

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 364
Judiciary Committee Substitute Adopted 4/16/19
Third Edition Engrossed 5/2/19

Short Title: NC Receivership Act Revisions.

(Public)

Sponsors:

Referred to:

March 27, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NORTH CAROLINA RECEIVERSHIP ACT; REPEAL
3 ASSIGNMENTS FOR THE BENEFIT OF CREDITOR STATUTES; AND MAKE AN
4 ACTION FOR THE APPOINTMENT OF A GENERAL RECEIVER FOR CERTAIN
5 DEBTORS A MANDATORY COMPLEX BUSINESS CASE, AS RECOMMENDED BY
6 THE NORTH CAROLINA BAR ASSOCIATION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 1 of the General Statutes is amended by adding a new Article
9 to read:

10 "Article 38A.

11 "North Carolina Receivership Act.

12 **"§ 1-507.20. Short title; definitions.**

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

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

16 (1) Affiliate. – As defined in G.S. 39-23.1(1).

17 (2) Business trust. – As defined in G.S. 39-44.

18 (3) Collateral. – The property subject to a lien.

19 (4) Court. – The superior or district court in which the receivership is pending.

20 (5) Debtor. – The person over whose property the receiver is appointed.

21 (6) Entity. – A person other than a natural person.

22 (7) Executory contract. – A contract that is part of the receivership property,
23 including a lease, where the obligations of both the debtor and the other party
24 to the contract are unperformed to the extent that the failure of either party to
25 complete performance of its obligations would constitute a material breach of
26 the contract, thereby excusing the other party's performance of its obligations
27 under the contract.

28 (8) Foreign jurisdiction. – Any state or federal jurisdiction other than that of this
29 State.

30 (9) Foreign receiver. – A receiver appointed in any foreign jurisdiction.

31 (10) General receiver. – The receiver appointed in a general receivership.

32 (11) General receivership. – A receivership over all or substantially all of the
33 nonexempt property of a debtor for the purpose of liquidation and distribution
34 to creditors and other parties in interest, including a receivership under the
35 provisions of Chapters 55, 55A, 55B, 57D, or 59 of the General Statutes.



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- 1 (12) Good faith. – Honesty in fact and the observance of reasonable commercial
2 standards of fair dealing.
- 3 (12a) Individual. – A natural person.
- 4 (13) Insider. – As to any person, includes the following:
5 a. If the person is an individual, then any of the following:
6 1. A relative of the person or of a general partner of the person.
7 2. A partnership in which the person is a general partner.
8 3. A general partner in the partnership in which the person is a
9 general partner.
10 4. A corporation or limited liability company of which the person
11 is a director, officer, manager, managing member, or other
12 person in control.
- 13 b. If the person is a corporation or limited liability company, then any of
14 the following:
15 1. An officer, director, manager, or managing member of the
16 person.
17 2. A person in control of the person.
18 3. A partnership in which the person is a general partner.
19 4. A general partner in a partnership in which the person is a
20 general partner.
21 5. A relative of a general partner, officer, director, manager,
22 managing member, or person in control of the person.
- 23 c. If the person is a partnership, then any of the following:
24 1. A general partner in the person.
25 2. A relative of a general partner in, general partner of, or person
26 in control of the person.
27 3. Another partnership in which the person is a general partner.
28 4. A general partner in a partnership in which the debtor is a
29 general partner.
30 5. A person in control of the person.
- 31 d. An affiliate, or insider of an affiliate, as if such affiliate were the
32 person.
- 33 e. A managing agent of the person.
- 34 (14) Insolvent. – With respect to a debtor, the sum of the debtor's debts is greater
35 than all of the debtor's property, at a fair valuation, exclusive of (i) property
36 transferred, concealed, or removed with intent to hinder, delay, or defraud the
37 debtor's creditors, or that has been transferred in a manner making transfer
38 voidable under Article 3A of Chapter 39 of the General Statutes, and (ii)
39 property that may be exempt from receivership property under Chapter 1C of
40 the General Statutes.
- 41 (15) Lien. – A charge against or interest in property to secure payment of a debt or
42 the performance of an obligation.
- 43 (16) Limited receiver. – The receiver appointed in a limited receivership.
- 44 (17) Limited receivership. – A receivership other than a general receivership,
45 including a receivership instituted as a supplemental proceeding to collect on
46 a judgment pursuant to G.S. 1-363.
- 47 (18) Party. – A person who is a party within the meaning of the North Carolina
48 Rules of Civil Procedure in the action in which a receiver is appointed.
- 49 (19) Party in interest. – Includes the debtor, an insider, any equity security holder
50 in the debtor, any person with an ownership interest in or lien on receivership
51 property, and, in a general receivership, any creditor of the debtor.

- 1 (20) Person. – Includes both natural persons and entities such as corporations,
2 limited liability companies, partnerships, and other entities recognized under
3 the laws of this State.
- 4 (21) Property. – All of the debtor's right, title, and interest, both legal and equitable,
5 in real and personal property, regardless of the manner by which any of the
6 same were or are acquired. The term includes any proceeds, products,
7 offspring, rents, or profits of or from the property. The term does not include
8 (i) any power that the debtor may exercise solely for the benefit of another
9 person or (ii) a power of withdrawal exercisable by the debtor over property
10 of a trust for which the debtor is not the settlor, to the extent that the power is
11 not subject to the claims of the debtor's creditors pursuant to
12 G.S. 36C-5-505(b).
- 13 (22) Receiver. – A person appointed by the court as the court's agent, and subject
14 to the court's direction, to take possession of, manage, control, and, if
15 authorized by this Article or order of the court, dispose of receivership
16 property.
- 17 (23) Receivership. – The case in which the receiver is appointed, and, as the context
18 requires, the proceeding in which the receiver takes possession of, manages,
19 or disposes of the debtor's property.
- 20 (24) Receivership property. – In the case of a general receivership, all or
21 substantially all of the nonexempt property of the debtor, or in the case of a
22 limited receivership, that property of the debtor identified in the order
23 appointing the receiver, or in any subsequent order.
- 24 (25) Record. – When used as a noun, means information that is inscribed on a
25 tangible medium or that is stored on an electronic or other medium and is
26 retrievable in perceivable form.
- 27 (26) Secured obligation. – An obligation the payment or performance of which is
28 secured by a security agreement.
- 29 (27) Secured party. – A person entitled to enforce a secured obligation. The term
30 includes a mortgagee under a mortgage and a beneficiary under a deed of trust.
- 31 (28) Security agreement. – An agreement that creates or provides for a lien. The
32 term includes a mortgage and a deed of trust.
- 33 (29) Sign. – With present intent to authenticate or adopt a record, (i) to execute or
34 adopt a tangible symbol or (ii) to attach to or logically associate with the
35 record an electronic sound, symbol, or process.
- 36 (30) State agent and State agency. – Any office, department, division, bureau,
37 board, commission, or other agency of this State or of any subdivision thereof,
38 or any individual acting in an official capacity on behalf of any State agent or
39 State agency.
- 40 (31) Time of appointment. – The date and time specified in the order of
41 appointment of a receiver or, if the date and time are not specified in the order
42 of appointment, the date and time that the court ruled on the application for
43 the appointment of a receiver. The term does not mean any subsequent date or
44 time, including the execution of a written order, the filing or docketing of a
45 written order, or the posting of a bond.
- 46 (32) Timeshare interest. – An interest having a duration of more than three years
47 which grants its holder the right to use and occupy an accommodation, facility,
48 or recreational site, whether improved or not, for a specific period less than a
49 full year during any given year.
- 50 (33) Utility. – A person providing any service regulated by the North Carolina
51 Utilities Commission.

1 (34) Voidable transaction. – A transfer of an interest in property that is voidable
2 under Article 3A of Chapter 39 of the General Statutes.

3 **"§ 1-507.21. Applicability of Article and of common law.**

4 (a) Application of Article. – Except as provided in subsection (b) of this section, this
5 Article applies to receiverships pursuant to any provision of the General Statutes, as well as any
6 receiverships instituted under common law and the equitable power of the courts.

