

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

D

SENATE BILL 364
PROPOSED COMMITTEE SUBSTITUTE S364-PCS35260-TG-15

Short Title: NC Receivership Act Revisions.

(Public)

Sponsors:

Referred to:

March 27, 2019

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

7 The General Assembly of North Carolina enacts:

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

10 "Article 38A.

11 "North Carolina Receivership Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



* S 3 6 4 - P C S 3 5 2 6 0 - T G - 1 5 *

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

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

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

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

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

7 (b) Exclusions. – This Article does not apply to any receivership in which the receiver is
8 a State agency or in which the receiver is appointed, controlled, or regulated by a State agency
9 unless otherwise provided by law. No trust other than a business trust and no estate of a deceased
10 natural person, missing person, or absentee in military service may be a debtor in a receivership
11 under this Article.

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

15 **"§ 1-507.22. Powers of the court.**

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

22 **"§ 1-507.23. Types of receiverships.**

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

33 **"§ 1-507.24. Appointment of receivers; receivership not a trust.**

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

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

43 (b) Appointment by Judge. – Either a judge of the Superior Court Division or the District
44 Court Division may appoint a receiver for a debtor that is an individual. Only a judge of the
45 Superior Court Division may appoint a receiver for all other debtors. Any resident judge of the
46 Superior Court Division or any nonresident judge of the Superior Court Division assigned to a
47 district who appoints a receiver pursuant to the authority granted under this Article while holding
48 court in that district shall retain jurisdiction and supervision of the receiver and the receivership
49 following the judge's rotation out of the district.

50 (c) Appointment Before Judgment. – A limited receiver may be appointed before
51 judgment to protect a party that demonstrates an apparent right, title, or interest in property that

1 is the subject of the action, if the property or its revenue-producing potential is being subjected
2 to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the
3 subject of a voidable transaction.

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

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

12 (1) The person is insolvent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

49 (i) Description of Receivership Property. – The order appointing the receiver or
50 subsequent order shall describe the receivership property with particularity appropriate to the

1 circumstances. If the order does not so describe the receivership property, until further order of
2 the court, the receiver shall have control over all of the debtor's nonexempt property.

3 (j) Receivership Not a Trust. – The order appointing the receiver does not create a trust.
4 **§ 1-507.25. Eligibility of receiver.**

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

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

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

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

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

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

20 (3) The proposed receiver or any insider of the proposed receiver has been
21 previously disqualified from serving as receiver and the reasons for
22 disqualification.

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

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

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

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

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

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

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

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

49 (d) Information Provided to Court. – The proposed receiver, the parties, and prospective
50 parties in interest may provide any information relevant to the qualifications, independence, and
51 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 court that appointed the receiver.

(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.

(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

1 any receivership property or any other matter that may affect the
2 administration of the receivership.

3 (6) The power to operate any business constituting receivership property in the
4 ordinary course of business, including the use, sale, lease, license, exchange,
5 collection and disposition of property of the business or otherwise constituting
6 receivership property, and the incurring and payment of expenses of the
7 business or other receivership property.

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

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

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

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

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

22 (2) To avoid conflicts of interest.

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

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

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

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

31 **§ 1-507.29. Receiver as lien creditor; real estate recording; subsequent sales of real estate.**

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

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

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

50 **§ 1-507.30. Duties of debtor.**

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

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

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

12 (3) To supply to the receiver information as requested relating to the
13 administration of the receivership and the receivership property, including
14 information necessary to complete any reports or other documents that the
15 receiver may be required to file.

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

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

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

26 **"§ 1-507.31. Employment and compensation of professionals.**

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

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

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

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

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

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

- 4 (1) The amount or basis of compensation to which the receiver or the receiver's
5 professional agree, as set forth in the order appointing the receiver or the
6 receiver's professional.
- 7 (2) The value of the debtor's assets.
- 8 (3) The number and amount of the debtor's creditors.
- 9 (4) The time and labor expended, and the billing rates charged, by the receiver or
10 the receiver's professional.
- 11 (5) The novelty and complexity of the receivership.
- 12 (6) The skill and time required to perform properly the duties and responsibilities
13 of the receiver or the receiver's professionals.
- 14 (7) The amount of the receiver's receipts and disbursements.
- 15 (8) The amount of any distributions made to creditors on unsecured claims.
- 16 (9) The compensation awarded to the receivers and receivers' professionals in
17 other receiverships.

18 **§ 1-507.32. Schedules of property and claims.**

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

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

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

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

34 **§ 1-507.33. Notice.**

35 In a general receivership, unless the court orders otherwise, the receiver shall give notice of
36 the receivership to all creditors and other parties in interest actually known to the receiver by
37 mail or other means of transmission within 30 days after the time of appointment. The notice of
38 the receivership shall include the time of appointment and the names and addresses of the debtor,
39 the receiver, and the receiver's attorney, if any.

