
SENATE BILL 5058

State of Washington

62nd Legislature

2011 Regular Session

By Senators Pflug, Kline, and Harper; by request of Washington State Bar Association

Read first time 01/12/11. Referred to Committee on Judiciary.

1 AN ACT Relating to receivership; and amending RCW 7.60.025,
2 7.60.055, 7.60.090, 7.60.110, 7.60.130, 7.60.190, 7.60.200, 7.60.230,
3 and 7.60.260.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 7.60.025 and 2010 c 212 s 4 are each amended to read
6 as follows:

7 (1) A receiver may be appointed by the superior court of this state
8 in the following instances, but except in any case in which a
9 receiver's appointment is expressly required by statute, or any case in
10 which a receiver's appointment is sought by a state agent whose
11 authority to seek the appointment of a receiver is expressly conferred
12 by statute, or any case in which a receiver's appointment with respect
13 to real property is sought under (b)(ii) of this subsection, a receiver
14 shall be appointed only if the court additionally determines that the
15 appointment of a receiver is reasonably necessary and that other
16 available remedies either are not available or are inadequate:

17 (a) On application of any party, when the party is determined to
18 have a probable right to or interest in property that is a subject of
19 the action and in the possession of an adverse party, or when the

1 property or its revenue-producing potential is in danger of being lost
2 or materially injured or impaired. A receiver may be appointed under
3 this subsection (1)(a) whether or not the application for appointment
4 of a receiver is combined with, or is ancillary to, an action seeking
5 a money judgment or other relief;

6 (b) Provisionally, (~~during the pendency~~) after commencement of
7 any judicial action or nonjudicial proceeding to foreclose upon any
8 lien against or for forfeiture of any interest in real or personal
9 property, (~~or after notice of a trustee's sale has been given under~~
10 ~~RCW 61.24.040, or after notice of forfeiture has been given under RCW~~
11 ~~61.30.040,~~) on application of any person, when the interest in the
12 property that is the subject of (~~foreclosure or forfeiture~~) such an
13 action or proceeding of the person seeking the receiver's appointment
14 is determined to be probable and either:

15 (i) The property or its revenue-producing potential is in danger of
16 being lost or materially injured or impaired; or

17 (ii) The appointment of a receiver with respect to the real or
18 personal property that is the subject of the action(~~, the notice of~~
19 ~~trustee's sale or notice of forfeiture~~) or proceeding is provided for
20 by agreement or is reasonably necessary to effectuate or enforce an
21 assignment of rents or other revenues from the property. For purposes
22 of this subsection (1)(b), a judicial action is commenced as provided
23 in superior court civil rule 3(a), a nonjudicial proceeding is
24 commenced under chapter 61.24 RCW upon the service of notice of default
25 described in RCW 61.24.030(8), and a proceeding for forfeiture is
26 commenced under chapter 61.30 RCW upon the recording of the notice of
27 intent to forfeit described in RCW 61.30.060;

28 (c) After judgment, in order to give effect to the judgment;

29 (d) To dispose of property according to provisions of a judgment
30 dealing with its disposition;

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

34 (f) If and to the extent that property is subject to execution to
35 satisfy a judgment, to preserve the property during the pendency of an
36 appeal, or when an execution has been returned unsatisfied, or when an
37 order requiring a judgment debtor to appear for proceedings

1 supplemental to judgment has been issued and the judgment debtor fails
2 to submit to examination as ordered;

3 (g) Upon an attachment of real or personal property when the
4 property attached is of a perishable nature or is otherwise in danger
5 of waste, impairment, or destruction, or where the abandoned property's
6 owner has absconded with, secreted, or abandoned the property, and it
7 is necessary to collect, conserve, manage, control, or protect it, or
8 to dispose of it promptly, or when the court determines that the nature
9 of the property or the exigency of the case otherwise provides cause
10 for the appointment of a receiver;

11 (h) In an action by a transferor of real or personal property to
12 avoid or rescind the transfer on the basis of fraud, or in an action to
13 subject property or a fund to the payment of a debt;