7 (b) Exclusions. – This Article does not apply to any receivership in which the receiver is
8 a State agency or in which the receiver is appointed, controlled, or regulated by a State agency
9 unless otherwise provided by law. No trust other than a business trust and no estate of a deceased
10 natural person, missing person, or absentee in military service may be a debtor in a receivership
11 under this Article. Nothing in this Article shall be construed in a manner that permits a receiver
12 to seize an interest of the debtor in property that is exempt from the enforcement of claims of
13 creditors, as described in G.S. 1-362, G.S. 1C-1601(a), G.S. 1C-1602, G.S. 25C-4, G.S. 30-15,
14 or G.S. 135-9.

15 (c) Article Supplemental. – Unless explicitly displaced by a particular provision of this
16 Article, the provisions of other statutory law and the principles of common law and equity remain
17 in full force and effect and supplement the provisions of this Article.

18 **"§ 1-507.22. Powers of the court.**

19 The court that appoints a receiver under this Article has the exclusive authority to direct the
20 receiver and determine all controversies relating to the receivership or receivership property,
21 wherever located, including, without limitation, authority to determine all controversies relating
22 to the collection, preservation, improvement, disposition, and distribution of receivership
23 property, and all matters otherwise arising in or relating to the receivership, the receivership
24 property, the exercise of the receiver's powers, or the performance of the receiver's duties.

25 **"§ 1-507.23. Types of receiverships.**

26 A receivership may be either a limited receivership or a general receivership. Any
27 receivership which is based upon the foreclosure or enforcement of a security agreement,
28 judgment lien, mechanic's lien, or other lien pursuant to which the debtor or any holder of a lien
29 would have a statutory right of redemption, shall be a limited receivership. If the order appointing
30 the receiver does not specify whether the receivership is a limited receivership or a general
31 receivership, the receivership shall be a limited receivership unless and until the court by later
32 order designates the receivership as a general receivership, notwithstanding that pursuant to
33 G.S. 1-507.24(i), a receiver may otherwise have control over all the property of the debtor. At
34 any time, the court may order a general receivership to be converted to a limited receivership and
35 a limited receivership to be converted to a general receivership.

36 **"§ 1-507.24. Appointment of receivers; receivership not a trust.**

37 (a) Action in Which Receivers Appointed. – A receiver may be appointed under this
38 Article by the filing of a civil action by a creditor or other party in interest in which the sole relief
39 requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action
40 that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a
41 power of sale or judicial foreclosure proceeding. If the debtor files the complaint commencing a
42 civil action in which the sole relief requested is the appointment of a receiver, then no summons
43 under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of
44 the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:

45 "In re: _____ [name of debtor]".

46 (b) Appointment by Judge. – Either a judge of the Superior Court Division or the District
47 Court Division may appoint a receiver for a debtor that is an individual. Once a receiver is
48 appointed, the clerk shall provide a copy of the order appointing the receiver to the senior resident
49 superior court judge or the senior district judge for the court in which the receivership is pending.
50 If the receivership is pending in the Superior Court Division, the senior resident superior court
51 judge for the court in which the receivership is pending shall designate either one of the resident

1 judges for the court in which the receivership is pending, or one of the nonresident judges of the
2 Superior Court Division then assigned to the district in which the receivership is pending, to be
3 the presiding judge over the receiver and the receivership who shall retain jurisdiction and
4 supervision of the receiver and the receivership until the receivership is terminated and the
5 receiver discharged pursuant to G.S. 1-507.37. The judge of the Superior Court Division so
6 designated shall retain jurisdiction and supervision notwithstanding the judge's rotation out of
7 the district. If the receivership is pending in the District Court Division, the chief district judge
8 for the court in which the receivership is pending shall designate one of the judges of the District
9 Court Division to retain jurisdiction and supervision of the receiver and the receivership until the
10 receivership is terminated and the receiver discharged pursuant to G.S. 1-507.37.

11 (c) Appointment Before Judgment. – A limited receiver may be appointed before
12 judgment to protect a party that demonstrates an apparent right, title, or interest in property that
13 is the subject of the action, if the property or its revenue-producing potential is being subjected
14 to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the
15 subject of a voidable transaction.

16 (d) Appointment by Judgment. – A limited or general receiver may be appointed in a
17 judgment or after judgment to carry the judgment into effect, or to preserve nonexempt property
18 pending an appeal, or when an execution has been returned unsatisfied and the debtor refuses to
19 apply the property in satisfaction of the judgment, or in an action for which a receiver may be
20 appointed on equitable grounds.

21 (e) Receiver for Entities. – In addition to those situations specifically provided for by
22 law, a limited or general receiver may be appointed when a person that is not a natural person
23 meets any of the following criteria:

24 (1) The person is insolvent.

25 (2) The person is not paying its debts as they become due unless such debts are
26 the subject of a bona fide dispute.

27 (3) The person is unable to pay its debts as they become due.

28 (4) The person is in imminent danger of insolvency.

29 (5) The person suspends its business for want of funds.

30 (6) The person has forfeited or has suspended its legal existence.

31 (7) The person had its legal existence expire by limitation.

32 (8) The person is the subject of an action to dissolve such person.

33 A limited receiver may also be appointed, in like cases, of the property located within this
34 State of foreign persons.

35 (f) Foreclosure or Enforcement of Security Agreement. – In connection with a power of
36 sale or judicial foreclosure proceeding or other enforcement of a security agreement, the court
37 may appoint a limited receiver in any of the following circumstances:

38 (1) The appointment is necessary to protect the property from waste, loss,
39 spoilage, transfer, concealment, dissipation, or impairment.

40 (2) The debtor agreed in a signed record to the appointment of a receiver on
41 default.

42 (3) The debtor agreed, after default and in a signed record, to the appointment of
43 a receiver.

44 (4) The property and any other collateral held by the secured party are not
45 sufficient to satisfy the secured obligation.

46 (5) The debtor fails to turn over to the secured party the collateral or proceeds of
47 collateral, including rents, the secured party was entitled to collect.

48 (6) The holder of a subordinate lien obtains the appointment of a receiver for the
49 same collateral held by the secured party.

50 (g) Other Cases. – A receiver may be appointed in other cases as provided by law and
51 equity.

1 (h) Motion for Appointment of Receiver. – The court may appoint a receiver in an action
2 described in subsection (a) of this section with notice to the debtor, all other parties to the action,
3 any judgment creditor who is seeking the appointment of a receiver in any other action, and other
4 parties in interest and other persons as the court may require. The court may appoint a receiver
5 ex parte or on shortened notice on a temporary basis, pending further order of the court, if it is
6 clearly shown that an emergency exists requiring the immediate appointment of a receiver and
7 that a receiver is needed to avoid irreparable harm. In that event, the court shall set a hearing as
8 soon as practicable and at the subsequent hearing, the burden of proof shall be as would be
9 applicable to a motion made on notice that is not expedited.

10 (i) Description of Receivership Property. – The order appointing the receiver or
11 subsequent order shall describe the receivership property with particularity appropriate to the
12 circumstances. If the order does not so describe the receivership property, until further order of
13 the court, the receiver shall have control over all of the debtor's nonexempt property.

14 (j) Receivership Not a Trust. – The order appointing the receiver does not create a trust.
15 **§ 1-507.25. Eligibility of receiver.**

16 (a) Who May Serve as Receiver. – Unless otherwise prohibited by law or prior order, any
17 person, whether or not a resident of this State, may serve as a receiver, provided that the court,
18 in its order appointing the receiver, makes written conclusions based in the record that the person
19 proposed as receiver meets the following criteria:

20 (1) The proposed receiver is qualified to serve as receiver and as an officer of the
21 court.

22 (2) The proposed receiver is independent as to any party in interest and the
23 underlying dispute.

24 (b) Considerations Regarding Qualifications. – In determining whether a proposed
25 receiver is qualified to serve as receiver and as an officer of the court, the court shall consider
26 any relevant information, including all of the following:

27 (1) The proposed receiver has knowledge and experience sufficient to perform
28 the duties of receiver.

29 (2) The proposed receiver has the financial ability to post the bond required by
30 G.S. 1-507.26.

31 (3) The proposed receiver or any insider of the proposed receiver has been
32 previously disqualified from serving as receiver and the reasons for
33 disqualification.

34 (4) The proposed receiver or any insider of the proposed receiver has been
35 convicted of a felony or other crime involving moral turpitude.

