

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

SESSION LAW 2020-75
SENATE BILL 364

AN ACT TO ENACT THE NORTH CAROLINA COMMERCIAL RECEIVERSHIP ACT; REPEAL CORRESPONDING ASSIGNMENTS FOR THE BENEFIT OF CREDITOR STATUTES; AND MAKE AN ACTION FOR THE APPOINTMENT OF A GENERAL RECEIVER FOR CERTAIN BUSINESS ENTITY DEBTORS A MANDATORY COMPLEX BUSINESS CASE, AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

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

"Article 38A.

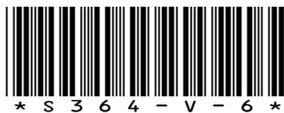
"North Carolina Commercial Receivership Act.

"§ 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.
- (3a) Consumer Debt. – Debt incurred by an individual primarily for a personal, family, or household purpose.
- (4) 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.
- (5) Debtor. – The person over whose property the receiver is appointed.
- (6) Entity. – A person other than an individual.
- (7) 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.
- (8) Foreign jurisdiction. – Any state or federal jurisdiction other than that of this State.
- (9) Foreign receiver. – A receiver appointed in any foreign jurisdiction.
- (10) General receiver. – The receiver appointed in a general receivership.
- (11) 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.
- (12) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (12a) Individual. – A natural person.
- (12b) 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.
- (13) 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.
- (14) 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.
- (15) Lien. – A charge against or interest in property to secure payment of a debt or the performance of an obligation.
- (16) Limited receiver. – The receiver appointed in a limited receivership.

- (17) 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.
- (18) 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.
- (19) 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.
- (20) Person. – Includes both individuals and entities such as corporations, limited liability companies, partnerships, and other entities recognized under the laws of this State.
- (21) 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.
- (22) 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.
- (23) 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.
- (24) 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.
- (25) 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.
- (26) Secured obligation. – An obligation the payment or performance of which is secured by a security interest or a lien.

- (27) 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.
- (28) Security agreement. – An agreement that creates or provides for a lien. The term includes a mortgage and a deed of trust.
- (29) 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.
- (30) 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.
- (31) 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.
- (32) 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.
- (33) Utility. – A person providing any service regulated by the North Carolina Utilities Commission.
- (34) Voidable transaction. – A transfer of an interest in property that is voidable under Article 3A of Chapter 39 of the General Statutes.

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

(a) Application of Article. – Except as provided in subsection (b) of this section, this Article applies to receiverships pursuant to any provision of the General Statutes, as well as any receiverships instituted under common law and the equitable power of the courts, in each case in which the debtor is an entity or an individual business debtor.

(b) Exclusions. – This Article does not apply to any receivership in which (i) the receiver is a State agency or in which the receiver is appointed, controlled, or regulated by a State agency unless otherwise provided by law or (ii) the receiver is appointed for a ward or a ward's estate pursuant to G.S. 35A-1294. No trust other than a business trust, no estate of a deceased individual, missing person, or absentee in military service, and no individual other than an individual business debtor may be a debtor in a receivership under this Article, and this Article shall not apply to receiverships of such persons. Nothing in this Article shall be construed in a manner that permits a receiver to seize an interest of the debtor in property that is not receivership property.

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

(d) This Article shall not deny the right of an individual business debtor or an entity for which a limited receiver has been appointed pursuant to this Article to file a case under Title 11 of the United States Code.

"§ 1-507.22. Powers of the court.

The court that appoints a receiver under this Article has the exclusive authority to direct the receiver and determine all controversies relating to the receivership or receivership property, wherever located, including, without limitation, authority to determine all controversies relating to the collection, preservation, improvement, disposition, and distribution of receivership

property, and all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

"§ 1-507.23. Types of receiverships.