14 (i) In an action against any person who is not an individual if the
15 object of the action is the dissolution of that person, or if that
16 person has been dissolved, or if that person is insolvent or is not
17 generally paying the person's debts as those debts become due unless
18 they are the subject of bona fide dispute, or if that person is in
19 imminent danger of insolvency;

20 (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which
21 a general assignment for the benefit of creditors has been made;

22 (k) In quo warranto proceedings under chapter 7.56 RCW;

23 (l) As provided under RCW 11.64.022;

24 (m) In an action by the department of licensing under RCW
25 18.35.220(3) with respect to persons engaged in the business of
26 dispensing of hearing aids, RCW 18.85.430 in the case of persons
27 engaged in the business of a real estate broker, associate real estate
28 broker, or real estate salesperson, or RCW 19.105.470 with respect to
29 persons engaged in the business of camping resorts;

30 (n) In an action under RCW 18.44.470 or 18.44.490 in the case of
31 persons engaged in the business of escrow agents;

32 (o) Upon a petition with respect to a nursing home in accordance
33 with and subject to receivership provisions under chapter 18.51 RCW;

34 (p) Under RCW 19.40.071(3), in connection with a proceeding for
35 relief with respect to a transfer fraudulent as to a creditor or
36 creditors;

37 (q) Under RCW 19.100.210(1), in an action by the attorney general

1 or director of financial institutions to restrain any actual or
2 threatened violation of the franchise investment protection act;

3 (r) In an action by the attorney general or by a prosecuting
4 attorney under RCW 19.110.160 with respect to a seller of business
5 opportunities;

6 (s) In an action by the director of financial institutions under
7 RCW 21.20.390 in cases involving actual or threatened violations of the
8 securities act of Washington or under RCW 21.30.120 in cases involving
9 actual or threatened violations of chapter 21.30 RCW with respect to
10 certain businesses and transactions involving commodities;

11 (t) In an action for or relating to dissolution of a business
12 corporation under RCW 23B.14.065, 23B.14.300, 23B.14.310, or
13 23B.14.320, for dissolution of a nonprofit corporation under RCW
14 24.03.271, for dissolution of a mutual corporation under RCW 24.06.305,
15 or in any other action for the dissolution or winding up of any other
16 entity provided for by Title 23, 23B, 24, or 25 RCW;

17 (u) In any action in which the dissolution of any public or private
18 entity is sought, in any action involving any dispute with respect to
19 the ownership or governance of such an entity, or upon the application
20 of a person having an interest in such an entity when the appointment
21 is reasonably necessary to protect the property of the entity or its
22 business or other interests;

23 (v) Under RCW 25.05.215, in aid of a charging order with respect to
24 a partner's interest in a partnership;

25 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
26 in the case of a bank or trust company or, under and subject to RCW
27 32.24.070 through 32.24.090, in the case of a mutual savings bank;

28 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
29 31.12.724, in the case of credit unions;

30 (y) Upon the application of the director of financial institutions
31 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
32 to agricultural lenders, under RCW 31.40.120 in actions to enforce
33 chapter 31.40 RCW applicable to entities engaged in federally
34 guaranteed small business loans, under RCW 31.45.160 in actions to
35 enforce chapter 31.45 RCW applicable to persons licensed as check
36 cashers or check sellers, or under RCW 19.230.230 in actions to enforce
37 chapter 19.230 RCW applicable to persons licensed under the uniform
38 money services act;

1 (z) Under RCW 35.82.090 or 35.82.180, with respect to a housing
2 project;

3 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
4 rights under any revenue bonds issued for the purpose of financing
5 industrial development facilities or bonds of the Washington state
6 housing finance commission, or any financing document securing any such
7 bonds;

8 (bb) Under and subject to RCW 43.70.195, in an action by the
9 secretary of health or by a local health officer with respect to a
10 public water system;

11 (cc) As contemplated by RCW 61.24.030, with respect to real
12 property that is the subject of nonjudicial foreclosure proceedings
13 under chapter 61.24 RCW;

14 (dd) As contemplated by RCW 61.30.030(3), with respect to real
15 property that is the subject of judicial or nonjudicial forfeiture
16 proceedings under chapter 61.30 RCW;