36 (5) The proposed receiver or any insider of the proposed receiver has been found
37 liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar
38 misconduct.

39 (c) Considerations Regarding Independence. – In determining whether a proposed
40 receiver is independent as to any party in interest and the underlying dispute, the court shall
41 consider any relevant information, including all of the following:

42 (1) The nature and extent of any relationship that the proposed receiver has to any
43 party in interest and the property proposed as receivership property.

44 (2) Whether the proposed receiver has any interest materially adverse to the
45 interests of any party in interest.

46 (3) Whether the proposed receiver has any material financial or pecuniary
47 interest, other than receiver compensation, regardless of its source, as allowed
48 by court order, in the outcome of the underlying dispute, including any
49 proposed contingent or success fee compensation arrangement.

1 (4) Whether the proposed receiver is a debtor, secured or unsecured creditor,
2 lienor of, or holder of any equity interest in, any party in interest or of
3 receivership property.

4 (5) Whether a violation of G.S. 23-46 occurred in the underlying action.

5 In evaluating all information, the court may exercise its discretion and need not consider any
6 single item of information to be determinative of independence. The proposed receiver shall not
7 be disqualified solely because the proposed receiver was appointed receiver in other unrelated
8 matters involving any of the parties to the action in which the appointment is sought, or the
9 proposed receiver has been engaged by any of the parties to the action or any other party in
10 interest in matters unrelated to the underlying action. A person seeking appointment of a receiver
11 may nominate a person to serve as receiver, but the court is not bound by the nomination.

12 (d) Information Provided to Court. – The proposed receiver, the parties, and prospective
13 parties in interest may provide any information relevant to the qualifications, independence, and
14 the selection of the receiver.

15 **"§ 1-507.26. Bond.**

16 (a) Receiver's Bond. – After appointment, a receiver shall give a bond in the sum, nature,
17 and with the conditions that the court shall order in its discretion. Unless otherwise ordered by
18 the court, the receiver's bond shall be conditioned on the receiver's faithful discharge of its duties
19 in accordance with the orders of the court and the laws of this State. The bond may be a cash
20 bond deposited with the clerk, a bond issued by a surety licensed to issue surety bonds, or a bond
21 issued by a surety which the court otherwise deems sufficient.

22 (b) Receiver Actions Before Bond. – The court may authorize a receiver to act before the
23 receiver posts the bond required by this section.

24 **"§ 1-507.27. Defenses and immunities; discovery.**

25 (a) A receiver shall be entitled to all defenses and immunities provided by the laws of
26 this State for an act or omission within the scope of the receiver's appointment.

27 (b) A receiver may not be sued personally for an act or omission in administering
28 receivership property without approval of the court that appointed the receiver.

29 (c) A party or party in interest may conduct discovery of the receiver concerning any
30 matter relating to the receiver's administration of the receivership property after obtaining an
31 order authorizing the discovery.

32 **"§ 1-507.28. Powers and duties of receivers.**

33 (a) Powers; Generally. – Except as otherwise provided in subsection (d) of this section,
34 a receiver, whether general or limited, shall have the following powers in addition to those
35 specifically conferred by this Article or otherwise by statute, rule, or order of the court:

36 (1) The power to take possession of, collect, control, manage, conserve, and
37 protect receivership property, including any books and records related thereto
38 with or without the assistance of the sheriff of the county in which the
39 receivership property is located as reasonably necessary.

40 (2) The power to incur and pay expenses incidental to the receiver's exercise of
41 the powers or otherwise in the performance of the receiver's duties.

42 (3) The power to assert rights, claims, causes of action, or defenses that relate to
43 receivership property.

44 (4) The power to seek and obtain instruction from the court with respect to any
45 matter relating to the receivership property, the exercise of the receiver's
46 powers, or the performance of the receiver's duties.

47 (b) Additional Powers of a General Receiver. – In addition to the powers provided in
48 subsection (a) of this section, a general receiver shall have the following additional powers:

49 (1) The power to assert any rights, claims, causes of action, or defenses of the
50 debtor to the extent any rights, claims, causes of action, or defenses are

1 receivership property, including the right to sue for and collect all debts,
2 demands, and rents constituting receivership property.

3 (2) The power to maintain in the receiver's name or in the name of the debtor any
4 action to enforce any right, claim, cause of action, or defense.

5 (3) The power to intervene in actions in which the debtor is a party for the purpose
6 of exercising the powers under this clause or requesting transfer of venue of
7 the action to the receivership.

8 (4) The power to pursue any claim or remedy that may be asserted by a creditor
9 of the debtor under Article 3A of Chapter 39 of the General Statutes.

10 (5) The power to compel any person, including the debtor and any party in
11 interest, by subpoena pursuant to Rule 45 of the North Carolina Rules of Civil
12 Procedure, to give testimony or to produce and permit inspection and copying
13 of designated books, documents, electronically stored information, electronic
14 data, passwords, access codes, or tangible or intangible things with respect to
15 any receivership property or any other matter that may affect the
16 administration of the receivership.

17 (6) The power to operate any business constituting receivership property in the
18 ordinary course of business, including the use, sale, lease, license, exchange,
19 collection and disposition of property of the business or otherwise constituting
20 receivership property, and the incurring and payment of expenses of the
21 business or other receivership property.

22 (7) The power to, if authorized by an order of the court following notice and a
23 hearing, compromise or settle claims involving receivership property.

24 (8) The power to enter into such contracts as are necessary for the management,
25 security, insuring, or liquidation of receivership property, and to employ,
26 discharge and fix the compensation and conditions for such agents,
27 contractors, and employees as are necessary to assist the receiver in managing,
28 securing, and liquidating receivership property.

29 (9) The power to exercise all of the powers and authority provided by this section
30 or order of the court.

31 (c) Duties. – A receiver, whether general or limited, shall have the duties specifically
32 conferred by this Article or otherwise by statute, rule, or order of the court, including the
33 following duties:

34 (1) To act in conformity with the laws of this State and the rules and orders of the
35 court.

36 (2) To avoid conflicts of interest.

37 (3) To not directly or indirectly pay or accept anything of value from receivership
38 property that has not been disclosed and approved by the court.

39 (4) To not directly or indirectly purchase, acquire, or accept any interest in
40 receivership property without full disclosure and approval by the court.

41 (5) To otherwise act in the best interests of the receivership and the receivership
42 property.

43 (d) Modification of Powers and Duties. – Except as otherwise provided in this Article,
44 the court may limit or expand the powers and duties of a receiver provided by this section.

45 **§ 1-507.29. Receiver as lien creditor; real estate recording; subsequent sales of real estate.**

46 (a) Receiver as Lien Creditor. – As of the time of appointment, the receiver shall have
47 the powers and priority as if it were a creditor that obtained a judicial lien at the time of
48 appointment on all of the receivership property, subject to satisfying the recording requirements
49 as to real property described in subsection (b) of this section. This power and priority shall be in
50 addition to any vested interest in real property a receiver for property of a judgment debtor may
51 obtain as a result of filing the receivership order in accordance with G.S. 1-364.

1 **(b) Real Estate Recording.** – If any interest in real estate is included in the receivership
2 property, a lis pendens shall be recorded as soon as practicable with the register of deeds of the
3 county or counties in which the real property is situated. The priority of the receiver as lien
4 creditor against real property shall be from the time of recording of the lis pendens, except in the
5 case of another lien creditor that, before the recording of the lis pendens, obtains actual
6 knowledge of the receiver's appointment, as to whom priority shall be from the time the lien
7 creditor obtains actual knowledge.

8 **(c) Subsequent Sales of Real Estate.** – The recording of the notice of lis pendens in the
9 office of the register of deeds of the county or counties in which the real property is situated, the
10 order of the court authorizing the receiver to sell the real property, and the deed for the sale of
11 the real property, duly executed by the receiver, shall be prima facie evidence of the authority of
12 the receiver to sell and convey the real property described in the deed.

13 **"§ 1-507.30. Duties of debtor.**

14 **(a) Duties.** – In addition to those duties conferred by statute or order of the court, the
15 debtor shall have the following duties:

16 **(1)** To assist and cooperate fully with the receiver in the administration of the
17 receivership and the receivership property and the discharge of the receiver's
18 duties, and comply with all rules and orders of the court.

