintains any**
85 **office, or any county in which any property over which a receiver is to**
86 **be appointed is located at the time the action is commenced.**

87 **3. At least seven days' notice of any application for the**
88 **appointment of a receiver shall be given to the debtor and to all other**
89 **parties to the action in which the request for appointment of a receiver**
90 **is sought, and to all other parties in interest as the court may require.**
91 **If any execution by a judgment creditor or any application by a**
92 **judgment creditor for the appointment of a receiver with respect to**
93 **property over which the appointment of a receiver is sought is pending**
94 **in any other action at the time the application is made, then notice of**
95 **the application for the receiver's appointment also shall be given to the**
96 **judgment creditor in the other action. The court may shorten or expand**

97 the period for notice of an application for the appointment of a
98 receiver upon good cause shown.

99 4. The order appointing a receiver shall reasonably describe the
100 property over which the receiver is to take charge, by category,
101 individual items, or both if the receiver is to take charge of less than
102 substantially all of the debtor's property. If the order appointing a
103 receiver does not expressly limit the receiver's authority to designated
104 property or categories of property of the owner, the receiver shall be
105 deemed a general receiver with authority to take charge over all of the
106 debtor's property, wherever located.

107 5. The court may condition the appointment of a receiver upon
108 the giving of security by the person seeking the appointment of a
109 receiver, in such amount as the court may specify, for the payment of
110 costs and damages incurred or suffered by any person should it later
111 be determined that the appointment of the receiver was wrongfully
112 obtained.

113 6. The appointment of a receiver is not required to be relief
114 ancillary or in addition to any other claim, and may be sought as an
115 independent claim and remedy.

515.515. A receiver shall be either a general receiver or a limited
2 receiver. A receiver shall be a general receiver if the receiver is
3 appointed to take possession and control of all or substantially all of a
4 debtor's property and provided the power to liquidate such property.
5 A receiver shall be a limited receiver if the receiver is appointed to
6 take possession and control of only of limited or specific property of a
7 debtor, whether to preserve or to liquidate such property. A receiver
8 appointed at the request of a person having a lien on or interest in
9 specific property that constitutes all or substantially all of a debtor's
10 property may be either a general receiver or a limited receiver. The
11 court shall specify in the order appointing a receiver whether the
12 receiver is appointed as a general receiver or as a limited
13 receiver. The court by order, upon notice and a hearing, may convert
14 either a general receiver into a limited receiver or a limited receiver
15 into a general receiver for good cause shown. In the absence of a clear
16 designation by the court of the type of receiver appointed, whether
17 limited or general, the receiver shall be presumed to be a general
18 receiver and shall have the rights, powers, and duties attendant

19 thereto.

215.520. 1. Upon entry of an order appointing a receiver or upon
2 conversion of a limited receiver to a general receiver pursuant to
3 section 515.515 and within ten business days thereof, or within such
4 additional time as the court may allow, the receiver shall give notice
5 of the appointment or conversion to all parties in interest, including
6 the secretary of state for the state of Missouri, and state and federal
7 taxing authorities. Such notice shall be made by first class mail and
8 proof of service thereof shall be filed with the court. The content of
9 such notice shall include:

10 (1) The caption reflecting the action in which the receiver is
11 appointed;

12 (2) The date the action was filed;

13 (3) The date the receiver was appointed;

14 (4) The name, address, and contact information of the appointed
15 receiver;

16 (5) Whether the receiver is a limited or general receiver;

17 (6) A description of the estate property;

18 (7) The debtor's name and address and the name and address of
19 the attorney for the debtor, if any;

20 (8) The court address at which pleadings, motions, or other
21 papers may be filed;

22 (9) Such additional information as the court directs; and

23 (10) A copy of the court's order appointing the receiver.

24 2. A general receiver shall also give notice of the receivership by
25 publication in a newspaper of general circulation published in the
26 county or counties in which estate property is known to be located once
27 a week for three consecutive weeks. The first notice shall be published
28 within thirty days after the date of appointment of the receiver. The
29 notice of the receivership shall include the date of appointment of the
30 receiver, the name of the court and the action number, the last day on
31 which claims may be filed, if established by the court, and the name
32 and address of the debtor, the receiver, and the receiver's attorney, if
33 any. For purposes of this section, all intangible property included as
34 estate property is deemed to be located in the county in which the
35 debtor, if a natural person, resides, or in which the debtor, if an entity,
36 maintains its principal administrative offices.

37 **3. The debtor shall cooperate with all reasonable requests for**
38 **information from the receiver for purposes of assisting the receiver in**
39 **providing notice pursuant to subsection 1 of this section. In the court's**
40 **discretion, the failure of such debtor to cooperate with any reasonable**
41 **request for information may be punished as a contempt of court.**

515.525. Except as provided in sections 515.500 to 515.665 or
2 **otherwise by statute, any person, whether or not a resident of this**
3 **state, may serve as a receiver. A person may not be appointed as a**
4 **receiver, and shall be replaced as receiver if already appointed, if it**
5 **should appear to the court that the person:**

6 **(1) Has been found guilty of a felony or other crime involving**
7 **moral turpitude or is controlled by a person who has been convicted of**
8 **a felony or other crime involving moral turpitude;**

9 **(2) Is a party to the action, or is a parent, grandparent,**
10 **grandchild, sibling, partner, director, officer, agent, attorney, employee,**
11 **secured or unsecured creditor or lienor of, or holder of any equity**
12 **interest in, or controls or is controlled by, the debtor, or who is the**
13 **agent, affiliate, or attorney of any disqualified person;**

14 **(3) Has an interest materially adverse to the interest of persons**
15 **to be affected by the receivership generally; or**

16 **(4) Is a sheriff of any county.**

515.530. Except as otherwise provided for by statute or court
2 **rule, before entering upon duties of receiver, a receiver shall execute**
3 **a bond with one or more sureties approved by the court, in the amount**
4 **the court specifies, conditioned that the receiver will faithfully**
5 **discharge the duties of receiver in accordance with orders of the court**
6 **and state law. Unless otherwise ordered by the court, the receiver's**
7 **bond runs in favor of all persons having an interest in the receivership**
8 **proceeding or property held by the receiver and in favor of state**
9 **agencies.**

515.535. As of the time of appointment, and subject to the
2 **provisions of subdivision (3) of subsection 3 of section 515.575, the**
3 **receiver shall have the powers and priority as if it were a creditor that**
4 **obtained a judicial lien at the time of appointment on all of the debtor's**
5 **property that is subject to the receivership, subject to satisfaction of**
6 **recording requirements as to real property pursuant to paragraph (c)**
7 **of subsection 2 of section 515.545.**

515.540. 1. Except as otherwise provided for by sections 515.500
2 to 515.665, the court in all cases has exclusive authority over the
3 receiver, and the exclusive possession and right of control with respect
4 to all real property and all tangible and intangible personal property
5 with respect to which the receiver is appointed, wherever located, and
6 the exclusive authority to determine all controversies relating to the
7 collection, preservation, application, and distribution of all property,
8 and all claims against the receiver arising out of the exercise of the
9 receiver's powers or the performance of the receiver's duties.
10 However, the court does not have exclusive authority over actions in
11 which a state agency is a party and in which jurisdiction or venue is
12 vested elsewhere.