40 **§ 1-507.34. Notices; motions; orders.**

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

47 (b) Master Service List. – From time to time, the receiver shall file an updated master
48 service list consisting of the names, mailing addresses, and, where available, e-mail addresses of
49 the debtor, the receiver, all persons joined as parties in the receivership, all persons known by the
50 receiver to have asserted a claim or an interest of any kind in any part of the receivership property.

1 all persons who have filed a notice of appearance in accordance with this section, and their
2 attorneys, if any.

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

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

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

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

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

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

26 **"§ 1-507.35. Records; interim reports.**

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

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

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

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

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

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

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

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

45 **"§ 1-507.36. Removal of receivers.**

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

49 (b) Successor Receiver. – Upon removal of the receiver, if the court determines that
50 further administration of the receivership is required, the court shall appoint a successor receiver.

1 Upon executing and filing a bond under G.S. 1-507.26, the successor receiver shall immediately
2 succeed the removed receiver and shall assume the duties of receiver.

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

7 **"§ 1-507.37. Termination of receiverships; final report.**

8 (a) Termination of Receivership. – The court may discharge a receiver and terminate the
9 receivership by order entered in the proceeding if the court finds that the appointment of the
10 receiver was improvident or that the circumstances no longer warrant continuation of the
11 receivership and upon approval by the court. If the court finds that the appointment of the receiver
12 was sought wrongfully or in bad faith, the court may assess against the person that sought the
13 receiver's appointment: (i) all of the fees and expenses of the receivership, including reasonable
14 attorneys' fees and costs and (ii) actual damages caused by the appointment, including reasonable
15 attorneys' fees and costs.

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

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

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

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

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

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

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

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

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

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

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

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

41 **"§ 1-507.38. Actions by or against receiver; actions relating to receivership property.**

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

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

48 (c) Joinder. – Subject to G.S. 1-507.41, a limited or general receiver may be joined or
49 substituted as a party in any action or other proceeding that relates to receivership property that
50 was pending at the time of appointment. Subject to G.S. 1-507.41, a general receiver may be
51 joined or substituted as a party in any action or other proceeding that was pending at the time of

1 appointment in which the debtor is a party. Actions or proceedings pending at the time of
2 appointment may be transferred to the court in which the receivership is pending upon the
3 receiver's or any party's motion for change of venue made in the court in which the action or
4 proceeding is pending, provided that such motion is filed no later than 90 days after the time of
5 appointment.

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

12 **"§ 1-507.39. Turnover of receivership property.**

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

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

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

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

32 **"§ 1-507.40. Ancillary receiverships.**

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

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

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

49 **"§ 1-507.41. Stays.**

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

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

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

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

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

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

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

- 30 **(1)** The commencement or continuation of a criminal proceeding against the
31 debtor.
- 32 **(2)** The commencement or continuation of an action or proceeding by a
33 governmental unit to enforce its police or regulatory power.
- 34 **(3)** The enforcement of a judgment, other than a money judgment, obtained in an
35 action or proceeding by a governmental unit to enforce its police or regulatory
36 power, or with respect to any licensure of the debtor.
- 37 **(4)** The establishment by a governmental unit of any tax liability and any appeal
38 thereof.
- 39 **(5)** The commencement or continuation of an action or proceeding to establish
40 paternity, to establish or modify an order for alimony, maintenance, or
41 support, or to collect alimony, maintenance, or support under any order of a
42 court.
- 43 **(6)** The exercise of a right of setoff.
- 44 **(7)** Any act to maintain or continue the perfection of a lien on, or otherwise
45 preserve or protect rights in, receivership property, but only to the extent that
46 the act was necessary to continue the perfection of the lien or to preserve or
47 protect the lien or other rights as they existed as of the time of the appointment.
48 If the act would require seizure of receivership property or commencement of
49 an action prohibited by a stay, the continued perfection shall instead be
50 accomplished by filing a notice in the court before which the receivership is

1 pending and by serving the notice upon the receiver and receiver's attorney, if
2 any, within the time fixed by law for seizure or commencement of the action.

3 (8) The commencement of a bankruptcy case under federal bankruptcy laws.

4 (9) Any other exception as provided in United States Code, Title 11, § 326(b), as
5 to the automatic stay in federal bankruptcy cases in effect from time to time,
6 but only to the extent not inconsistent with any provision in this section.

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

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

11 **"§ 1-507.42. Utility service.**

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

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

25 **"§ 1-507.43. Receivership financing.**

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

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

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

34 **"§ 1-507.44. Executory contracts.**

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

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

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

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

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

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

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

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

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

35 (3) The receiver was appointed at the request of a mortgagee under a mortgage or
36 a beneficiary of a deed of trust encumbering the real property and (i) the lease
37 is superior in priority to the lien of the mortgage or the deed of trust; (ii) the
38 tenant has an enforceable agreement with the mortgagee or beneficiary or
39 holder of a senior lien on the real property under which the tenant's occupancy
40 will not be disturbed as long as the tenant performs its obligations under the
41 lease; (iii) the mortgagee or beneficiary has consented to the lease, either in a
42 signed record or by its failure to object that the lease violated the mortgage or
43 deed of trust; or (iv) the terms of the lease were commercially reasonable at
44 the time the lease was agreed to, and the tenant did not know or have reason
45 to know that the lease violated the mortgage or deed of trust.