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

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

(a) Action in Which Receivers Appointed. – A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a power of sale or judicial foreclosure proceeding. However, in the case of an individual business debtor, a creditor to whom only consumer debt is owing may not file a civil action or motion to appoint a receiver for the individual business debtor. If the debtor files the complaint commencing a civil action in which the sole relief requested is the appointment of a receiver, then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:

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

(b) Appointment by Judge. – Either a judge of the Superior Court Division or the District Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is appointed, the following provisions apply:

- (1) If a receiver is appointed for an individual business debtor or if a limited receiver is appointed for an entity, the clerk shall provide a copy of the order appointing the receiver to the senior resident superior court judge or the senior district judge for the court in which the receivership is pending. If the receivership is pending in the Superior Court Division, the senior resident superior court judge for the court in which the receivership is pending shall designate either one of the resident judges for the court in which the receivership is pending, or one of the nonresident judges of the Superior Court Division then assigned to the district in which the receivership is pending, to be the presiding judge over the receiver and the receivership. The presiding judge shall retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver discharged pursuant to G.S. 1-507.37, or until the senior resident superior court judge enters an order transferring jurisdiction and supervision of the receiver to another superior court judge. The judge of the Superior Court Division so designated shall retain jurisdiction and supervision notwithstanding the judge's rotation out of the district. If the receivership is pending in the District Court Division, the chief district court judge for the court in which the receivership is pending shall designate one of the judges of the District Court Division to retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver is discharged

pursuant to G.S. 1-507.37, or until the chief district court judge enters an order transferring jurisdiction and supervision of the receiver to another district court judge.

- (2) If a general receiver is appointed for an entity, the senior resident superior court judge shall promptly provide a copy of the order appointing the general receiver to the Chief Justice through the Administrative Office of the Courts and include special areas of expertise needed by the judge to be assigned and may include a list of recommended judges. The Chief Justice shall designate the receivership as an exceptional civil case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts unless the case is designated as a mandatory complex business case under G.S. 7A-45.4(b)(4). The judge of the Superior Court Division who appoints the general receiver shall retain jurisdiction and supervision of the receivership until the Chief Justice assigns the case to a judge pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

This subsection shall not apply to the appointment of a receiver in a pending action to partition real property pursuant to G.S. 46A-28.

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

(d) Appointment After Judgment. – A limited or general receiver may be appointed after judgment to carry the judgment into effect, or to dispose of property according to the judgment, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(e) Receiver for Entities and Individual Business Debtors. – In addition to those situations specifically provided for by law, a limited or general receiver may be appointed when an entity or an individual business debtor meets any of the following criteria:

- (1) The person is insolvent.
- (2) The person is not paying its debts as they become due unless such debts are the subject of a bona fide dispute.
- (3) The person is unable to pay its debts as they become due.
- (4) The person is in imminent danger of insolvency.
- (5) The person suspends its business for want of funds.
- (6) The person has forfeited or has suspended its legal existence.
- (7) The person had its legal existence expire by limitation.
- (8) The person is the subject of an action to dissolve such person.

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

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

- (1) The appointment is necessary to protect the property from waste, loss, spoilage, transfer, concealment, dissipation, or impairment.
- (2) The debtor agreed in a signed record to the appointment of a receiver on default.
- (3) The debtor agreed, after default and in a signed record, to the appointment of a receiver.
- (4) The property and any other collateral held by the secured party are not sufficient to satisfy the secured obligation.

- (5) The debtor fails to turn over to the secured party the collateral or proceeds of collateral, including rents, the secured party was entitled to collect.
- (6) The holder of a subordinate lien obtains the appointment of a receiver for the same collateral held by the secured party.

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

(h) Motion for Appointment of Receiver. – The court may appoint a receiver in an action described in subsection (a) of this section with 10 days' notice to the debtor, all other parties to the action, any judgment creditor who is seeking the appointment of a receiver in any other action, and other parties in interest and other persons as the court may require. The court may appoint a receiver ex parte or on shortened notice on a temporary basis, pending further order of the court, if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver and that a receiver is needed to avoid irreparable harm. In that event, the court shall set a hearing as soon as practicable and at the subsequent hearing, the burden of proof shall be as would be applicable to a motion made on notice that is not expedited.

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

(j) Receivership Not a Trust. – The order appointing the receiver does not create a trust.

(k) Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual business debtor other than on consent of the party or parties seeking the appointment of the receiver and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment against the party or parties seeking the appointment of the receiver for any damages proximately caused by such filing, including costs and reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing, that the motion was filed in bad faith.