19 **(2)** To, immediately upon the receiver's appointment, deliver to the receiver all of
20 the receivership property in the debtor's possession, custody, or control,
21 including all books and records, electronic data, passwords, access codes,
22 statements of accounts, deeds, titles or other evidence of ownership, financial
23 statements, financial information, bank account statements, and all other
24 papers and documents related to the receivership property.

25 **(3)** To supply to the receiver information as requested relating to the
26 administration of the receivership and the receivership property, including
27 information necessary to complete any reports or other documents that the
28 receiver may be required to file.

29 **(4)** To remain responsible for the filing of all tax returns, including those returns
30 applicable to periods which include those in which the receivership is in effect,
31 except as otherwise ordered by the court.

32 **(b) Debtor Not Individual.** – If the debtor is not a natural person, this section applies to
33 each officer, director, manager, member, partner, trustee, or other person exercising or having
34 the power to exercise control over the affairs of the debtor.

35 **(c) Enforcement.** – If a person knowingly fails to perform a duty imposed by this section,
36 the court may (i) compel the person to comply with that duty, (ii) award the receiver actual
37 damages caused by the person's failure, and reasonable attorneys' fees and costs, and (iii) sanction
38 the person for civil contempt.

39 **"§ 1-507.31. Employment and compensation of professionals.**

40 **(a) Employment.** – To represent or assist the receiver in carrying out the receiver's duties,
41 the receiver may employ attorneys, accountants, appraisers, brokers, agents, auctioneers, or other
42 professionals that do not hold or represent an interest adverse to the receivership.

43 A person is not disqualified for employment under this subsection solely because of the
44 person's employment by, representation of, or other relationship with the receiver, the debtor, a
45 creditor, or other party in interest. Nothing in this Article shall prevent the receiver from serving
46 in the receivership as a professional to the receiver, whether as attorney, accountant, broker,
47 agent, auctioneer, or otherwise, if the receiver has the necessary licenses to lawfully perform such
48 professional services.

49 Nothing in this subsection shall require prior court approval of the receiver's retention of
50 professionals; provided, however, promptly after the receiver's engagement of any professional,
51 the receiver shall file with the court and give notice to all parties in interest of a notice of the

1 retention and of the proposed compensation. Any party in interest may file a motion for
2 disapproval of any retention within 14 days after the receiver's filing of the notice on the sole
3 grounds that the proposed professional holds or represents an interest adverse to the receivership.
4 Upon the filing of a motion for disapproval, the court shall promptly schedule a hearing and
5 determine the issue.

6 (b) Compensation. – The receiver and any professional retained by the receiver shall be
7 paid reasonable compensation for their services rendered from the receivership property in the
8 same manner as other expenses of administration and without the necessity of separate orders,
9 but shall be subject to any procedures, safeguards, and reporting that the court may order.

10 Except to the extent compensation to the receiver or the receiver's professionals has been
11 approved by the court, or as to parties in interest that are deemed to have waived the right to
12 object, any interim payments of compensation to the receiver or the receiver's professionals are
13 subject to approval in connection with the receiver's final report pursuant to G.S. 1-507.37.

14 In determining reasonable compensation to be paid to the receiver under this subsection, the
15 court shall not be limited to considering any fixed percentage of the receiver's receipts or
16 disbursements, but may consider all relevant facts and circumstances, including the following:

- 17 (1) The amount or basis of compensation to which the receiver or the receiver's
18 professional agree, as set forth in the order appointing the receiver or the
19 receiver's professional.
- 20 (2) The value of the debtor's assets.
- 21 (3) The number and amount of the debtor's creditors.
- 22 (4) The time and labor expended, and the billing rates charged, by the receiver or
23 the receiver's professional.
- 24 (5) The novelty and complexity of the receivership.
- 25 (6) The skill and time required to perform properly the duties and responsibilities
26 of the receiver or the receiver's professionals.
- 27 (7) The amount of the receiver's receipts and disbursements.
- 28 (8) The amount of any distributions made to creditors on unsecured claims.
- 29 (9) The compensation awarded to the receivers and receivers' professionals in
30 other receiverships.

31 **"§ 1-507.32. Schedules of property and claims.**

32 (a) The court may order the debtor or a general receiver to file under oath within 60 days
33 from the time of appointment, or at such earlier or later time as the court shall direct, the
34 following:

- 35 (1) A schedule of all receivership property and exempt property of the debtor,
36 describing, as of the time of appointment: (i) the location of the property and,
37 if real property, a legal description thereof; (ii) a description of all liens to
38 which the property is subject; and (iii) an estimated value of the property.
- 39 (2) A schedule of all creditors and taxing authorities and regulatory authorities,
40 their mailing addresses, the amount and nature of their claims, whether the
41 claims are secured by liens of any kind, and whether the claims are disputed,
42 contingent, or unliquidated.

43 (b) Each schedule filed by (i) the debtor shall be filed under oath and under penalty of
44 perjury as true and correct and (ii) the receiver shall be filed under oath and under penalty of
45 perjury as true and correct to the best of the receiver's knowledge.

46 (c) The court may order inventories and appraisals if appropriate to the receivership.

47 **"§ 1-507.33. Notice.**

48 In a general receivership, unless the court orders otherwise, the receiver shall give notice of
49 the receivership to all creditors and other parties in interest actually known to the receiver by
50 mail or other means of transmission within 30 days after the time of appointment. The notice of

1 the receivership shall include the time of appointment and the names and addresses of the debtor,
2 the receiver, and the receiver's attorney, if any.

3 **"§ 1-507.34. Notices; motions; orders.**

4 (a) Notice of Appearance. – Any party in interest may make an appearance in a
5 receivership by filing a written notice of appearance, including the name, mailing address, e-mail
6 address, and telephone number of the party in interest and its attorney, if any, and by serving a
7 copy on the receiver and the receiver's attorney, if any. It is not necessary for a party in interest
8 to be joined as a party to be heard in the receivership. A proof of claim does not constitute a
9 written notice of appearance.

10 (b) Master Service List. – From time to time, the receiver shall file an updated master
11 service list consisting of the names, mailing addresses, and, where available, e-mail addresses of
12 the debtor, the receiver, all persons joined as parties in the receivership, all persons known by the
13 receiver to have asserted a claim or an interest of any kind in any part of the receivership property,
14 all persons who have filed a notice of appearance in accordance with this section, and their
15 attorneys, if any.

16 (c) Motions. – Except as otherwise provided in this Article, an order shall be sought by a
17 motion brought in compliance with the North Carolina Rules of Civil Procedure.

18 (d) Persons Served. – Except as otherwise provided in this Article, a motion shall be
19 served as provided in the North Carolina Rules of Civil Procedure, unless the court orders
20 otherwise, on all persons on the master service list, all persons who are identified in the motion
21 as directly affected by the relief requested, and other persons as the court may direct.

22 (e) Service on State Agency. – Any request for relief against a State agency shall be
23 served as provided in the North Carolina Rules of Civil Procedure, unless the court orders
24 otherwise, on the specific State agency and on the Office of the Attorney General.

25 (f) Order Without Hearing. – Where a provision in this Article, an order issued in the
26 receivership, or a court rule requires an objection or other response to a motion or application
27 within a specific time, and no objection or other response is interposed, the court may grant the
28 relief requested without a hearing.

29 (g) Order Upon Application. – Where a provision of this Article permits, as to
30 administrative matters, or where it otherwise appears that no party in interest would be materially
31 prejudiced, the court may issue an order ex parte or based on an application without a motion,
32 notice, or hearing.

33 (h) Persons Bound by Orders. – Except as to persons entitled to be served pursuant to
34 subsection (d) of this section and who were not served, an order of the court binds parties in
35 interest and all persons who file notices of appearance, submit proofs of claim, receive written
36 notice of the receivership, receive notice of any motion in the receivership, or who have actual
37 knowledge of the receivership whether they are joined as parties or received notice of the specific
38 motion or order.

39 **"§ 1-507.35. Records; interim reports.**

40 (a) Preparation and Retention of Records. – The receiver shall prepare and retain
41 appropriate business records, including records of all cash receipts, disbursements and
42 dispositions of receivership property. After due consideration of issues of confidentiality, the
43 records may be provided by the receiver to parties in interest or shall be provided as ordered by
44 the court.