17 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien
18 for common expenses against a dwelling unit subject to the horizontal
19 property regimes act, chapter 64.32 RCW;

20 (ff) Under RCW 64.34.364(10), in an action by a unit owners'
21 association to foreclose a lien for nonpayment of delinquent
22 assessments against condominium units;

23 (gg) Upon application of the attorney general under RCW
24 64.36.220(3), in aid of any writ or order restraining or enjoining
25 violations of chapter 64.36 RCW applicable to timeshares;

26 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment
27 or performance of municipal bonds issued with respect to facilities
28 used to abate, control, or prevent pollution;

29 (ii) Upon the application of the department of social and health
30 services under RCW 74.42.580, in cases involving nursing homes;

31 (jj) Upon the application of the utilities and transportation
32 commission under RCW 80.28.040, with respect to a water company that
33 has failed to comply with an order of such commission within the time
34 deadline specified therein;

35 (kk) Under RCW 87.56.065, in connection with the dissolution of an
36 irrigation district;

37 (ll) Upon application of the attorney general or the department of
38 licensing, in any proceeding that either of them are authorized by

1 statute to bring to enforce Title 18 or 19 RCW; the securities act of
2 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
3 21.30 RCW; the land development act, chapter 58.19 RCW; or under
4 chapter 64.36 RCW relating to the regulation of timeshares;

5 (mm) Upon application of the director of financial institutions in
6 any proceeding that the director of financial institutions is
7 authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or

8 (nn) In such other cases as may be provided for by law, or when, in
9 the discretion of the court, it may be necessary to secure ample
10 justice to the parties.

11 (2) The superior courts of this state shall appoint as receiver of
12 property located in this state a person who has been appointed by a
13 federal or state court located elsewhere as receiver with respect to
14 the property specifically or with respect to the owner's property
15 generally, upon the application of the person or of any party to that
16 foreign proceeding, and following the appointment shall give effect to
17 orders, judgments, and decrees of the foreign court affecting the
18 property in this state held by the receiver, unless the court
19 determines that to do so would be manifestly unjust or inequitable.
20 The venue of such a proceeding may be any county in which the person
21 resides or maintains any office, or any county in which any property
22 over which the receiver is to be appointed is located at the time the
23 proceeding is commenced.

24 (3) At least seven days' notice of any application for the
25 appointment of a receiver shall be given to the owner of property to be
26 subject thereto and to all other parties in the action, and to other
27 parties in interest as the court may require. If any execution by a
28 judgment creditor under Title 6 RCW or any application by a judgment
29 creditor for the appointment of a receiver, with respect to property
30 over which the receiver's appointment is sought, is pending in any
31 other action at the time the application is made, then notice of the
32 application for the receiver's appointment also shall be given to the
33 judgment creditor in the other action. The court may shorten or expand
34 the period for notice of an application for the appointment of a
35 receiver upon good cause shown.

36 (4) The order appointing a receiver in all cases shall reasonably
37 describe the property over which the receiver is to take charge, by
38 category, individual items, or both if the receiver is to take charge

1 of less than all of the owner's property. If the order appointing a
2 receiver does not expressly limit the receiver's authority to
3 designated property or categories of property of the owner, the
4 receiver is a general receiver with the authority to take charge over
5 all of the owner's property, wherever located.

6 (5) The court may condition the appointment of a receiver upon the
7 giving of security by the person seeking the receiver's appointment, in
8 such amount as the court may specify, for the payment of costs and
9 damages incurred or suffered by any person should it later be
10 determined that the appointment of the receiver was wrongfully
11 obtained.

12 **Sec. 2.** RCW 7.60.055 and 2004 c 165 s 7 are each amended to read
13 as follows:

14 (1) Except as otherwise provided for by this chapter, the court in
15 all cases has exclusive authority over the receiver, and the exclusive
16 possession and right of control with respect to all real property and
17 all tangible and intangible personal property with respect to which the
18 receiver is appointed, wherever located, and the exclusive jurisdiction
19 to determine all controversies relating to the collection,
20 preservation, application, and distribution of all the property, and
21 all claims against the receiver arising out of the exercise of the
22 receiver's powers or the performance of the receiver's duties.
23 However, the court does not have exclusive jurisdiction over actions in
24 which a state agency is a party and in which a statute expressly vests
25 jurisdiction or venue elsewhere.