13 2. For good cause shown, the court has power to shorten or
14 expand the time frames specified in sections 515.500 to 515.665.

515.545. 1. A receiver has the following powers and authority:

2 (1) To incur or pay expenses incidental to the receiver's
3 preservation and use of estate property, and otherwise in the
4 performance of the receiver's duties, including the power to pay
5 obligations incurred prior to the receiver's appointment if and to the
6 extent that payment is determined by the receiver to be prudent in
7 order to preserve the value of estate property and the funds used for
8 this purpose are not subject to any lien or right of setoff in favor of a
9 creditor who has not consented to the payment and whose interest is
10 not otherwise adequately protected;

11 (2) If the appointment applies to all or substantially all of the
12 property of an operating business or any revenue-producing property
13 of the debtor, to do all the things which the owner of the business or
14 property may do in the exercise of ordinary business judgment, or in
15 the ordinary course of the operation of the business as a going concern
16 or use of the property including, but not limited to, the purchase and
17 sale of goods or services in the ordinary course of such business, and
18 the incurring and payment of expenses of the business or property in
19 the ordinary course;

20 (3) To assert any rights, claims, or choses in action of the debtor,
21 if and to the extent that the rights, claims, or choses in action are
22 themselves property within the scope of the appointment or relate to
23 any estate property, to maintain in the receiver's name or in the name

24 of the debtor any action to enforce any right, claim, or chose in action,
25 and to intervene in actions in which the debtor is a party for the
26 purpose of exercising the powers under this subsection;

27 (4) To intervene in any action in which a claim is asserted
28 against the debtor, for the purpose of prosecuting or defending the
29 claim and requesting the transfer of venue of the action to the court
30 appointing the receiver. However, the court shall not transfer actions
31 in which a state agency is a party and as to which a statute expressly
32 vests jurisdiction or venue elsewhere. This power is exercisable with
33 court approval by a limited receiver, and with or without court
34 approval by a general receiver;

35 (5) To assert rights, claims, or choses in action of the receiver
36 arising out of transactions in which the receiver is a participant;

37 (6) To pursue in the name of the receiver any claim under
38 sections 428.005 to 428.059 assertable by any creditor of the debtor, if
39 pursuit of the claim is determined by the receiver to be appropriate in
40 the exercise of the receiver's business judgment;

41 (7) To seek and obtain advice or instruction from the court with
42 respect to any course of action with respect to which the receiver is
43 uncertain in the exercise of the receiver's powers or the discharge of
44 the receiver's duties;

45 (8) To obtain appraisals with respect to estate property;

46 (9) To compel by subpoena any person to submit to an
47 examination under oath, in the manner of a deposition in accordance
48 with rule 57.03 of the Missouri rules of civil procedure, with respect to
49 estate property or any other matter that may affect the administration
50 of the receivership;

51 (10) To use, sell, or lease property other than in the ordinary
52 course of business pursuant to section 515.645, and to execute in the
53 debtor's stead such documents, conveyances, and borrower consents as
54 may be required in connection therewith; and

55 (11) All other powers as may be conferred upon the receiver
56 specifically by sections 515.500 to 515.665, by statute, court rule, or by
57 the court.

58 2. A receiver has the following duties:

59 (1) The duty to notify all federal and state taxing and applicable
60 regulatory agencies of the receiver's appointment in accordance with

61 any applicable laws imposing this duty, including but not limited to 26
62 U.S.C. Section 6036;

63 (2) The duty to comply with state law;

64 (3) If a receiver is appointed with respect to any real property,
65 the duty to record as soon as practicable within the land records in any
66 county in which such real property may be situated a notice of lis
67 pendens as provided in section 527.260, together with a certified copy
68 of the order of appointment, together with a legal description of the
69 real property if one is not included in that order; and

70 (4) Other duties as may be required specifically by sections
71 515.500 to 515.665, by statute, court rule, or by the court.

72 3. The various powers, authorities, and duties of a receiver
73 provided by sections 515.500 to 515.665 may be expanded, modified, or
74 limited by order of the court.

515.550. 1. Upon demand by a receiver, any person, including the
2 debtor, shall turn over any estate property that is within the possession
3 or control of that person unless otherwise ordered by the court for
4 good cause shown. A receiver by motion may seek to compel turnover
5 of estate property as against any person over which the court first
6 establishes jurisdiction, unless there exists a bona fide dispute with
7 respect to the existence or nature of the receiver's possessory interest
8 in the estate property, in which case turnover shall be sought by means
9 of a legal action. In the absence of a bona fide dispute with respect to
10 the receiver's right to possession of estate property, the failure to
11 relinquish possession and control to the receiver shall be punishable
12 as a contempt of the court.

13 2. Should the court after notice and a hearing pursuant to
14 subsection 1 of this section order the turnover of property to the
15 receiver, the party against which such order is made shall have the
16 right to deliver a bond executed by such party as principal together
17 with one or more sufficient sureties providing that the principal and
18 each such surety shall each be bound to the receiver in double the
19 amount of the value of the property to be turned over, should the
20 property not be turned over to the receiver when such order becomes
21 final. Absent such bond, the property ordered to be turned over to the
22 receiver shall be immediately turned over to the receiver within ten
23 days of the entry of such order.

515.555. 1. In addition to other duties and requirements set forth
2 in sections 515.500 to 515.665 and as ordered by the court, the debtor
3 shall:

4 (1) Within fourteen days of the appointment of a general
5 receiver, make available for inspection by the receiver during normal
6 business hours all information and data required to be filed with the
7 court pursuant to section 515.560, in the form and manner the same are
8 maintained in the ordinary course of the debtor's business;

9 (2) Assist and cooperate fully with the receiver in the
10 administration of the estate and the discharge of the receiver's duties,
11 and comply with all orders of the court;

12 (3) Supply to the receiver information necessary to enable the
13 receiver to complete any schedules or reports that the receiver may be
14 required to file with the court, and otherwise assist the receiver in the
15 completion of the schedules;

16 (4) Upon the receiver's appointment, deliver into the receiver's
17 possession all the property of the receivership estate in the person's
18 possession, custody, or control, including, but not limited to, all
19 accounts, books, papers, records, and other documents; and

20 (5) Following the receiver's appointment, submit to examination
21 by the receiver, or by any other person upon order of the court, under
22 oath, concerning the acts, conduct, property, liabilities, and financial
23 condition of that person or any matter relating to the receiver's
24 administration of the estate.