45 (b) Interim Reports. – The court may order the receiver to prepare and file interim reports
46 addressing the following:

47 (1) The activities of the receiver since appointment or the last report.

48 (2) Any receipts and disbursements, including payments made to professionals
49 retained by the receiver.

50 (3) Any distributions of money and property of the receivership estate.

1 (4) Any fees and expenses of the receiver and, if not filed separately, a request for
2 approval of payment of the fees and expenses.

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

4 The order may provide for the delivery of the receiver's interim reports to persons on the
5 master service list and to other persons and may provide a procedure for objection to the interim
6 reports, and may also provide that the failure to object constitutes a waiver of objection to matters
7 addressed in the interim reports.

8 **"§ 1-507.36. Removal of receivers.**

9 (a) Removal of Receiver. – The court may remove the receiver if: (i) the receiver fails to
10 execute and file the bond required by G.S. 1-507.26; (ii) the receiver dies, resigns, refuses, or
11 fails to serve for any reason; or (iii) for other good cause.

12 (b) Successor Receiver. – Upon removal of the receiver, if the court determines that
13 further administration of the receivership is required, the court shall appoint a successor receiver.
14 Upon executing and filing a bond under G.S. 1-507.26, the successor receiver shall immediately
15 succeed the removed receiver and shall assume the duties of receiver.

16 (c) Report and Discharge of Removed Receiver. – Within 30 days after removal, the
17 removed receiver shall file with the court and serve a report pursuant to G.S. 1-507.35, for matters
18 up to the date of the removal. Upon approval of the report, the court may enter an order pursuant
19 to G.S. 1-507.37 discharging the removed receiver.

20 **"§ 1-507.37. Termination of receiverships; final report.**

21 (a) Termination of Receivership. – The court may discharge a receiver and terminate the
22 receivership by order entered in the proceeding if the court finds that the appointment of the
23 receiver was improvident or that the circumstances no longer warrant continuation of the
24 receivership and upon approval by the court. If the court finds that the appointment of the receiver
25 was sought wrongfully or in bad faith, the court may assess against the person that sought the
26 receiver's appointment: (i) all of the fees and expenses of the receivership, including reasonable
27 attorneys' fees and costs and (ii) actual damages caused by the appointment, including reasonable
28 attorneys' fees and costs.

29 (b) Final Report and Discharge of Receiver. – Upon distribution or disposition of all
30 receivership property, or the completion of the receiver's duties, the receiver shall file a final
31 report and shall request that the court approve the final report and discharge the receiver.

32 (c) Contents of Final Report. – The final report, which may incorporate by reference
33 interim reports, shall include, in addition to any matters required by the court in the receivership
34 all of the following:

35 (1) A description of the activities of the receiver in the conduct of the receivership.

36 (2) A schedule of all receivership property at the commencement of the
37 receivership and any receivership property received during the receivership.

38 (3) A list of expenditures, including all payments to professionals retained by the
39 receiver.

40 (4) A list of any unpaid expenses incurred during the receivership.

41 (5) A list of all dispositions of receivership property.

42 (6) A list of all distributions made or proposed to be made from the receivership
43 for creditor claims.

44 (7) If not done separately, a motion or application for approval of the payment of
45 fees and expenses of the receiver.

46 (8) Any other information required by the court.

47 (d) Notice of Final Report. – The receiver shall give notice of the filing of the final report
48 and request for discharge to all persons on the most current master service list. If there is no
49 objection within 14 days of the mailing of the notice, the court may enter an order approving the
50 final report and discharging the receiver without the necessity of a hearing.

1 (e) Effect of Discharge of Receiver. – A discharge removes all authority of the receiver,
2 excuses the receiver from further performance of any duties, and discharges any lis pendens
3 recorded by the receiver.

4 (f) Discharge and Return of Bond. – Unless otherwise provided in the order discharging
5 the receiver, any surety bond posted by the receiver pursuant to G.S. 1-507.26 shall be discharged
6 and the clerk is authorized to return to the receiver within 30 days from the entry of the order any
7 cash bond deposited with the clerk.

8 **"§ 1-507.38. Actions by or against receiver; actions relating to receivership property.**

9 (a) Actions By or Against Receiver. – The receiver may sue in the receiver's capacity
10 and, subject to other sections of this Article and all immunities provided at common law, may be
11 sued in that capacity.

12 (b) Venue. – Unless the court orders otherwise, an action by or against the receiver or
13 relating to the receivership or receivership property shall be commenced in the court in which
14 the receivership is pending.

15 (c) Joinder. – Subject to G.S. 1-507.41, a limited or general receiver may be joined or
16 substituted as a party in any action or other proceeding that relates to receivership property that
17 was pending at the time of appointment. Subject to G.S. 1-507.41, a general receiver may be
18 joined or substituted as a party in any action or other proceeding that was pending at the time of
19 appointment in which the debtor is a party. Actions or proceedings pending at the time of
20 appointment may be transferred to the court in which the receivership is pending upon the
21 receiver's or any party's motion for change of venue made in the court in which the action or
22 proceeding is pending, provided that such motion is filed no later than 90 days after the time of
23 appointment.

24 (d) Effect of Judgments. – A judgment entered subsequent to the time of appointment
25 against a receiver or the debtor shall not constitute a lien on receivership property, nor shall any
26 execution issue thereon. A judgment against a limited receiver shall have the same effect as a
27 judgment against the debtor, except that the judgment shall be enforceable against receivership
28 property only to the extent ordered by the court. Nothing in this section shall validate a judgment
29 that is entered in violation of the stay or stays provided for in G.S. 1-507.41.

30 **"§ 1-507.39. Turnover of receivership property.**

31 (a) Demand by Receiver. – Except as expressly provided in this section, and unless
32 otherwise ordered by the court, upon demand by a receiver: (i) subject to subsection (b) of this
33 section, any person shall turn over to the receiver any receivership property that is within the
34 possession, custody, or control of that person and (ii) any person that owes a debt that is
35 receivership property and is matured or payable on demand or on order shall pay the debt to or
36 on the order of the receiver, except to the extent that the debt is subject to setoff or recoupment.

37 (b) Adequate Protection. – If a creditor has possession, custody, or control of receivership
38 property and the validity, perfection, or priority of the creditor's lien on the property depends on
39 the creditor's possession, custody, or control, the creditor may retain possession, custody, or
40 control until the court orders adequate protection of the creditor's lien.

41 (c) Turnover Motion by Receiver. – A receiver may seek to compel turnover of
42 receivership property required by subdivision (i) of subsection (a) of this section by motion in
43 the receivership. If there exists a bona fide dispute with respect to the existence or nature of the
44 receiver's or the debtor's interest in the receivership property, turnover shall be sought by means
45 of an action under G.S. 1-507.38. Unless a bona fide dispute exists about a receiver's right to
46 possession, custody, or control of receivership property, the court may sanction as civil contempt
47 a person's failure to turn over the property when required by this section.

48 (d) Payment Only to Receiver. – A person that has notice of the appointment of a receiver
49 and owes a debt that is receivership property may not satisfy the debt by payment to the debtor.

50 **"§ 1-507.40. Ancillary receiverships.**

1 (a) Ancillary Receiverships in Foreign Jurisdictions. – A receiver appointed by a court
2 of this State may, without first seeking approval of the court, apply in any foreign jurisdiction for
3 appointment as receiver with respect to any receivership property which is located within the
4 foreign jurisdiction.

5 (b) Ancillary Receiverships in This State. – A foreign receiver may obtain appointment
6 by a court of this State as a receiver in an ancillary receivership with respect to any property
7 subject to the foreign receivership that is located in this State or subject to the jurisdiction of the
8 court for which a receiver could be appointed under this Article if (i) the foreign receiver would
9 be eligible to serve as receiver under G.S. 1-507.25 and (ii) the appointment is in furtherance of
10 the foreign receiver's possession, control, or disposition of property subject to the foreign
11 receivership and in accordance with orders of the foreign jurisdiction.