"§ 1-507.25. Eligibility of receiver.

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

- (1) The proposed receiver is qualified to serve as receiver and as an officer of the court.
- (2) The proposed receiver is independent as to any party in interest and the underlying dispute.

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

- (1) The proposed receiver has knowledge and experience sufficient to perform the duties of receiver.
- (2) The proposed receiver has the financial ability to post the bond required by G.S. 1-507.26.
- (3) The proposed receiver or any insider of the proposed receiver has been previously disqualified from serving as receiver and the reasons for disqualification.
- (4) The proposed receiver or any insider of the proposed receiver has been convicted of a felony or other crime involving moral turpitude.
- (5) The proposed receiver or any insider of the proposed receiver has been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct.

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

- (1) The nature and extent of any relationship that the proposed receiver has to any party in interest and the property proposed as receivership property.
- (2) Whether the proposed receiver has any interest materially adverse to the interests of any party in interest.
- (3) Whether the proposed receiver has any material financial or pecuniary interest, other than receiver compensation, regardless of its source, as allowed by court order, in the outcome of the underlying dispute, including any proposed contingent or success fee compensation arrangement.
- (4) Whether the proposed receiver is a debtor, secured or unsecured creditor, lienor of, or holder of any equity interest in, any party in interest or of receivership property.
- (5) Whether the proposed receiver has participated in any action that constitutes a violation of G.S. 23-46.

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

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

"§ 1-507.26. Bond.

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

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

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

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

(b) A receiver may not be sued personally for an act or omission in administering receivership property without approval of the judge appointed to preside over the receivership pursuant to G.S. 1-507.24(b).

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

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

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

- (1) The power to take possession of, collect, control, manage, conserve, and protect receivership property, including any books and records related thereto

with or without the assistance of the sheriff of the county in which the receivership property is located as reasonably necessary.

- (2) The power to incur and pay expenses incidental to the receiver's exercise of the powers or otherwise in the performance of the receiver's duties.
- (3) The power to assert rights, claims, causes of action, or defenses that relate to receivership property.
- (4) The power to seek and obtain instruction from the court with respect to any matter relating to the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.
- (5) In the case of any item of receivership property that because of an applicable exemption is not totally receivership property, the power to take possession of, use, control, manage, or transfer such property pursuant to G.S. 1-507.45.

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

- (1) The power to assert any rights, claims, causes of action, or defenses of the debtor to the extent any rights, claims, causes of action, or defenses are receivership property, including the right to sue for and collect all debts, demands, and rents constituting receivership property.
- (2) The power to maintain in the receiver's name or in the name of the debtor any action to enforce any right, claim, cause of action, or defense.
- (3) The power to intervene in actions in which the debtor is a party for the purpose of exercising the powers under this clause or requesting transfer of venue of the action to the receivership.
- (4) The power to pursue any claim or remedy that may be asserted by a creditor of the debtor under Article 3A of Chapter 39 of the General Statutes.
- (5) The power to compel any person, including the debtor and any party in interest, by subpoena pursuant to Rule 45 of the North Carolina Rules of Civil Procedure, to give testimony or to produce and permit inspection and copying of designated books, documents, electronically stored information, electronic data, passwords, access codes, or tangible or intangible things with respect to any receivership property or any other matter that may affect the administration of the receivership.
- (6) The power to manage and operate any business constituting receivership property in the ordinary course of business, including the use, sale, lease, license, exchange, collection, and disposition of property of the business or otherwise constituting receivership property, and the incurring and payment of expenses of the business or other receivership property.
- (7) The power to, if authorized by an order of the court following notice and a hearing, compromise or settle claims involving receivership property.
- (8) The power to enter into such contracts as are necessary for the management, security, insuring, or liquidation of receivership property, and to employ, discharge and fix the compensation and conditions for such agents, contractors, and employees as are necessary to assist the receiver in managing, securing, and liquidating receivership property.
- (9) In the case of a general receiver for an entity, the power to file a bankruptcy case under the United States Code, Title 11, and to take all other action in the name of the entity without the necessity of any approval or consent of the members, managers, directors, officers, partners, trustees, or other persons that pursuant to the governance documents of the entity or applicable law would be legally required in the absence of the receiver's appointment to approve or consent to such action.