25 2. When the debtor is an entity, each of the officers, directors,
26 managers, members, partners, or other individuals exercising or having
27 the power to exercise control over the affairs of the entity are subject
28 to the requirements of this section.

515.560. 1. Within thirty days after the date of appointment of a
2 general receiver, the debtor shall file with the court and submit to the
3 receiver the following schedules:

4 (1) A true list of all of the known creditors and applicable
5 regulatory and taxing agencies of the debtor, including the mailing
6 addresses for each, the amount and nature of their claims, and whether
7 their claims are disputed; and

8 (2) A true list of all estate property, including the estimated
9 liquidation value and location of the property and, if real property, a

10 legal description thereof, as of the date of appointment of the receiver.

11 2. The Missouri supreme court may from time to time prescribe
12 by court rule the schedules to be filed in receiverships as the supreme
13 court shall deem appropriate to the effective administrations of
14 sections 515.500 to 515.665.

515.565. 1. A receiver shall not be obligated to obtain any
2 appraisal or other independent valuation of property in the receiver's
3 possession unless ordered by the court to do so.

4 2. A court may order the receiver to file such additional
5 schedules, reports of assets, liabilities, claims, or inventories as
6 necessary and proper.

7 3. Whenever a list or schedule required pursuant to this section
8 is not prepared and filed as required by the debtor, the court may
9 order the receiver, a petitioning creditor, or such other person as the
10 court in its discretion deems appropriate to prepare and file such list
11 or schedule within a time fixed by the court. The court may approve
12 reimbursement of the cost incurred in complying with such order as an
13 administrative expense.

515.570. 1. A general receiver shall file with the court a monthly
2 report of the receiver's operations and financial affairs unless
3 otherwise ordered by the court. Except as otherwise ordered by the
4 court, each report of a general receiver shall be due by the last day of
5 the subsequent month and shall include the following:

6 (1) A balance sheet;

7 (2) A statement of income and expenses;

8 (3) A statement of cash receipts and disbursements;

9 (4) A statement of accrued accounts receivable of the receiver;

10 (5) A statement disclosing amounts considered to be
11 uncollectable;

12 (6) A statement of accounts payable of the receiver, including
13 professional fees. Such statement shall list the name of each creditor
14 and the amounts owing and remaining unpaid over thirty days; and

15 (7) A tax disclosure statement, which shall list post filing taxes
16 due or tax deposits required, the name of the taxing agency, the
17 amount due, the date due, and an explanation for any failure to make
18 payments or deposits.

19 2. A limited receiver shall file with the court all such reports as

20 the court may require.

515.575. 1. Except as otherwise ordered by the court, the entry
2 of an order appointing a general receiver shall operate as a stay,
3 applicable to all persons, of:

4 (1) The commencement or continuation, including the issuance,
5 employment, or service of process, of a judicial, administrative, or
6 other action or proceeding against the debtor that was or could have
7 been commenced before the entry of the order of appointment, or to
8 recover a claim against the debtor that arose before the entry of the
9 order of appointment;

10 (2) The enforcement against the debtor or any estate property of
11 a judgment obtained before the order of appointment;

12 (3) Any act to obtain possession of estate property from the
13 receiver, or to interfere with, or exercise control over, estate property;

14 (4) Any act to create, perfect, or enforce any lien or claim against
15 estate property except by exercise of a right of setoff, to the extent that
16 the lien secures a claim against the debtor that arose before the entry
17 of the order of appointment; or

18 (5) Any act to collect, assess, or recover a claim against the
19 debtor that arose before the entry of the order of appointment.

20 2. The stay shall automatically expire as to the acts specified in
21 subdivisions (1), (2) and (3) of subsection 1 of this section sixty days
22 after the entry of the order of appointment unless before the expiration
23 of the sixty-day period the debtor or receiver, for good cause shown,
24 obtains an order of the court extending the stay, after notice and a
25 hearing. A person whose action or proceeding is stayed by motion to
26 the court may seek relief from the stay for good cause shown. Any
27 judgment obtained against the debtor or estate property following the
28 entry of the order of appointment is not a lien against estate property
29 unless the receivership is terminated prior to a conveyance of the
30 property against which the judgment would otherwise constitute a lien.

31 3. The entry of an order appointing a receiver does not operate
32 as a stay of:

33 (1) The commencement or continuation of a criminal proceeding
34 against the debtor;

35 (2) The commencement or continuation of an action or
36 proceeding to establish paternity, or to establish or modify an order for

37 alimony, maintenance, or support, or to collect alimony, maintenance,
38 or support under any order of a court;

39 (3) Any act to perfect or to maintain or continue the perfection
40 of an interest in estate property pursuant to any generally applicable
41 Missouri law that permits perfection of an interest in property to be
42 effective against an entity that acquires rights in such property before
43 the date of perfection. Such right to perfect an interest in estate
44 property includes any act to perfect an interest in purchase money
45 collateral pursuant to sections 400.9-301 to 400.9-339, perfection of a
46 lien that may be placed against real property under the provisions of
47 chapter 429, or the assertion of a right to continue in possession of any
48 estate property that is in the possession of a person entitled to retain
49 possession of such property pending payment for work performed with
50 respect to such property. If perfection of an interest would otherwise
51 require seizure of the property involved or the commencement of an
52 action, the perfection shall instead be accomplished by filing, and by
53 serving upon the receiver, or receiver's counsel, if any, notice of the
54 interest within the time fixed by law for seizure or commencement;

55 (4) The commencement or continuation of an action or
56 proceeding by a governmental unit to enforce its police or regulatory
57 power;

58 (5) The enforcement of a judgment, other than a money
59 judgment, obtained in an action or proceeding by a governmental unit
60 to enforce its police or regulatory power, or with respect to any
61 licensure of the debtor;

62 (6) The exercise of a right of setoff, including but not limited to
63 any right of a commodity broker, forward contract merchant,
64 stockbroker, financial institution, or securities clearing agency to set
65 off a claim for a margin payment or settlement payment arising out of
66 a commodity contract, forward contract, or securities contract against
67 cash, securities, or other property held or due from the commodity
68 broker, forward contract merchant, stockbroker, financial institution,
69 or securities clearing agency to margin, guarantee, secure, or settle the
70 commodity contract, forward contract, or securities contract, and any
71 right of a swap participant to set off a claim for a payment due to the
72 swap participant under or in connection with a swap agreement against
73 any payment due from the swap participant under or in connection

74 with the swap agreement or against cash, securities, or other property
75 of the debtor held by or due from the swap participant to guarantee,
76 secure, or settle the swap agreement;

77 (7) The establishment by a governmental unit of any tax liability
78 and any appeal thereof; or

79 (8) Any action pending in a court other than that in which the
80 receiver is appointed until transcription of the order appointing the
81 receiver or extending the stay is made to the other court in which an
82 action against the debtor is pending.