46 **"§ 1-507.45. Use or transfer of receivership property not in ordinary course.**

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

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

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

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

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

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

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

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

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

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

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

42 **"§ 1-507.46. Abandonment of property.**

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

46 **"§ 1-507.47. Liens against after-acquired property.**

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

50 **"§ 1-507.48. Claims process.**

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

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

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

13 **"§ 1-507.49. Objection to and allowance of claims.**

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

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

24 **"§ 1-507.50. Priority of claims.**

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

- 28 (1) Subject to subsection (b) of this section, claims secured by liens on
29 receivership property, which liens are valid and perfected before the time of
30 appointment, to the extent of the proceeds from the disposition of the collateral
31 in accordance with their respective priorities under otherwise applicable law.
- 32 (2) Actual, necessary costs and expenses incurred by the receiver during the
33 receivership, other than those expenses allowable elsewhere in this subsection,
34 including allowed fees and expenses of the receiver and professionals
35 employed by the receiver under G.S. 1-507.31.
- 36 (3) Claims for domestic support obligations within the meaning of United States
37 Code, Title 11, § 101, that are owing as of the time of appointment.
- 38 (4) Claims for wages, salaries, or commissions, including vacation, severance,
39 and sick leave pay, or contributions to an employee benefit plan, earned by
40 the claimant within 180 days before the time of appointment or the cessation
41 of the debtor's business, whichever occurs first, but only to the extent of the
42 dollar amount in effect from time to time in United States Code, Title 11, §§
43 507(a)(4) and (5).
- 44 (5) Allowed unsecured claims, to the extent of the dollar amount in effect from
45 time to time in United States Code, Title 11, § 507(a)(7), for each individual,
46 arising from the deposit with the debtor, before the time of appointment of the
47 receiver, of money in connection with the purchase, lease, or rental of
48 property, or the purchase of services, for the personal, family, or household
49 use of such individual, that were not delivered or provided.
- 50 (6) Unsecured claims of governmental units for taxes that accrued before the time
51 of appointment.

1 (7) All other unsecured claims, in each case calculated as of the time of
2 appointment, including the deficiency balance owing to a holder of an secured
3 claim to the extent not otherwise satisfied under subdivision (1) of subsection
4 (a) of this section, but only if no interest or costs and expenses of collection,
5 including attorneys' fees and expenses, that accrue or are incurred for any
6 period after the time of appointment is included in the calculation of such
7 deficiency balance.

8 (8) Interest pursuant to G.S. 1-507.51.

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

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

21 **"§ 1-507.51. Interest on unsecured claims.**

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

28 **"§ 1-507.52. Distributions.**

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

32 (b) Notice. – The receiver shall give notice of the filing of the distribution schedule to all
33 persons on the master mailing list or that have filed proofs of claim. If there is no objection within
34 30 days after the notice, the court may enter an order authorizing the receiver to make the
35 distributions described in the distribution schedule without the necessity of a hearing.

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

39 **"§ 1-507.53. Effect of enforcement by secured party.**

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

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

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

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

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

48 (5) Make the secured obligation unenforceable.

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

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

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

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

3 "**§ 7A-45.4. Designation of complex business cases.**

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

6 ...

7 (10) An action in which a general receiver is sought to be appointed pursuant to
8 G.S. 1-507.24 for a debtor that is not an individual and has assets having a fair
9 market value of not less than one million dollars (\$1,000,000).

10 ...

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

12 ...

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

16 "

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

18 "**§ 57D-3-02. Cessation of membership.**

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

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

21 a. Becomes a debtor in bankruptcy.

22 b. Executes an assignment for the benefit of ~~creditors, including the~~
23 ~~execution of a deed of trust or deed of assignment for the benefit of~~
24 ~~creditors causing all debts of the person to become due and payable~~
25 ~~creditors under G.S. 23-1.any applicable law.~~

26 c. ~~Petitions for, consents to, or acquiesces in the appointment of~~ Has a
27 general receiver appointed for the person pursuant to G.S. 1-507.24 or
28 has a trustee, receiver, or liquidator ~~of~~ appointed for the person or for
29 all or substantially all of the person's property.

30 "

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

32 "**§ 23-38. Effect of order of discharge.**

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

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

47 "**§ 7A-249. Corporate receiverships.**

48 The superior court division is the proper division, without regard to the amount in
49 controversy, for ~~actions for corporate receiverships under a receivership proceeding of a debtor~~
50 that is not an individual under Article 38A of Chapter 1, Article 38, 1 of the General Statutes,
51 and proceedings under Chapters 55 (North Carolina Business Corporation Act) and 55A

1 (Nonprofit Corporation ~~Act~~ Act), and 57D (North Carolina Limited Liability Company Act) of
2 the General Statutes."

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