(10) The power to exercise all of the powers and authority provided by this section.

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

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

(2) To avoid conflicts of interest.

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

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

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

(d) Limitation and Modification of Receiver's Powers and Duties. – Except as otherwise provided in this Article, the court may limit or expand the powers and duties of a receiver that are otherwise provided by this Article, including, in the case of a general receiver for an individual, limiting the general receiver's powers and authority to such part of the debtor's receivership property that the court determines will, upon the general receiver's disposition, result in sufficient proceeds to pay allowed claims in full.

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

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

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

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

"§ 1-507.30. Duties of debtor.

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

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

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

- (3) To supply to the receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the receiver may be required to file.
- (4) To remain responsible for the filing of all tax returns, including those returns applicable to periods which include those in which the receivership is in effect, except as otherwise ordered by the court.

(b) Debtor Not Individual. – If the debtor is not an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the debtor immediately before the appointment of the receiver.

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

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

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

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

Nothing in this subsection shall require prior court approval of the receiver's retention of professionals; provided, however, promptly after the receiver's engagement of any professional, the receiver shall file with the court and give notice to all parties in interest of a notice of the retention and of the proposed compensation. Any party in interest may file a motion for disapproval of any retention within 14 days after the receiver's filing of the notice on the sole grounds that the proposed professional holds or represents an interest adverse to the receivership. Upon the filing of a motion for disapproval, the court shall promptly schedule a hearing and determine the issue.

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

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

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

- (1) The amount or basis of compensation to which the receiver or the receiver's professional agree, as set forth in the order appointing the receiver or the receiver's professional.
- (2) The value of the debtor's assets.
- (3) The number and amount of the debtor's creditors.
- (4) The time and labor expended, and the billing rates charged, by the receiver or the receiver's professional.

- (5) The novelty and complexity of the receivership.
- (6) The skill and time required to perform properly the duties and responsibilities of the receiver or the receiver's professionals.
- (7) The amount of the receiver's receipts and disbursements.
- (8) The amount of any distributions made to creditors on unsecured claims.
- (9) The compensation awarded to the receivers and receivers' professionals in other receiverships.

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

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

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

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

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

"§ 1-507.33. Notice.

In a general receivership, unless the court orders otherwise, the receiver shall give notice of the receivership to all creditors and other parties in interest actually known to the receiver by first-class mail within 30 days after the time of appointment or in such other manner and within such earlier or later time as the court may order. The notice of the receivership shall include the time of appointment and the names and addresses of the debtor, the receiver, and the receiver's attorney, if any.

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

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

(b) Master Service List. – In a general receivership within 30 days after the filing of the schedule described in G.S. 1-507.32, or such later time as the court may order, the general receiver shall file an initial master service list consisting of the names, mailing addresses, and, where available, e-mail addresses of the debtor, the receiver, all persons joined as parties in the receivership, all creditors and other parties in interest known by the receiver to have any kind of claim against or interest in any part of the receivership property, all persons who have filed a notice of appearance in accordance with this section, and their attorneys, if any. In a limited receivership within 30 days after the appointment of the limited receiver pursuant to G.S. 1-507.24, or such later time as the court may order, the limited receiver shall file an initial master service list consisting of the names, mailing addresses, and, where available, e-mail addresses of the debtor, the receiver, all persons joined as parties in the receivership, all creditors and other parties in interest known by the receiver to have any kind of claim against or interest in any part of the receivership property, and all persons who have filed a notice of appearance in accordance with this section, and their attorneys, if any. After the filing of the initial master

service list, the receiver shall file from time to time an updated master service list when there has been a substantial number of additions or other changes thereto or when ordered by the court.

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

(d) Persons Served and Manner of Service. – Except as otherwise provided in this Article, a motion and all other pleadings filed in the receivership subsequent to the filing of the original complaint that are required to be served shall be served as provided in Rule 5 of the North Carolina Rules of Civil Procedure, unless the court orders otherwise, on all persons on the master service list, all persons who are identified in the motion or other pleading as directly affected by the relief requested, and other persons as the court may direct.