12 The courts of this State may enter any order necessary to effectuate orders entered by the
13 foreign jurisdiction's receivership proceeding. Unless the court orders otherwise, a receiver
14 appointed in an ancillary receivership in this State shall have the powers and duties of a limited
15 receiver as set forth in this Article and shall otherwise comply with the provisions of this Article
16 applicable to limited receivers.

17 **"§ 1-507.41. Stays.**

18 (a) Control of Property. – All receivership property shall be under the control and
19 supervision of the court appointing the receiver.

20 (b) Stay by Court Order. – In addition to any stay provided in this section, the court may
21 order a stay or stays to protect receivership property and to facilitate the administration of the
22 receivership.

23 (c) Automatic Stay. – Except as otherwise set forth in subsection (f) of this section or
24 ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable
25 to all persons, of an act, action, or proceeding: (i) to obtain possession of receivership property,
26 or to interfere with or exercise control over receivership property, or enforce a judgment against
27 receivership property, other than the commencement or continuation of a judicial, administrative,
28 or other action or proceeding, including the issuance or use of process, to enforce any lien having
29 priority over the rights of the receiver in receivership property and (ii) any act to create or perfect
30 any lien against receivership property, except by exercise of a right of setoff, to the extent that
31 the lien secures a claim that arose before the time of appointment.

32 (d) Limited Additional Automatic Stay in General Receiverships. – Except as otherwise
33 ordered by the court, in addition to the stay provided in subsection (c) of this section, the entry
34 of an order appointing a general receiver shall operate as a stay, applicable to all persons, of: (i)
35 the commencement or continuation of a judicial, administrative, or other action or proceeding,
36 including the issuance or use of process, against the debtor or the receiver that was or could have
37 been commenced before the time of appointment, or to recover a claim against the debtor that
38 arose before the time of appointment and (ii) the commencement or continuation of a judicial,
39 administrative, or other action or proceeding, including the issuance or use of process, to enforce
40 any lien having priority over the rights of the receiver in receivership property.

41 Stays obtained for the acts specified in this subsection shall expire 60 days after the time of
42 appointment unless, before the expiration of the 60-day period, the receiver or other party in
43 interest files a motion seeking an order of the court extending the stay and before the expiration
44 of an additional 30 days following the 60-day period, the court orders the stay extended.

45 (e) Modification of Stay. – The court may modify for cause any stay provided in this
46 section upon the motion of any party in interest affected by the stay.

47 (f) Inapplicability of Stay. – The entry of an order appointing a receiver does not operate
48 as a stay of any of the following:

- 49 (1) The commencement or continuation of a criminal proceeding against the
50 debtor.

- 1 (2) The commencement or continuation of an action or proceeding by a
2 governmental unit to enforce its police or regulatory power.
- 3 (3) The enforcement of a judgment, other than a money judgment, obtained in an
4 action or proceeding by a governmental unit to enforce its police or regulatory
5 power, or with respect to any licensure of the debtor.
- 6 (4) The establishment by a governmental unit of any tax liability and any appeal
7 thereof.
- 8 (5) The commencement or continuation of an action or proceeding to establish
9 paternity, to establish or modify an order for alimony, maintenance, or
10 support, or to collect alimony, maintenance, or support under any order of a
11 court.
- 12 (6) The exercise of a right of setoff.
- 13 (7) Any act to maintain or continue the perfection of a lien on, or otherwise
14 preserve or protect rights in, receivership property, but only to the extent that
15 the act was necessary to continue the perfection of the lien or to preserve or
16 protect the lien or other rights as they existed as of the time of the appointment.
17 If the act would require seizure of receivership property or commencement of
18 an action prohibited by a stay, the continued perfection shall instead be
19 accomplished by filing a notice in the court before which the receivership is
20 pending and by serving the notice upon the receiver and receiver's attorney, if
21 any, within the time fixed by law for seizure or commencement of the action.
- 22 (8) The commencement of a bankruptcy case under federal bankruptcy laws.
- 23 (9) Any other exception as provided in United States Code, Title 11, § 326(b), as
24 to the automatic stay in federal bankruptcy cases in effect from time to time,
25 but only to the extent not inconsistent with any provision in this section.
- 26 (g) Action Voidable. – The court may void an act that violates a stay under this section.
- 27 (h) Enforcement. – If a person knowingly violates a stay under this section, the court may
28 award actual damages caused by the violation, reasonable attorneys' fees, and costs, and may
29 sanction the violation as civil contempt.

30 **"§ 1-507.42. Utility service.**

31 (a) No Discontinuance of Utility Service. – Except as provided in subsection (b) of this
32 section, a utility providing service to receivership property that has received written notice from
33 the receiver of the appointment of the receiver may not alter, refuse, or discontinue service to the
34 receivership property.

35 (b) Adequate Assurance of Payment. – A utility providing service to receivership
36 property that has received written notice from the receiver of the appointment of the receiver may
37 alter, refuse, or discontinue service to the receivership property if neither the receiver nor the
38 debtor, within 30 days after the time of appointment, furnishes adequate assurance of payment,
39 in the form of a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of
40 utility consumption, or other security mutually agreed on between the utility and the receiver or
41 the debtor, for service after such time. On motion by a party in interest and after notice and a
42 hearing, the court may order reasonable modification of the amount or form of the adequate
43 assurance of payment.

44 **"§ 1-507.43. Receivership financing.**

45 (a) Unsecured Financing. – Without necessity of a court order, the receiver may obtain
46 unsecured credit and incur unsecured debt on behalf of the receivership.

47 (b) Secured Financing. – On motion by the receiver and after notice and a hearing, the
48 court may authorize the receiver to obtain secured credit or incur secured indebtedness, and the
49 court may authorize the receiver to mortgage, pledge, hypothecate, or otherwise encumber
50 receivership property as security for the repayment of such indebtedness.

1 (c) Expenses of Receivership. – Any financing incurred by the receiver pursuant to this
2 section shall be allowable as expenses of the receivership under G.S. 1-507.50(a)(2).

3 **"§ 1-507.44. Executory contracts.**

4 (a) Adoption or Rejection of Executory Contract. – Except as otherwise provided in
5 subsection (g) of this section, with court approval, a receiver may adopt or reject an executory
6 contract of the debtor that is part of the receivership property. The court may condition the
7 receiver's adoption and continued performance of the executory contract on terms appropriate
8 under the circumstances. If the receiver does not request court approval to adopt or reject the
9 executory contract within 90 days after the time of appointment, or such longer or shorter period
10 as the court upon motion of the receiver or a party in interest may order, the receiver is deemed
11 to have rejected the executory contract.

12 (b) Performance Not Adoption. – A receiver's performance of an executory contract
13 before court approval of its adoption or rejection under subsection (a) of this section is not an
14 adoption of the executory contract and does not preclude the receiver from seeking approval to
15 reject the executory contract.

16 (c) Ipsa Facto Clauses. – A provision in an executory contract which requires or permits
17 a forfeiture, modification, or termination of the executory contract because of the appointment
18 of the receiver or the financial condition of the debtor does not affect a receiver's power under
19 subsection (a) of this section to adopt the executory contract.

20 (d) Termination of Executory Contract. – A receiver's right to possess or use receivership
21 property pursuant to an executory contract terminates on rejection of the executory contract under
22 subsection (a) of this section. Rejection is a breach of the executory contract effective
23 immediately before the time of appointment. A claim for damages for rejection of the executory
24 contract must be submitted by the later of (i) the time set for submitting a claim in the receivership
25 or (ii) 30 days after the court approves the rejection.

26 (e) Assignment of Executory Contract. – If, at the time a receiver is appointed, the debtor
27 has the right to assign the executory contract relating to receivership property under the laws of
28 this State, the receiver may assign the executory contract with court approval.

29 (f) Rejection of Executory Contract for Sale of Real Property. – If a receiver rejects an
30 executory contract under subsection (a) of this section for the sale of receivership property that
31 is real property in possession of the purchaser or a real property timeshare interest, the purchaser
32 may (i) treat the rejection as a termination of the executory contract, in which case the purchaser
33 has a lien on the real property for the recovery of any part of the purchase price the purchaser
34 paid or (ii) retain the purchaser's right to possession under the executory contract, in which case
35 the purchaser shall continue to perform all obligations arising under the executory contract and
36 may offset any damages caused by nonperformance of an obligation of the debtor after the date
37 of the rejection; however, the purchaser has no right or claim against other receivership property
38 or the receiver on account of the damages.