83 4. For the purposes of subdivision (8) of subsection 3 of this
84 section, the receiver or any party in interest is authorized to cause to
85 be transcribed any order appointing a receiver or extending the stay
86 to any and all courts in which any action against a debtor is pending
87 in this state. A court that receives a transcript of an order of
88 receivership or extension of stay may on its own order sua sponte
89 transfer the matter before court to the court issuing an order of
90 receivership.

515.580. 1. A utility providing service to estate property may not
2 alter, refuse, or discontinue service to the property without first giving
3 the receiver fifteen days' notice of any default or intention to alter,
4 refuse, or discontinue service to estate property. This section does not
5 prohibit the court, upon motion by the receiver, to prohibit the
6 alteration or cessation of utility service if the receiver can furnish
7 adequate assurance of payment in the form of deposit or other security
8 for service to be provided after entry of the order appointing the
9 receiver.

10 2. Any utility regulated by the public service commission which
11 violates this section shall be subject to appropriate remedial measures
12 by the commission upon receiving notice that the utility has violated
13 the provisions of this section.

14 3. When a utility not regulated by the public service commission
15 violates this section, upon direction of the court, an action may be
16 brought by the receiver against the utility to enforce compliance with
17 the provisions of this section.

515.585. 1. A receiver may assume or reject any executory
2 contract or unexpired lease of the debtor upon order of the court
3 following notice and a hearing, which shall include notice to persons

4 party to the executory contract or unexpired lease to be assumed or
5 rejected. The court may condition assumption or rejection of any
6 executory contract or unexpired lease on the terms and conditions the
7 court believes are just and proper under the particular circumstances
8 of the action. Such terms and conditions may include a requirement
9 that the receiver cures or provides adequate assurance that the
10 receiver will promptly cure any default. A general receiver's
11 performance of an executory contract or unexpired lease prior to the
12 court's authorization of its assumption or rejection shall not constitute
13 an assumption of the executory contract or unexpired lease, or an
14 agreement by the receiver to assume it, nor otherwise preclude the
15 receiver thereafter from seeking the court's authority to reject it.

16 2. Any person party to an executory contract or unexpired lease
17 may by motion seek to compel the rejection thereof at any time, such
18 rejection the court shall order in its discretion, and as the interests of
19 justice may require. In determining a motion to compel the rejection
20 of an executory contract or unexpired lease, the court may consider,
21 among other factors:

22 (1) Whether rejection is in the best interests of the receivership
23 estate and the interests of creditors;

24 (2) The extent to which the executory contract or unexpired
25 lease burdens the receivership estate financially;

26 (3) Whether the debtor is performing or is in breach of the
27 executory contract or unexpired lease;

28 (4) If the debtor is in breach of a financial provision of the
29 executory contract or unexpired lease, the debtor's ability to cure such
30 breach within a reasonable time; and

31 (5) Harm suffered by the non-debtor person party to the
32 executory contract or unexpired lease that results or may result from
33 refusing the rejection thereof.

34 3. Any obligation or liability incurred by a general receiver on
35 account of the receiver's assumption of an executory contract or
36 unexpired lease shall be treated as an expense of the receivership. A
37 receiver's rejection of an executory contract or unexpired lease shall
38 be treated as a breach of the contract or lease occurring immediately
39 prior to the receiver's appointment; and the receiver's right to possess
40 or use property pursuant to any executory contract or unexpired lease

41 shall terminate upon rejection of such contract or lease. A non-debtor
42 party to an executory contract or unexpired lease that is rejected by a
43 receiver may take such steps as may be necessary under applicable law
44 to terminate or cancel such contract or lease. The claim of a non-
45 debtor party to an executory contract or unexpired lease resulting from
46 a receiver's rejection of it shall be served upon the receiver within
47 thirty days following the date the receiver gives notice of such
48 rejection to such person, which notice shall indicate the right to file a
49 claim within the thirty day period.

50 4. A receiver's power under this section to assume an executory
51 contract or unexpired lease shall not be affected by any provision in
52 such contract or lease that would effect or permit a forfeiture,
53 modification, or termination of it on account of either the receiver's
54 appointment, the financial condition of the debtor, or an assignment for
55 the benefit of creditors by the debtor.

56 5. A receiver may not assume an executory contract or unexpired
57 lease of debtor without the consent of the other person party to such
58 contract or lease if:

59 (1) Applicable law would excuse a person, other than the debtor,
60 from accepting performance from or rendering performance to anyone
61 other than the debtor even in the absence of any provisions in the
62 contract or lease expressly restricting or prohibiting an assignment of
63 the person's rights or the performance of the debtor's duties;

64 (2) The contract or lease is a contract to make a loan or extend
65 credit or financial accommodations to or for the benefit of the debtor,
66 or to issue a security of the debtor; or

67 (3) The executory contract or lease expires by its own terms, or
68 under applicable law prior to the receiver's assumption thereof.

69 6. A receiver may not assign an executory contract or unexpired
70 lease without assuming it, absent the consent of the other parties to the
71 contract or lease.