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

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

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

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

"§ 1-507.35. Records; interim reports; status hearings.

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

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

- (1) The activities of the receiver since appointment or the last report.
- (2) Any receipts and disbursements, including payments made to professionals retained by the receiver.
- (3) Any distributions of money and property of the receivership estate.
- (4) Any fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses.
- (5) Any other information required by the court.

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

(c) Status Hearings. – From time to time, upon motion of the receiver or any party in interest, or at such time or times as the court may deem appropriate, the court shall schedule status hearings to review the status of the receivership. Upon the scheduling of a status hearing, the receiver shall give notice thereof to all persons on the most current master service list.

"§ 1-507.36. Removal of receivers.

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

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

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

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

(a) Termination of Receivership. – The court may discharge a receiver and terminate the receivership by order entered in the proceeding if the court finds that the appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership and upon approval by the court. In the case of a receivership of an individual business debtor, the court shall discharge a receiver and terminate the receivership if the court finds, after notice and hearing, that the individual did not qualify to be a debtor under this Article because the individual was not an individual business debtor on the date of the filing of the pleading seeking the appointment of the receiver. If the court finds that the appointment of the receiver was sought wrongfully or in bad faith, the court may assess against the person that sought the receiver's appointment: (i) all of the fees and expenses of the receivership, including reasonable attorneys' fees and costs and (ii) actual damages caused by the appointment, including reasonable attorneys' fees and costs.

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

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

- (1) A description of the activities of the receiver in the conduct of the receivership.
- (2) A schedule of all receivership property at the commencement of the receivership and any receivership property received during the receivership.
- (3) A list of expenditures, including all payments to professionals retained by the receiver.
- (4) A list of any unpaid expenses incurred during the receivership.
- (5) A list of all dispositions of receivership property.
- (6) A list of all distributions made or proposed to be made from the receivership for creditor claims.
- (7) If not done separately, a motion or application for approval of the payment of fees and expenses of the receiver.
- (8) Any other information required by the court.

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

(e) Effect of Discharge of Receiver. – A discharge under subsection (b) of this section removes all authority of the receiver, excuses the receiver from further performance of any duties, and cancels any lis pendens recorded by the receiver.

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

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

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

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

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

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

"§ 1-507.38A. Procedure for determining individual business debtor's exempt property.

If the debtor is an individual business debtor, the provisions of G.S. 1C-1603 for designating the debtor's exempt property shall apply, except to the extent that any of the provisions of G.S. 1C-1603 conflict with or are inconsistent with the provisions of this Article, and except that the following provisions shall instead apply:

- (1) If before the appointment of the receiver for the individual business debtor there has been no entry of an order designating the individual business debtor's exemptions under G.S. 1C-1603 for setting aside the individual business debtor's exempt property, the receiver shall serve the notice advising the individual business debtor of the individual business debtor's rights, accompanied by the form for the statement by the individual business debtor under subsection (c1) of G.S. 1C-1603, within 30 days of the receiver's appointment or such later time as the court may order. The notice shall be served on the individual business debtor as provided under G.S. 1A-1, Rule 4(j)(1), or if the individual business debtor cannot be served as provided under G.S. 1A-1, Rule 4(j)(1), the notice may be served by mailing a copy thereof to the individual business debtor at the individual business debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The receiver may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.
- (2) No later than 20 days after service of the notice of rights, or such later time as the court may order, the individual business debtor shall file with the court and serve upon the receiver the statement under subsection (c1) of G.S. 1C-1603 or a request for a hearing before the court. No later than 10 days

