

Article 38A.

North Carolina Commercial Receivership Act.

§ 1-507.20. Short title; definitions.

(a) Short Title. – This Article may be cited as the North Carolina Commercial Receivership Act.

(b) Definitions. – The following definitions apply throughout this Article unless the context requires otherwise:

- (1) Affiliate. – As defined in G.S. 39-23.1(1).
- (2) Business trust. – As defined in G.S. 39-44.
- (3) Collateral. – The property subject to a lien.
- (4) Consumer Debt. – Debt incurred by an individual primarily for a personal, family, or household purpose.
- (5) Court. – The superior or district court in which the receivership is pending, except that in the case of a receiver appointed to partition real property pursuant to G.S. 46-3.1, the term shall mean the clerk of superior court that has jurisdiction over the receiver and the receivership.
- (6) Debtor. – The person over whose property the receiver is appointed.
- (7) Entity. – A person other than an individual.
- (8) Executory contract. – A contract that is part of the receivership property, including a lease, where the obligations of both the debtor and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract.
- (9) Foreign jurisdiction. – Any state or federal jurisdiction other than that of this State.
- (10) Foreign receiver. – A receiver appointed in any foreign jurisdiction.
- (11) General receiver. – The receiver appointed in a general receivership.
- (12) General receivership. – A receivership over all or substantially all of the nonexempt property of a debtor for the purpose of liquidation and distribution to creditors and other parties in interest, including a receivership under the provisions of Chapters 55, 55A, 55B, 57D, or 59 of the General Statutes.
- (13) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (14) Individual. – A natural person.
- (15) Individual business debtor. – An individual owing consumer debt, on the date of the filing of the pleading seeking the appointment of a receiver under this Article for such individual, in an amount that is less than fifty percent (50%) of the individual's total debt.
- (16) Insider. – As to any person, includes the following:
 - a. If the person is an individual, then any of the following:
 1. A relative of the person or of a general partner of the person.
 2. A partnership in which the person is a general partner.
 3. A general partner in the partnership in which the person is a general partner.
 4. A corporation or limited liability company of which the person is a director, officer, manager, managing member, or other person in control.

- b. If the person is a corporation or limited liability company, then any of the following:
 - 1. An officer, director, manager, or managing member of the person.
 - 2. A person in control of the person.
 - 3. A partnership in which the person is a general partner.
 - 4. A general partner in a partnership in which the person is a general partner.
 - 5. A relative of a general partner, officer, director, manager, managing member, or person in control of the person.
 - c. If the person is a partnership, then any of the following:
 - 1. A general partner in the person.
 - 2. A relative of a general partner in, general partner of, or person in control of the person.
 - 3. Another partnership in which the person is a general partner.
 - 4. A general partner in a partnership in which the debtor is a general partner.
 - 5. A person in control of the person.
 - d. An affiliate, or insider of an affiliate, as if such affiliate were the person.
 - e. A managing agent of the person.
- (17) Insolvent. – With respect to a debtor, the sum of the debtor's debts is greater than all of the debtor's property, at a fair valuation, exclusive of (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud the debtor's creditors, or that has been transferred in a manner making transfer voidable under Article 3A of Chapter 39 of the General Statutes, and (ii) property that may be exempt from receivership property under Chapter 1C of the General Statutes.
 - (18) Lien. – A charge against or interest in property to secure payment of a debt or the performance of an obligation.
 - (19) Limited receiver. – The receiver appointed in a limited receivership.
 - (20) Limited receivership. – A receivership other than a general receivership, including a receivership instituted as a supplemental proceeding to collect on a judgment pursuant to G.S. 1-363.
 - (21) Party. – A person who is a party within the meaning of the North Carolina Rules of Civil Procedure in the action in which a receiver is appointed.
 - (22) Party in interest. – Includes the debtor, an insider, any equity security holder in the debtor, any person with an ownership interest in or lien on receivership property, and, in a general receivership, any creditor of the debtor.
 - (23) Person. – Includes both individuals and entities such as corporations, limited liability companies, partnerships, and other entities recognized under the laws of this State.
 - (24) Property. – All of the debtor's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of the same were or are acquired. The term includes any proceeds, products, offspring, rents, or profits of or from the property. The term does not include (i) any power that the debtor may exercise solely for the benefit of another person, (ii) a power of withdrawal exercisable by the debtor over property of a trust for which the debtor is not the settlor, to the extent that the power is not subject to the claims of the debtor's creditors pursuant to G.S. 36C-5-505(b),

or (iii) if the debtor is an individual, any real property owned jointly by the debtor and the debtor's spouse that is held by them as a tenancy by the entireties, unless the debtor's spouse is also a debtor in the receivership and there is a joint debt owed to one or more creditors.

- (25) Receiver. – A person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, control, and, if authorized by this Article or order of the court, dispose of receivership property.
- (26) Receivership. – The case in which the receiver is appointed, and, as the context requires, the proceeding in which the receiver takes possession of, manages, or disposes of the debtor's property.
- (27) Receivership property. – In the case of a general receivership, all or substantially all of the nonexempt property of the debtor, or in the case of a limited receivership, the property of the debtor identified in the order appointing the receiver, or in any subsequent order, and, in each case, except for the debtor's property that is wholly exempt from the enforcement of claims of creditors pursuant to applicable law, including without limitation, pursuant to G.S. 1-362, 1C-1601(a), 1C-1602, 25C-4, 30-15, 30-17, and 135-9. Notwithstanding the foregoing, receivership property in a general receivership of an individual business debtor shall not include (i) the principal residence of the individual business debtor if the value of the principal residence is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in the principal residence and (ii) any consumer good if the value of such consumer good is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in such consumer good.
- (28) Record. – When 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.
- (29) Secured obligation. – An obligation the payment or performance of which is secured by a security interest or a lien.
- (30) Secured party. – A person entitled to enforce a secured obligation. The term includes a mortgagee under a mortgage and a beneficiary under a deed of trust.
- (31) Security agreement. – An agreement that creates or provides for a lien. The term includes a mortgage and a deed of trust.
- (32) Sign. – With present intent to authenticate or adopt a record, (i) to execute or adopt a tangible symbol or (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.
- (33) State agent and State agency. – Any office, department, division, bureau, board, commission, or other agency of this State or of any subdivision thereof, or any individual acting in an official capacity on behalf of any State agent or State agency.
- (34) Time of appointment. – The date and time specified in the order of appointment of a receiver or, if the date and time are not specified in the order of appointment, the date and time that the court ruled on the application for the appointment of a receiver. The term does not mean any subsequent date or time, including the execution of a written order, the filing or docketing of a written order, or the posting of a bond.
- (35) Timeshare interest. – An interest having a duration of more than three years which 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.

- (36) Utility. – A person providing any service regulated by the North Carolina Utilities Commission.
- (37) Voidable transaction. – A transfer of an interest in property that is voidable under Article 3A of Chapter 39 of the General Statutes. (2020-75, s. 1.)