72 7. If the receiver rejects an executory contract or unexpired
73 lease for:

74 (1) The sale of real property under which the debtor is the seller
75 and the purchaser is in possession of the real property;

76 (2) The sale of a real property timeshare interest under which
77 the debtor is the seller;

78 **(3) The license of intellectual property rights under which the**
79 **debtor is the licensor; or**

80 **(4) The lease of real property in which the debtor is the lessor;**
81 **then the purchaser, licensee, or lessee may treat the rejection as a**
82 **termination of the contract, license agreement, or lease, or**
83 **alternatively, the purchaser, licensee, or lessee may remain in**
84 **possession in which circumstance the purchaser, licensee, or lessee**
85 **shall continue to perform all obligations arising thereunder as and**
86 **when they may fall due, but may offset against any payments any**
87 **damages occurring on account of the rejection after it occurs. The**
88 **purchaser of real property in such a circumstance is entitled to receive**
89 **from the receiver any deed or any other instrument of conveyance**
90 **which the debtor is obligated to deliver under the executory contract**
91 **when the purchaser becomes entitled to receive it, and the deed or**
92 **instrument has the same force and effect as if given by the person. A**
93 **purchaser, licensee, or lessee who elects to remain in possession under**
94 **the terms of this subsection has no rights against the receiver on**
95 **account of any damages arising from the receiver's rejection except as**
96 **expressly provided for by this subsection. A purchaser of real property**
97 **who elects to treat rejection of an executory contract as a termination**
98 **has a lien against the interest in that real property of the debtor for the**
99 **recovery of any portion of the purchase price that the purchaser has**
100 **paid.**

101 **8. Any contract with the state shall be deemed rejected if not**
102 **assumed within sixty days of appointment of a general receiver unless**
103 **the receiver and state agency agree to its assumption.**

104 **9. Nothing in sections 515.500 to 515.665 affects the enforceability**
105 **of antiassignment prohibitions provided under contract or applicable**
106 **law.**

515.590. 1. If a receiver is authorized to operate the business of
2 **a debtor or manage a debtor's property, the receiver may obtain**
3 **unsecured credit and incur unsecured debt in the ordinary course of**
4 **business as an administrative expense of the receiver without order of**
5 **the court.**

6 **2. The court after notice and a hearing may authorize a receiver**
7 **to obtain credit or incur debt other than in the ordinary course of**
8 **business. The court may allow the receiver to mortgage, pledge,**

9 hypothecate, or otherwise encumber estate property as security for
10 repayment of any debt that the receiver may incur, including that the
11 court may provide that additional credit extended to a receiver by a
12 secured creditor of the debtor be afforded the same priority as the
13 secured creditor's existing lien.

14 3. When determining the propriety of allowing a receiver to
15 obtain credit or incur debt pursuant to subsection 2 of this section, the
16 court shall consider the likely impact on the interests of unsecured
17 creditors of the debtor.

515.595. 1. A receiver has the right to sue and be sued in the
2 receiver's capacity as such, without leave of court, in all circumstances
3 necessary or proper for the conduct of the receivership. However, an
4 action seeking to dispossess a receiver of any estate property or
5 otherwise to interfere with the receiver's management or control of any
6 estate property may not be maintained or continued unless permitted
7 by order of the court obtained upon notice and a hearing.

8 2. An action by or against a receiver is adjunct to the
9 receivership action. The clerk of the court may assign or refer a case
10 number that reflects the relationship of any action to the receivership
11 action. All pleadings in an adjunct action shall include the case
12 number of the receivership action as well as the adjunct action case
13 number assigned by the clerk of the court. All adjunct actions shall be
14 referred to the judge, if any, assigned to the receivership action.

15 3. A receiver may be joined or substituted as a party in any
16 action or proceeding that was pending at the time of the receiver's
17 appointment and in which the debtor is a party, upon application by
18 the receiver to the court, agency, or other forum before which the
19 action or proceeding is pending.

20 4. Venue for adjunct actions by or against a receiver shall lie in
21 the court in which the receivership is pending, if the courts has
22 jurisdiction over the action. Actions in other courts in this state shall
23 be transferred to the court upon the receiver's filing of a motion for
24 change of venue, provided that the receiver files the motion within
25 thirty days following service of original process upon the receiver.
26 However, actions in other courts or forums in which a state agency is
27 a party shall not be transferred on request of the receiver absent
28 consent of the affected state agency or grounds provided under other

29 applicable law.

30 5. An action by or against a receiver does not abate by reason of
31 death or resignation or removal of the receiver, but continues against
32 the successor receiver or against the debtor, if a successor receiver is
33 not appointed.

34 6. Whenever the assets of any domestic or foreign corporation,
35 that has been doing business in this state, has been placed in the hands
36 of any general receiver and the receiver is in possession of its assets,
37 service of all process upon the corporation may be made upon the
38 receiver.

39 7. A judgment against a general receiver or the debtor is not a
40 lien on estate property, nor shall any execution issue thereon. Upon
41 entry of a judgment against a general receiver or the debtor in the
42 court in which a general receivership is pending, or upon filing in a
43 general receivership of a certified copy of a judgment against a general
44 receiver or the debtor entered by another court in this state or a
45 foreign jurisdiction, the judgment shall be treated as an allowed claim
46 in the receivership. A judgment against a limited receiver shall be
47 treated and has the same effect as a judgment against the debtor,
48 except that the judgment is not enforceable against estate property
49 unless otherwise ordered by the court upon notice and a hearing.

515.600. 1. A receiver appointed pursuant to sections 515.500 to
2 515.665, and the agents, attorneys, and employees of the receivership
3 employed by the receiver pursuant to section 515.605 shall enjoy
4 absolute judicial immunity and be immune from any claim against them
5 personally for any act or omission while acting in the performance of
6 their functions and duties in connection with the receivership, or for
7 any act or omission the receiver reasonably believes to be in good faith
8 performance of their functions and duties in connection with the
9 receivership. A person other than a successor receiver duly appointed
10 by the court does not have a right of action against a receiver under
11 this section to recover property or the value thereof for or on behalf of
12 the estate except as provided in subsection 2 of this section. A
13 successor receiver may recover only actual damages incurred by the
14 receivership estate from a prior receiver.

15 2. A person, other than a successor receiver duly appointed by
16 the court, shall not have the right to bring an action against a receiver

17 or the agents, attorneys, and employees of the receivership employed
18 by the receiver pursuant to section 515.605 for any act or omission
19 while acting in the performance of their functions and duties in
20 connection with the receivership unless such person first files a
21 verified application with the appointing court requesting leave to bring
22 such action and the court grants such application after notice and
23 hearing. The appointing court shall only approve the application to
24 bring claims against the receiver under this section upon a prima facie
25 showing by the person making such request that the receiver's actions
26 are not protected by the grant of immunity set forth subsection 1 of this
27 section. No other court apart from the appointing court shall have the
28 authority to review or approve the application to bring claims against
29 the receiver under this section.

30 3. If a person requests leave to bring claims under subsection 2
31 of this section and such leave is denied, the court shall grant judgment
32 in favor of the receiver for the costs of the proceeding and reasonable
33 attorney's fee if the court finds that the position of the person was not
34 substantially justified.

515.605. 1. The receiver, with the court's approval, may employ
2 one or more attorneys, accountants, appraisers, auctioneers, or other
3 professional persons that do not hold or represent an interest adverse
4 to the receivership to represent or assist the receiver in carrying out
5 the receiver's duties.