- after receipt of the individual business debtor's statement or request for hearing, or such later time as the court may order, the receiver shall send a copy of the individual business debtor's statement or hearing request to all persons on the most current master service list.
- (3) No later than 10 days after service of the individual business debtor's statement upon all persons on the most current master service list, or such later time as the court may order, the receiver or any party in interest may file an objection to all or any part of the individual business debtor's statement. If an objection is timely filed to the individual business debtor's statement, or if the individual business debtor had requested a hearing without filing a statement, the court shall schedule a hearing and the receiver shall send notice of the scheduled hearing to all persons on the most current master service list. At the hearing, the individual business debtor may claim the debtor's exemptions. The court shall determine the issues and enter an order designating the individual business debtor's exempt property allowed by law.
- (4) The forms used shall be the same forms provided by the Administrative Office of the Courts and used under G.S. 1C-1603, and the procedure for setting aside exempt property shall be the same as set forth in G.S. 1C-1603(c), except that (i) all references in the forms or in G.S. 1C-1603(c) to "judgment debtor" shall be to the individual business debtor and all references to "judgment creditor" shall be to the receiver, (ii) all hearings concerning the designation of the individual business debtor's exempt property shall be before, and the order designating the property allowed by law and scheduled by the individual business debtor as exempt property shall be entered by, the judge appointed to supervise the receiver and the receivership pursuant to G.S. 1-507.24(b), and not the district court judge unless the district court judge is the judge appointed to supervise the receiver and the receivership under G.S. 1-507.24(b), and (iii) all valuations of property shall be made by the judge appointed to supervise the receiver and the receivership pursuant to G.S. 1-507.24(b) and the judge, upon motion of the individual business debtor, the receiver, or any party in interest may appoint a qualified person to examine the property and report its value to the court. Compensation of that person must be advanced by the person requesting the valuation and is a claim having priority under G.S. 1-507.50(a)(2).
- (5) Any appeal from the judge's order designating the individual business debtor's property as exempt shall be in the same manner as an appeal as any other order of the court, and G.S. 1C-1603(e)(12) shall not apply.
- (6) Any designation of the individual business debtor's exemption before the appointment of the receiver for the individual business debtor shall remain enforceable in accordance with its terms, but may be modified pursuant to G.S. 1C-1603(g) upon the motion of the receiver or any other person who did not receive notice or participate in the original exemption proceeding, or upon motion of the individual business debtor, the receiver or any party in interest upon a change in circumstances.
- (7) The individual business debtor may within 60 days after acquiring property subsequent to the designation of the individual business debtor's exemption move to amend the designation of the individual business debtor's exemption to assert an exemption applicable to the after acquired property.
- (8) In the case of a limited receivership, the provisions of this section shall only apply if the individual business debtor claims or has the right to claim an exemption in all or any part of the receivership property.

"§ 1-507.39. Turnover of receivership property.

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

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

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

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

"§ 1-507.40. Ancillary receiverships.

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

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

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

"§ 1-507.41. Stays.

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

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

(c) Automatic Stay. – Except as otherwise set forth in subsection (f) of this section or ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of an act, action, or proceeding: (i) to obtain possession of receivership property, or to interfere with or exercise control over receivership property, or enforce a judgment against receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property and (ii) any act to create or perfect

any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

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

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

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

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

- (1) The commencement or continuation of a criminal proceeding against the debtor.
- (2) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power.
- (3) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the debtor.
- (4) The establishment by a governmental unit of any tax liability and any appeal thereof.
- (5) The commencement or continuation of an action or proceeding to establish paternity, to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court.
- (6) The exercise of a right of setoff.
- (7) Any act to maintain or continue the perfection of a lien on, or otherwise preserve or protect rights in, receivership property, but only to the extent that the act was necessary to continue the perfection of the lien or to preserve or protect the lien or other rights as they existed as of the time of the appointment. If the act would require seizure of receivership property or commencement of an action prohibited by a stay, the continued perfection shall instead be accomplished by filing a notice in the court before which the receivership is pending and by serving the notice upon the receiver and receiver's attorney, if any, within the time fixed by law for seizure or commencement of the action.
- (8) The commencement of a bankruptcy case under federal bankruptcy laws.
- (9) Any other exception as provided in United States Code, Title 11, § 326(b), as to the automatic stay in federal bankruptcy cases in effect from time to time.

(g) Action Voidable. – The court may void an act that violates a stay under this section.

(h) Enforcement. – If a person knowingly violates a stay under this section, the court may award actual damages caused by the violation, reasonable attorneys' fees, and costs, and may sanction the violation as civil contempt.

"§ 1-507.42. Utility service.

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

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

"§ 1-507.43. Receivership financing.

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

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

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

"§ 1-507.44. Executory contracts.