39 (g) Rejection of Unexpired Lease of Real Property. – A receiver may not reject an
40 unexpired lease of real property under which the debtor is the landlord under any of the following
41 circumstances:

- 42 (1) The tenant occupies the leased premises as the tenant's primary residence,
43 unless (i) the tenant is the child, spouse, partner, or parent of the debtor; (ii)
44 the tenant does not have a written lease; (iii) the lease is terminable at will;
45 (iv) the rent paid by the tenant is substantially less than the fair market rental
46 value for the property, provided the rent has not been reduced or subsidized
47 due to a federal or State subsidy; or (v) the receiver sells the property to a
48 purchaser who will occupy the premises as a primary residence, in which case
49 the tenant shall be required to vacate the property within 90 days of the sale
50 of the property.

1 (2) The receiver was appointed at the request of a person other than the mortgagee
2 under a mortgage or the beneficiary of a deed of trust encumbering the real
3 property.

4 (3) The receiver was appointed at the request of a mortgagee under a mortgage or
5 a beneficiary of a deed of trust encumbering the real property and (i) the lease
6 is superior in priority to the lien of the mortgage or the deed of trust; (ii) the
7 tenant has an enforceable agreement with the mortgagee or beneficiary or
8 holder of a senior lien on the real property under which the tenant's occupancy
9 will not be disturbed as long as the tenant performs its obligations under the
10 lease; (iii) the mortgagee or beneficiary has consented to the lease, either in a
11 signed record or by its failure to object that the lease violated the mortgage or
12 deed of trust; or (iv) the terms of the lease were commercially reasonable at
13 the time the lease was agreed to, and the tenant did not know or have reason
14 to know that the lease violated the mortgage or deed of trust.

15 **§ 1-507.45. Use or transfer of receivership property not in ordinary course.**

16 (a) Use Not in Ordinary Course. – With court approval, a receiver may use receivership
17 property other than in the ordinary course of business.

18 (b) Transfer Not in Ordinary Course. – On motion by the receiver and after notice and a
19 hearing, the court may authorize the receiver to transfer receivership property other than in the
20 ordinary course of business by sale, lease, license, exchange, or other disposition.

21 The court may order that the receiver's sale of receivership property is free and clear of all
22 liens and all rights of redemption and claims of exemption of the debtor, regardless of whether
23 the sale will generate proceeds sufficient to satisfy fully all liens and claims of exemption on the
24 receivership property, unless all of the following criteria are met:

25 (1) A secured party's lien or the debtor's claim of exemption in the receivership
26 property to be sold will not be paid in full from the proceeds of the proposed
27 sale and the secured party or the debtor files a timely objection to the receiver's
28 motion to sell the receivership property.

29 (2) A timely objection is filed and the court, after notice and hearing, determines
30 that the amount likely to be received by the objecting person from the proceeds
31 of the receiver's sale is less than the amount the objecting person would likely
32 receive within a reasonable time in the absence of the receiver's sale.

33 A secured party holding a lien and a debtor claiming an exemption in the receivership
34 property to be sold that will not be paid in full from the proceeds of the proposed sale must file
35 an objection to the receiver's motion within 14 days after the receiver delivers a copy of the
36 motion to the secured party and the debtor as provided in G.S. 1A-1, Rule 4(j)(1) or within such
37 earlier or later time as the court shall direct.

38 The receiver shall have the burden of proof to establish that the amount likely to be received
39 by the objecting person is equal to or more than the amount the objecting person would likely
40 receive within a reasonable time in the absence of the receiver's sale. The court may also require
41 that any transfer of receivership property be subject to confirmation by the court.

42 (c) Transfer of Lien to Proceeds. – A lien on receivership property which is extinguished
43 by a transfer under subsection (b) of this section attaches to the proceeds of the transfer with the
44 same validity, perfection, and priority the lien had on the receivership property immediately
45 before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the
46 lien.

47 (d) Manner of Transfer. – A transfer under subsection (c) of this section may occur by
48 means other than a public auction sale. A creditor holding a valid lien on the receivership property
49 to be transferred may purchase the property and offset against the purchase price part or all of
50 the allowed amount secured by the lien if the creditor tenders funds sufficient to satisfy in full

1 the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by
2 the transfer.

3 (e) Co-Owned Property. – If any receivership property includes an interest as a co-owner
4 of property, the receiver shall have the rights and powers of the debtor afforded by applicable
5 law, including any rights of partition, but may not sell the property free and clear of the
6 co-owner's interest in the receivership property.

7 (f) Reversal or Modification of Transfer Order. – A reversal or modification of an order
8 approving a transfer under subsection (b) of this section does not affect the validity of the transfer
9 to a person that acquired the receivership property in good faith or revive against the person any
10 lien extinguished by the transfer, whether the person knew before the transfer of the request for
11 reversal or modification, unless the court stayed the order before the transfer.

12 **"§ 1-507.46. Abandonment of property.**

13 With court approval, the receiver may abandon any receivership property that is burdensome
14 or is not of material value to the receivership. Property that is abandoned is no longer receivership
15 property and not subject to the provisions of this Article.

16 **"§ 1-507.47. Liens against after-acquired property.**

17 Except as otherwise provided for by laws of this State, property that becomes receivership
18 property after the time of appointment is subject to a lien to the same extent as it would have
19 been in the absence of the receivership.

20 **"§ 1-507.48. Claims process.**

21 (a) Recommendation of Receiver. – In a general receivership, and in a limited
22 receivership if the circumstances require, the receiver shall submit to the court a recommendation
23 concerning a claims process appropriate to the particular receivership.

24 (b) Order Establishing Process. – In a general receivership and, if the court orders, in a
25 limited receivership, the court shall establish the claims process to be followed in the receivership
26 addressing whether proofs of claim must be submitted, the form of any proofs of claim, the place
27 where the proofs of claim must be filed, the deadline or deadlines for filing the proofs of claim,
28 and other matters bearing on the claims process.

29 (c) Alternative Procedures. – The court may authorize proofs of claim to be filed with the
30 receiver rather than the court. The court may authorize the receiver to treat claims as allowed
31 claims based on the amounts established in the books and records of the debtor or the schedule
32 of claims filed pursuant to G.S. 1-507.32, without the necessity of the filing of proofs of claim.

33 **"§ 1-507.49. Objection to and allowance of claims.**

34 (a) Objections and Allowance. – The receiver or any party in interest may file an
35 objection to a claim stating the grounds for the objection. The court may order that a copy of the
36 objection be served on the persons on the master service list at least 14 days prior to the hearing.
37 Claims allowed by court order, and claims properly submitted or scheduled and not disallowed
38 by the court, shall be allowed claims and shall be entitled to share in distributions of receivership
39 property in accordance with the priorities provided by this Article or otherwise by law.

40 (b) Estimation of Claims. – For the purpose of allowance of claims, the court may
41 estimate (i) any contingent or unliquidated claim, the fixing or liquidation of which would unduly
42 delay the administration of the receivership or (ii) any right to payment arising from a right to an
43 equitable remedy.

44 **"§ 1-507.50. Priority of claims.**

45 (a) Priorities. – Allowed claims shall receive distribution under this Article in the
46 following order of priority and, except as set forth in subsection (a)(1) of this section, on a pro
47 rata basis:

- 48 (1) Subject to subsection (b) of this section, claims secured by liens on
49 receivership property, which liens are valid and perfected before the time of
50 appointment, to the extent of the proceeds from the disposition of the collateral
51 in accordance with their respective priorities under otherwise applicable law.