6 2. A person is not disqualified for employment under this section
7 solely because of the person's employment by, representation of, or
8 other relationship with a creditor or other party in interest, if the
9 relationship is disclosed in the application for the person's employment
10 and if the court determines that there is no actual conflict of interest
11 or inappropriate appearance of a conflict.

12 3. This section does not preclude the court from authorizing the
13 receiver to act as attorney or accountant if the authorization is in the
14 best interests of the receivership.

15 4. The receiver and any professionals employed by the receiver
16 shall maintain itemized billing records containing a description of
17 services, the time spent, billing rates of all who perform work to be
18 compensated, and a detailed list of expenses. The receiver, and any
19 professionals employed by the receiver may file a motion requesting

20 the allowance of fees and expenses. Notice of the motion shall be
21 served on all persons required to be identified on the master mailing
22 list maintained pursuant to section 515.610, advising that objections to
23 the application shall be filed within ten days from the date of the
24 notice, and if objections are not timely filed, the court may approve the
25 motion without further notice or hearing. If an objection is filed, the
26 receiver or professional whose compensation is affected may notice the
27 objection for a hearing. Upon request of any person required to receive
28 notice pursuant to this subsection, the receiver and any professionals
29 employed by the receiver shall provide a copy of their itemized billing
30 records upon which their motion for fees and expenses is based within
31 five days of the date of the request.

515.610. 1. Creditors and parties in interest to who are given
2 notice as provided by sections 515.500 to 515.665 and creditors or other
3 persons submitting written claims in the receivership or otherwise
4 appearing and participating in the receivership are bound by the acts
5 of the receiver and the orders of the court relating to the receivership
6 whether or not the person is a party to the receivership action.

7 2. Creditors and parties in interest have a right to notice and a
8 hearing as provided in sections 515.500 to 515.665 whether or not the
9 person is a party to the receivership action.

10 3. Any party in interest may appear in the receivership in the
11 manner prescribed by court rule and shall file with the court a written
12 notice including the name and mailing address of the party in interest,
13 and the name and address of the party in interest's attorney, if any,
14 with the clerk, and by serving a copy of the notice upon the receiver
15 and the receiver's attorney of record, if any. The receiver shall
16 maintain a master mailing list of all parties and of all parties in
17 interest that file and serve a notice of appearance in accordance with
18 this subsection and such parties in interest's attorneys, if any. The
19 receiver shall make a copy of the current master mailing list available
20 to any party or upon request.

21 4. Any request for relief against a state agency shall be mailed
22 to or otherwise served on the agency and on the office of the attorney
23 general.

24 5. The receiver shall give not less than ten days' written notice
25 of any examination by the receiver of the debtor to all persons required

26 to be identified on the master mailing list.

27 **6. All persons required to be identified on the master mailing list**
28 **are entitled to not less than thirty days' written notice of the hearing**
29 **of any motion or other proceeding involving any proposed:**

30 **(1) Allowance or disallowance of any claim or claims;**

31 **(2) Abandonment, disposition, or distribution of estate property,**
32 **other than an emergency disposition of property subject to eroding**
33 **value or a disposition of estate property in the ordinary course of**
34 **business;**

35 **(3) Compromise or settlement of a controversy that might affect**
36 **the distribution to creditors from the receivership;**

37 **(4) Motion for termination of the receivership or removal or**
38 **discharge of the receiver. Notice of the motion shall also be sent to the**
39 **department of revenue and other applicable regulatory agencies;**

40 **(5) Any opposition to any motion to authorize any of the actions**
41 **under subdivisions (1) to (4) of this subsection shall be filed and served**
42 **upon all persons required to be identified on the master mailing list at**
43 **least ten days before the date of the proposed action.**

44 **7. Whenever notice is not specifically required to be given under**
45 **sections 515.500 to 515.665 or otherwise by court rule, the court may**
46 **consider motions and grant or deny relief without notice or hearing,**
47 **unless a party or party in interest would be prejudiced or harmed by**
48 **the relief requested.**

515.615. 1. The claims administration process identified in this
2 **section shall be administered by a general receiver and may be ordered**
3 **by the court to be administered by a limited receiver.**

4 **2. All claims, other than claims of duly perfected secured**
5 **creditors, arising prior to the receiver's appointment shall be in the**
6 **form required by this section and served and noticed as required by**
7 **this section. Any claim not in the form required by this section and so**
8 **served and noticed is barred from participating in any distribution to**
9 **creditors.**

10 **3. Claims shall be served on the receiver within thirty days from**
11 **the date notice is given under this section, unless the court reduces or**
12 **extends the period for cause shown, except that a claim arising from**
13 **the rejection of an executory contract or an unexpired lease of the**
14 **debtor may be served within thirty days after the rejection. Claims by**

15 state agencies shall be served by such state agencies on the receiver
16 within sixty days from the date notice is given by mail under this
17 section.

18 4. Claims shall be in written form entitled "Proof of Claim",
19 setting forth the name and address of the creditor and the nature and
20 amount of the claim, and executed by the creditor or the creditor's
21 authorized agent. When a claim or an interest in estate property
22 securing the claim is based on a writing, the original or a copy of the
23 writing shall be included as a part of the proof of claim together with
24 evidence of perfection of any security interest or other lien asserted by
25 the claimant. Unless otherwise ordered by the court, creditors may
26 amend such claims and such amendments shall relate back to the
27 original filing of such claim.

28 5. Notices of claim shall be filed with the court. A notice shall be
29 filed with the court relating to each served claim. A notice of claim
30 shall not include the claim or supporting documentation served upon
31 the receiver. A notice of claim shall include the name and address of
32 the creditor asserting the claim, together with the name and address
33 of the attorney, if any representing the creditor, the amount of the
34 claim, whether or not the claim is secured or unsecured, and if secured,
35 a brief description of any estate property and other collateral securing
36 the claim.

37 6. A claim properly noticed, executed, and served in accordance
38 with this section constitutes prima facie evidence of the validity and
39 amount of the claim.

515.620. 1. At any time prior to the entry of an order approving
2 the general receiver's final report, the receiver or any party in interest
3 may file with the court an objection to a claim, such objection shall be
4 in writing and shall set forth the grounds for the objection to the claim.
5 A copy of the objection shall be mailed to the creditor who shall have
6 thirty days to file with the court any suggestions in support of the
7 claim. Upon the filing of any suggestions in support of the claim, the
8 court may adjudicate the claim objection or set a hearing relating to
9 the claim objection. Claims that comply with the requirements of
10 section 515.615 that are not disallowed by the court are entitled to
11 share in distributions from the receivership in accordance with the
12 priorities provided for by sections 515.500 to 515.665 or otherwise by

13 law.