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

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

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

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

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

(f) Rejection of Executory Contract for Sale of Real Property. – If a receiver rejects an executory contract under subsection (a) of this section for the sale of receivership property that is real property in possession of the purchaser or a real property timeshare interest, the purchaser

may (i) treat the rejection as a termination of the executory contract, in which case the purchaser has a lien on the real property for the recovery of any part of the purchase price the purchaser paid or (ii) retain the purchaser's right to possession under the executory contract, in which case the purchaser shall continue to perform all obligations arising under the executory contract and may offset any damages caused by nonperformance of an obligation of the debtor after the date of the rejection; however, the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

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

- (1) The tenant occupies the leased premises as the tenant's primary residence, unless (i) the tenant is the child, spouse, partner, or parent of the debtor; (ii) the tenant does not have a written lease; (iii) the lease is terminable at will; (iv) the rent paid by the tenant is substantially less than the fair market rental value for the property, provided the rent has not been reduced or subsidized due to a federal or State subsidy; or (v) the receiver sells the property to a purchaser who will occupy the premises as a primary residence, in which case the tenant shall be required to vacate the property within 90 days of the sale of the property.
- (2) The receiver was appointed at the request of a person other than the mortgagee under a mortgage or the beneficiary of a deed of trust encumbering the real property.
- (3) The receiver was appointed at the request of a mortgagee under a mortgage or a beneficiary of a deed of trust encumbering the real property and (i) the lease is superior in priority to the lien of the mortgage or the deed of trust; (ii) the tenant has an enforceable agreement with the mortgagee or beneficiary or holder of a senior lien on the real property under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease; (iii) the mortgagee or beneficiary has consented to the lease, either in a signed record or by its failure to object that the lease violated the mortgage or deed of trust; or (iv) the terms of the lease were commercially reasonable at the time the lease was agreed to, and the tenant did not know or have reason to know that the lease violated the mortgage or deed of trust.

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

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

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

(c) Sale of Receivership Property. – The court may order that the receiver's sale of receivership property is free and clear of all liens and all rights of redemption and claims of exemption of the debtor, regardless of whether the sale will generate proceeds sufficient to satisfy fully all liens and claims of exemption on the receivership property, unless all of the following criteria are met:

- (1) A secured party's lien or the debtor's claim of exemption in the receivership property to be sold will not be paid in full from the proceeds of the proposed sale and the secured party or the debtor files a timely objection to the receiver's motion to sell the receivership property.
- (2) A timely objection is filed and the court, after notice and hearing, determines that the amount likely to be received by the objecting person from the proceeds

of the receiver's sale is less than the amount the objecting person would likely receive within a reasonable time in the absence of the receiver's sale.

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

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

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

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

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

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

"§ 1-507.46. Abandonment of property.

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

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

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

"§ 1-507.48. Claims process.

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

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

(c) Alternative Procedures. – The court may authorize proofs of claim to be filed with the receiver rather than the court. The court may authorize the receiver to treat claims as allowed

claims based on the amounts established in the books and records of the debtor or the schedule of claims filed pursuant to G.S. 1-507.32, without the necessity of the filing of proofs of claim.

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

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

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

"§ 1-507.50. Priority of claims.

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

- (1) Subject to subsection (b) of this section, claims secured by liens on receivership property, which liens are valid and perfected before the time of appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law.
- (2) Actual, necessary costs and expenses incurred by the receiver during the receivership, other than those expenses allowable elsewhere in this subsection, including allowed fees and expenses of the receiver and professionals employed by the receiver under G.S. 1-507.31, and any compensation advanced for the valuation of an individual debtor's property pursuant to G.S. 1-507.38A(d).
- (3) Claims for domestic support obligations within the meaning of United States Code, Title 11, § 101, that are owing as of the time of appointment.
- (4) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within 180 days before the time of appointment or the cessation of the debtor's business, whichever occurs first, but only to the extent of the dollar amount in effect from time to time in United States Code, Title 11, §§ 507(a)(4) and (5).
- (5) Allowed unsecured claims, to the extent of the dollar amount in effect from time to time in United States Code, Title 11, § 507(a)(7), for each individual, arising from the deposit with the debtor, before the time of appointment of the receiver, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individual, that were not delivered or provided.
- (6) Unsecured claims of governmental units for taxes that accrued before the time of appointment.
- (7) All other unsecured claims, in each case calculated as of the time of appointment, including the deficiency balance owing to a holder of a secured claim to the extent not otherwise satisfied under subdivision (1) of subsection (a) of this section, but only if no interest or costs and expenses of collection, including attorneys' fees and expenses, that accrue or are incurred for any period after the time of appointment is included in the calculation of such deficiency balance.
- (8) Interest pursuant to G.S. 1-507.51.