- 1 (2) Actual, necessary costs and expenses incurred by the receiver during the
2 receivership, other than those expenses allowable elsewhere in this subsection,
3 including allowed fees and expenses of the receiver and professionals
4 employed by the receiver under G.S. 1-507.31.
- 5 (3) Claims for domestic support obligations within the meaning of United States
6 Code, Title 11, § 101, that are owing as of the time of appointment.
- 7 (4) Claims for wages, salaries, or commissions, including vacation, severance,
8 and sick leave pay, or contributions to an employee benefit plan, earned by
9 the claimant within 180 days before the time of appointment or the cessation
10 of the debtor's business, whichever occurs first, but only to the extent of the
11 dollar amount in effect from time to time in United States Code, Title 11, §§
12 507(a)(4) and (5).
- 13 (5) Allowed unsecured claims, to the extent of the dollar amount in effect from
14 time to time in United States Code, Title 11, § 507(a)(7), for each individual,
15 arising from the deposit with the debtor, before the time of appointment of the
16 receiver, of money in connection with the purchase, lease, or rental of
17 property, or the purchase of services, for the personal, family, or household
18 use of such individual, that were not delivered or provided.
- 19 (6) Unsecured claims of governmental units for taxes that accrued before the time
20 of appointment.
- 21 (7) All other unsecured claims, in each case calculated as of the time of
22 appointment, including the deficiency balance owing to a holder of an secured
23 claim to the extent not otherwise satisfied under subdivision (1) of subsection
24 (a) of this section, but only if no interest or costs and expenses of collection,
25 including attorneys' fees and expenses, that accrue or are incurred for any
26 period after the time of appointment is included in the calculation of such
27 deficiency balance.
- 28 (8) Interest pursuant to G.S. 1-507.51.

29 (b) Surcharge of Collateral. – In the event that the funds available for distribution by the
30 receiver pursuant to this section are insufficient to pay in full all of the receiver's reasonable and
31 necessary costs and expenses of preserving, protecting, or disposing of collateral securing a valid
32 claim of a secured party, including the reasonable and necessary fees and expenses of the receiver
33 and its professionals that are directly attributable to the preservation, protection, or disposition
34 of such collateral, then, on motion by the receiver, and after notice and hearing, the court may
35 order that the receiver recover such costs and expenses from the collateral or its proceeds to the
36 extent that the secured party holding a lien in such collateral receives a direct and quantifiable
37 benefit from the receiver's actions.

38 (c) Payments to Debtor. – If all of the amounts payable under subsections (a) and (b) of
39 this section have been paid in full, any remaining receivership property shall be returned to the
40 debtor.

41 **"§ 1-507.51. Interest on unsecured claims.**

42 To the extent that funds are available to pay in full the allowed unsecured claims under
43 G.S. 1-507.50(a)(7), the holder of each allowed unsecured claim shall also be entitled to receive
44 interest, calculated from the time of appointment on the amount of its allowed unsecured claim
45 at the legal rate set forth in G.S. 24-1. If there are not sufficient funds in the receivership to pay
46 in full the interest owed to all the holders of allowed unsecured claims, then the interest shall be
47 paid pro rata.

48 **"§ 1-507.52. Distributions.**

49 (a) Proposed Distributions. – Before any interim or final distribution is made, the receiver
50 shall file a distribution schedule listing the proposed distributions. The distribution schedule may
51 be filed at any time during the receivership or may be included in the final report.

1 (b) Notice. – The receiver shall give notice of the filing of the distribution schedule to all
 2 persons on the master mailing list or that have filed proofs of claim. If there is no objection within
 3 30 days after the notice, the court may enter an order authorizing the receiver to make the
 4 distributions described in the distribution schedule without the necessity of a hearing.

5 (c) Other Distributions. – In the order appointing the receiver or in subsequent orders, the
 6 court may authorize distributions of receivership property to persons with ownership interests or
 7 liens.

8 **"§ 1-507.53. Effect of enforcement by secured party.**

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

12 (1) Make the secured party a mortgagee in possession of real property.

13 (2) Impose any duty on the secured party under G.S. 25-9-207.

14 (3) Make the secured party an agent or fiduciary of the debtor.

15 (4) Constitute an election of remedies that precludes a later action to enforce the
 16 secured obligation.

17 (5) Make the secured obligation unenforceable.

18 (6) Limit any right available to the secured party with respect to the secured
 19 obligation."

20 **SECTION 2.(a)** Articles 1 and 2 of Chapter 23 of the General Statutes are repealed.

21 **SECTION 2.(b)** Article 38 of Chapter 1 is repealed.

22 **SECTION 3.(a)** G.S. 7A-45.4 reads as rewritten:

23 **"§ 7A-45.4. Designation of complex business cases.**

24 (a) Any party may designate as a mandatory complex business case an action that
 25 involves a material issue related to any of the following:

26 ...

27 (10) An action in which a general receiver is sought to be appointed pursuant to
 28 G.S. 1-507.24 for a debtor that is not an individual and has assets having a fair
 29 market value of not less than two million dollars (\$2,000,000), if the party
 30 making the designation is either (i) the debtor or (ii) one or more creditors or
 31 creditor's duly authorized representatives each asserting a claim against the
 32 debtor that is not contingent as to liability or the subject of a bona fide dispute
 33 as to liability or amount and that in the aggregate is in excess of twenty-five
 34 thousand dollars (\$25,000). Any creditor or creditor's duly authorized
 35 representatives that asserts a claim against the debtor that is not contingent as
 36 to liability or the subject of a bona fide dispute as to liability or amount and is
 37 not a party to the action may join in the notice of designation with the same
 38 effect as if such joining creditor or creditor's representative were a party.

39 ...

40 (d) The Notice of Designation shall be filed:

41 ...

42 (5) In the case of an action described in subdivision (10) of subsection (a) of this
 43 section, by the debtor, any person with a lien on receivership property, or any
 44 creditor of the debtor.

45 "

46 **SECTION 3.(b)** G.S. 57D-3-02 reads as rewritten:

47 **"§ 57D-3-02. Cessation of membership.**

48 (a) A person ceases to be a member upon the occurrence of any of the following events:

49 (1) The person does any of the following:

50 a. Becomes a debtor in bankruptcy.

- 1 b. Executes an assignment for the benefit of ~~creditors, including the~~
2 ~~execution of a deed of trust or deed of assignment for the benefit of~~
3 ~~creditors causing all debts of the person to become due and payable~~
4 ~~creditors~~ under ~~G.S. 23-1~~any applicable law.
5 c. ~~Petitions for, consents to, or acquiesces in the appointment of~~Has a
6 ~~general receiver appointed for the person pursuant to G.S. 1-507.24 or~~
7 ~~has a trustee, receiver, or liquidator of~~appointed for the person or for
8 all or substantially all of the person's property.

9 "

10 **SECTION 3.(c)** G.S. 23-38 reads as rewritten:

11 "**§ 23-38. Effect of order of discharge.**

12 The order of discharge under ~~the last four articles of this chapter, any Article of this Chapter,~~
13 whether granted upon a nonsuggestion of fraud, upon the finding of a jury in favor of the debtor,
14 or otherwise, shall ~~be in like terms and have like effect as prescribed in G.S. 23-16;~~ declare that
15 the debtor shall forever thereafter be exempted from arrest or imprisonment on account of any
16 judgment, or by reason of any debt due at the time of such order, or contracted for before that
17 time though payable afterwards, except that (i) no debt, demand, judgment, or decree against a
18 debtor who is discharged under this Chapter shall be affected or impaired by the discharge, but
19 the same shall remain valid and effective against all of the property of the debtor acquired after
20 discharge and the appointment of a trustee, and the lien or any judgment or decree upon the
21 property of the debtor shall not in any manner be affected by the discharge and (ii) the body of
22 such debtor shall be free from arrest or imprisonment at the suit of every creditor, and as to him
23 only, to whom the notice required may have been given; and the notices, or copies thereof, shall
24 in all cases be filed in the office of the superior court clerk."

25 **SECTION 3.(d)** G.S. 7A-249 reads as rewritten:

26 "**§ 7A-249. Corporate receiverships.**

27 The superior court division is the proper division, without regard to the amount in
28 controversy, for ~~actions for corporate receiverships under a receivership proceeding of a debtor~~
29 that is not an individual under Article 38A of Chapter 1, Article 38, 1 of the General Statutes,
30 and proceedings under Chapters 55 (North Carolina Business Corporation Act) and 55A
31 (Nonprofit Corporation ~~Act~~-Act), and 57D (North Carolina Limited Liability Company Act) of
32 the General Statutes."

33 **SECTION 4.** This act becomes effective January 1, 2020, and applies to
34 receiverships commenced on or after that date.