14 **2. Upon order of the court, the general receiver, or any party in**
15 **interest objecting to the creditor's claim, an objection may be subject**
16 **to mediation prior to adjudication of the objection. However, state**
17 **claims are not subject to mediation absent agreement of the state.**

18 **3. Upon motion of the general receiver or other party in interest,**
19 **the following claims may be estimated for purpose of allowance under**
20 **this section under the rules or orders applicable to the estimation of**
21 **claims under this section:**

22 **(1) Any contingent or unliquidated claim, the fixing or**
23 **liquidation of which, as the circumstance may be, would unduly delay**
24 **the administration of the receivership; or**

25 **(2) Any right to payment arising from a right to an equitable**
26 **remedy for breach of performance.**

27 **Claims subject to this subsection shall be allowed in the estimated**
28 **amount thereof.**

515.625. 1. Claims not disallowed by the court shall receive
2 **distribution under sections 515.500 to 515.665 in the order of priority**
3 **under subdivisions (1) to (8) of this section and, with the exception of**
4 **subdivisions (1) to (3) of this subsection, on a pro rata basis:**

5 **(1) Any secured creditor that is duly perfected under applicable**
6 **law, whether or not such secured creditor has filed a proof of claim,**
7 **shall receive the proceeds from the disposition of the estate property**
8 **that secures its claim. However, the receiver may recover from estate**
9 **property secured by a lien or the proceeds thereof the reasonable,**
10 **necessary expenses of preserving, protecting, or disposing of the estate**
11 **property to the extent of any benefit to a duly perfected secured**
12 **creditor. If and to the extent that the proceeds are less than the amount**
13 **of a duly perfected secured creditor's claim or a duly perfected secured**
14 **creditor's lien is avoided on any basis, the duly perfected secured**
15 **creditor's claim is an unsecured claim under subdivision (8) of this**
16 **subsection. Duly perfected secured claims shall be paid from the**
17 **proceeds in accordance with their respective priorities under otherwise**
18 **applicable law;**

19 **(2) Actual, necessary costs and expenses incurred during the**
20 **administration of the receivership, other than those expenses allowable**
21 **under subdivision (1) of this subsection, including allowed fees and**

22 reimbursement of reasonable charges and expenses of the receiver and
23 professional persons employed by the receiver. Notwithstanding
24 subdivision (1) of this subsection, expenses incurred during the
25 administration of the estate have priority over the secured claim of any
26 secured creditor obtaining or consenting to the appointment of the
27 receiver;

28 (3) A secured creditor that is not duly perfected under applicable
29 law shall receive the proceeds from the disposition of the estate
30 property that secures its claim if and to the extent that unsecured
31 claims are made subject to those liens under applicable law;

32 (4) Claims for wages, salaries, or commissions, including
33 vacation, severance, and sick leave pay, or contributions to an
34 employee benefit plan earned by the claimant within one hundred
35 eighty days of the date of appointment of the receiver or the cessation
36 of any business relating to the receivership, whichever occurs first, but
37 only to the extent of ten thousand nine hundred fifty dollars;

38 (5) Unsecured claims, to the extent of two thousand four hundred
39 twenty-five dollars for each natural person, arising from the deposit
40 with the person debtor before the date of appointment of the receiver
41 of money in connection with the purchase, lease, or rental of estate
42 property or the purchase of services for personal, family, or household
43 use that were not delivered or provided;

44 (6) Claims for a marital, family, or other support debt, but not to
45 the extent that the debt is assigned to another person, voluntarily, by
46 operation of law, or otherwise; or includes a liability designated as a
47 support obligation unless that liability is actually in the nature of a
48 support obligation;

49 (7) Unsecured claims of governmental units for taxes which
50 accrued prior to the date of appointment of the receiver;

51 (8) Other unsecured claims.

52 2. If all of the classes under subsection 1 of this section have
53 been paid in full any residue shall be paid to the debtor.

515.630. Except as otherwise provided for by statute, estate
2 property acquired by the estate, the receiver, or the debtor of the
3 receiver is subject to an allowed secured claim to the same extent as
4 would exist in the absence of a receivership.

515.635. To the extent that funds are available in the estate for

2 distribution to creditors in a general receivership, the holder of an
3 allowed noncontingent, liquidated claim is entitled to receive interest
4 at the legal rate or other applicable rate from the date of appointment
5 of the receiver or the date on which the claim became a noncontingent,
6 liquidated claim. If there are sufficient funds in the estate to fully pay
7 all interest owing to all members of the class, then interest shall be
8 paid proportionately to each member of the class.

515.640. The receiver or any party upon order of the court
2 following notice and a hearing and upon the terms and conditions the
3 court considers just and proper may abandon any estate property that
4 is burdensome to the receiver or is of inconsequential value or benefit.
5 However, a receiver may not abandon property that is a hazard or
6 potential hazard to the public in contravention of a state statute or rule
7 that is reasonably designed to protect the public health or safety from
8 identified hazards. Property that is abandoned no longer constitutes
9 estate property.

515.645. 1. The receiver with the court's approval after notice
2 and a hearing may use, sell, or lease estate property other than in the
3 ordinary course of business.

4 2. The court may order that a general receiver's sale of estate
5 property either under subsection 1 of this section, or consisting of real
6 property that the debtor intended to sell in its ordinary course of
7 business, be effected free and clear of liens, claims, and of all rights of
8 redemption, whether or not the sale will generate proceeds sufficient
9 to fully satisfy all claims secured by the property, unless either:

10 (1) The property to be sold is real property used principally in
11 the production of crops, livestock, or aquaculture, or the property is a
12 homestead, and the owner of the property has not consented to the sale
13 following the appointment of the receiver; or

14 (2) A party in interest, including but not limited to an owner of
15 the property to be sold or a secured creditor as regards the property
16 to be sold serves and files a timely opposition to the receiver's sale, and
17 the court determines that the amount likely to be realized by the
18 receiver's sale is less than the amount that may be realized within a
19 reasonable time in the absence of the receiver's sale.

20 Upon any sale free and clear of liens authorized by this section, all
21 liens encumbering the property sold shall transfer and attach to the

22 proceeds of the sale, net of reasonable expenses incurred in the
23 disposition of the property sold, in the same order, priority, and
24 validity as the liens had with respect to the property sold immediately
25 before the conveyance. The court may authorize the receiver at the
26 time of sale to satisfy, in whole or in part, any lien on the property sold
27 out of the proceeds of its sale if the interest of any other creditor
28 having a lien against the proceeds of the sale would not thereby be
29 impaired.