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

(c) Payments to Debtor. – If all of the amounts payable under subsections (a) and (b) of this section have been paid in full, including interest that may be payable under G.S. 1-507.51, any remaining receivership property shall be returned to the debtor.

(d) Distribution of Proceeds of Property Owned as Tenants by the Entireties. – In the determination of the unsecured claims on account of which a distribution of proceeds from the disposition of receivership property that is owned by the debtor and the debtor's spouse as tenants by the entireties should be made pursuant to subsections (a)(6) and (7) of this section, such proceeds may only be distributed to holders of unsecured claims owed jointly by the debtor and the debtor's spouse.

"§ 1-507.51. Interest on unsecured claims.

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

"§ 1-507.52. Distributions.

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

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

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

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

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

- (1) Make the secured party a mortgagee in possession of real property.
- (2) Impose any duty on the secured party under G.S. 25-9-207.
- (3) Make the secured party an agent or fiduciary of the debtor.
- (4) Constitute an election of remedies that precludes a later action to enforce the secured obligation.
- (5) Make the secured obligation unenforceable.
- (6) Limit any right available to the secured party with respect to the secured obligation."

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

SECTION 2.(b) Part 2 of Article 38 of Chapter 1 of the General Statutes is repealed.

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

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

...
(b) The following actions shall be designated as mandatory complex business cases:

...
(4) An action in which a general receiver is sought to be appointed pursuant to G.S. 1-507.24 for a debtor that is not an individual business debtor as defined in G.S. 1-507.20 and has assets having a fair market value of not less than five million dollars (\$5,000,000), if the party making the designation is either (i) the debtor or (ii) one or more creditors or creditors' duly authorized representatives that assert a claim or claims against the debtor exceeding, in the aggregate, twenty-five thousand dollars (\$25,000) that in each case is not contingent as to liability and is not the subject of a bona fide dispute as to liability or amount. Any creditor or creditor's duly authorized representative that is not a party to the action may join in the notice of designation with the same effect as if such joining creditor or creditor's representative were a party.

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

...
(5) In the case of an action described in subdivision (4) of subsection (b) of this section, by the debtor, any person with a lien on receivership property, or any creditor of the debtor.

...."

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

"§ 57D-3-02. Cessation of membership.

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

- (1) The person does any of the following:
 - a. Becomes a debtor in bankruptcy.
 - b. Executes an assignment for the benefit of ~~creditors, including the execution of a deed of trust or deed of assignment for the benefit of creditors causing all debts of the person to become due and payable~~ creditors under G.S. 23-1.any applicable law.
 - c. ~~Petitions for, consents to, or acquiesces in the appointment of~~ Has a general receiver appointed for the person pursuant to G.S. 1-507.24 or has a trustee, receiver, or liquidator of appointed for the person or for all or substantially all of the person's property.

...."

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

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

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

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

"§ 7A-249. Corporate receiverships.

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

SECTION 3.(e) G.S. 46A-28 reads as rewritten:

"§ 46A-28. Court's authority to make orders before final determination of proceeding; notice and hearing.

(a) Before final determination of a proceeding to partition real property, on application of any of the parties, the court may make any orders that it finds to be in the best interest of the parties, including, but not limited to, orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, the appointment of ~~receivers pursuant to G.S. 1-502(6)~~, a limited receiver for the real property pursuant to Article 38A of Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting, surveying, appraising, or selling the property.

...."

SECTION 4. This act becomes effective January 1, 2021, and applies to receiverships commenced on or after that date.

In the General Assembly read three times and ratified this the 25th day of June, 2020.

s/ Philip E. Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 5:30 p.m. this 1st day of July, 2020