30 3. At a public sale of estate property under subsection 1 of this
31 section, a creditor with a lien against the property to be sold may
32 credit bid at the sale of the property. A creditor with a lien against the
33 property to be sold who purchases the property from a receiver may
34 offset against the purchase price its secured claim against the property,
35 provided that such secured creditor tenders cash sufficient to satisfy
36 in full all secured claims payable out of the proceeds of sale having
37 priority over such secured creditor's secured claim. If the lien or the
38 claim it secures is the subject of a bona fide dispute, the court may
39 order the holder of the lien or claim to provide the receiver with
40 adequate security to assure full payment of the purchase price in the
41 event the lien, the claim, or any part thereof is determined to be invalid
42 or unenforceable.

43 4. If estate property includes an interest as a co-owner of
44 property, the receiver shall have the rights and powers of a co-owner
45 afforded by applicable state or federal law, including but not limited
46 to any rights of partition.

47 5. The reversal or modification on appeal of an authorization to
48 sell or lease estate property under this section does not affect the
49 validity of a sale or lease under that authorization to any person that
50 purchased or leased the property in good faith, whether or not the
51 person knew of the pendency of the appeal, unless the authorization
52 and sale or lease were stayed pending the appeal.

53 6. The notice of a proposed use, sale, or lease of estate property
54 required by subsection 1 of this section shall include the time and place
55 of any public sale, the terms and conditions of any private sale and the
56 time fixed for filing objections, and shall be mailed to all parties in
57 interest, and to such other persons as the court in the interests of
58 justice may require.

59 7. In determining whether a sale free and clear of liens, claims,
60 encumbrances, and of all rights of redemption is in the best interest of
61 the estate, the court may consider, among such other factors as the
62 court deems appropriate, the following:

63 (1) Whether the sale shall be conducted in a commercially
64 reasonable manner considering assets of a similar type or nature;

65 (2) Whether an independent appraisal supports the purchase
66 price to be paid;

67 (3) Whether creditors and parties in interest received adequate
68 notice of the sale, sale procedures, and details of the proposed sale;

69 (4) Any relationship between the buyer and the debtor;

70 (5) Whether the sale is an arm's length transaction; and

71 (6) Whether parties asserting a lien as to the property to be sold
72 consent to the proposed sale.

 515.650. 1. A receiver appointed in any action pending in the
2 courts of this state, without first seeking approval of the court, may
3 apply to any court outside of this state for appointment as receiver
4 with respect to any property or business of the person over whose
5 property the receiver is appointed constituting estate property which
6 is located in any other jurisdiction, if the appointment is necessary to
7 the receiver's possession, control, management, or disposition of
8 property in accordance with orders of the court.

9 2. A receiver appointed by a court of another state, or by a
10 federal court in any district outside of this state, or any other person
11 having an interest in that proceeding, may obtain appointment by a
12 court of this state of that same receiver with respect to any property
13 or business of the person over whose property the receiver is appointed
14 constituting property of the foreign receivership that is located in this
15 jurisdiction if the person is eligible to serve as receiver and the
16 appointment is necessary to the receiver's possession, control, or
17 disposition of the property in accordance with orders of the court in
18 the foreign proceeding. Upon the receiver's request, the court shall
19 enter the orders not offensive to the laws and public policy of this
20 state, necessary to effectuate orders entered by the court in the foreign
21 receivership proceeding. A receiver appointed in an ancillary
22 receivership in this state is required to comply with sections 515.500 to
23 515.665 requiring notice to creditors or other parties in interest only

24 as may be required by the superior court in the ancillary receivership.

515.655. 1. The court shall remove or replace the receiver on
2 application of the debtor, the receiver, or any creditor, or any party or
3 on the court's own motion if the receiver fails to perform the receiver's
4 duties or obligations under sections 515.500 to 515.665, as ordered by
5 the court.

6 2. Upon removal, resignation, or death of the receiver the court
7 shall appoint a successor receiver if the court determines that further
8 administration of the estate is required. The successor receiver shall
9 immediately take possession of the estate and assume the duties of
10 receiver.

11 3. Whenever the court is satisfied that the receiver so removed
12 or replaced has fully accounted for and turned over to the successor
13 receiver appointed by the court all of the property of the estate and has
14 filed a report of all receipts and disbursements during the person's
15 tenure as receiver, the court shall enter an order discharging that
16 person from all further duties and responsibilities as receiver after
17 notice and a hearing.

515.660. 1. Upon distribution or disposition of all property of the
2 estate, or the completion of the receiver's duties with respect to estate
3 property, the receiver shall move the court to be discharged upon
4 notice and a hearing.

5 2. The receiver's final report and accounting setting forth all
6 receipts and disbursements of the estate shall be included in the
7 petition for discharge and filed with the court.

8 3. Upon approval of the final report, the court shall discharge
9 the receiver.

10 4. The receiver's discharge releases the receiver from any
11 further duties and responsibilities as receiver under sections 515.500
12 to 515.665.

13 5. Upon motion of any party in interest, or upon the court's own
14 motion, the court has the power to discharge the receiver and
15 terminate the court's administration of the property over which the
16 receiver was appointed. If the court determines that the appointment
17 of the receiver was wrongfully procured or procured in bad faith, the
18 court may assess against the person who procured the receiver's
19 appointment all of the receiver's fees and other costs of the

20 receivership and any other sanctions the court determines to be
21 appropriate.

22 **6. A certified copy of an order terminating the court's**
23 **administration of the property over which the receiver was appointed**
24 **shall operate as a release of any lis pendens notice recorded pursuant**
25 **to section 515.545 and the same shall be recorded within the land**
26 **records in any county in which such real property may be situated,**
27 **together with a legal description of the real property if one is not**
28 **included in that order.**

515.665. Orders of the court pursuant to sections 515.500 to
2 **515.665 are appealable to the extent allowed under existing law,**
3 **including subdivision (2) of section 512.020.**

[515.240. The court, or any judge thereof in vacation, shall
2 have power to appoint a receiver, whenever such appointment shall
3 be deemed necessary, whose duty it shall be to keep and preserve
4 any money or other thing deposited in court, or that may be subject
5 of a tender, and to keep and preserve all property and protect any
6 business or business interest entrusted to him pending any legal
7 or equitable proceeding concerning the same, subject to the order
8 of the court.]

[515.250. Such receiver shall give bond, and have the same
2 powers and be subject to all the provisions, as far as they may be
3 applicable, enjoined upon a receiver appointed by virtue of the law
4 providing for suits by attachment.]

[515.260. The court shall allow such receiver such
2 compensation for his services and expenses as may be reasonable
3 and just, and cause the same to be taxed as costs, and paid as
4 other costs in the cause.]

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