26 (2) For good cause shown, the court has the power to shorten or
27 expand the time frames specified in this chapter.

28 **Sec. 3.** RCW 7.60.090 and 2004 c 165 s 11 are each amended to read
29 as follows:

30 (1) In the event of a general assignment of property for the
31 benefit of creditors under chapter 7.08 RCW, the assignment shall have
32 annexed as schedule (~~(A)~~) A a true list of all of the person's known
33 creditors, their mailing addresses, the amount and nature of their
34 claims, and whether their claims are disputed; and as schedule B a true
35 list of all property of the estate, including the estimated liquidation

1 value and location of the property and, if real property, a legal
2 description thereof, as of the date of the assignment.

3 (2) In all other cases, within (~~twenty~~) thirty-five days after
4 the date of appointment of a general receiver, the receiver shall file
5 as schedule A a true list of all of the known creditors and applicable
6 regulatory and taxing agencies of the person over whose assets the
7 receiver is appointed, their mailing addresses, the amount and nature
8 of their claims, and whether their claims are disputed; and as schedule
9 B a true list of all property of the estate identifiable by the
10 receiver, including the estimated liquidation value and location of the
11 property and, if real property, a legal description thereof, as of the
12 date of appointment of the receiver.

13 (3) The schedules must be in substantially the following forms:

14 SCHEDULE A--CREDITOR LIST

15 1. List all creditors having security interests or liens, showing:

16 Name Address Amount Collateral Whether or not disputed

17 2. List all wages, salaries, commissions, or contributions to an employee benefit plan owed, showing:

18 Name Address Amount Whether or not disputed

19 3. List all consumer deposits owed, showing:

20 Name Address Amount Whether or not disputed

21 4. List all taxes owed, showing:

22 Name Address Amount Whether or not disputed

23 5. List all unsecured claims, showing:

24 Name Address Amount Whether or not disputed

25 6. List all owners or shareholders, showing:

26 Name Address Percentage of Ownership

27 7. List all applicable regulatory agencies, showing:

28 Name Address

29 SCHEDULE B--LIST OF PROPERTY

30 List each category of property and for each give approximate value obtainable for the asset on the date of
31 assignment/appointment of the receiver, and address where asset is located.

32 I. Nonexempt Property

Description Liquidation Value on Date of
and Location Assignment/Appointment of Receiver

1. Legal Description and street address of real property, including leasehold interests:
2. Fixtures:
3. Cash and bank accounts:
4. Inventory:
5. Accounts receivable:
6. Equipment:
7. Prepaid expenses, including deposits, insurance, rents, and utilities:
8. Other, including loans to third parties, claims, and choses in action:

II. Exempt Property

Description Liquidation Value on Date of
and Location Assignment/Appointment of Receiver

I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct, and complete to the best of my knowledge. DATED this ... day of,, at, state of

.....

[SIGNATURE]

(4) When schedules are filed by a person making a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the schedules shall be duly verified upon oath by such person.

(5) The receiver shall obtain an appraisal or other independent valuation of the property in the receiver's possession if ordered by the court.

(6) The receiver shall file a complete inventory of the property in the receiver's possession if ordered by the court.

Sec. 4. RCW 7.60.110 and 2004 c 165 s 13 are each amended to read as follows:

1 (1) Except as otherwise ordered by the court, the entry of an order
2 appointing a general receiver or a custodial receiver with respect to
3 all of a person's property shall operate as a stay, applicable to all
4 persons, of:

5 (a) The commencement or continuation, including the issuance or
6 employment of process, of a judicial, administrative, or other action
7 or proceeding against the person over whose property the receiver is
8 appointed that was or could have been commenced before the entry of the
9 order of appointment, or to recover a claim against the person that
10 arose before the entry of the order of appointment;

11 (b) The enforcement, against the person over whose property the
12 receiver is appointed or any estate property, of a judgment obtained
13 before the order of appointment;

14 (c) Any act to obtain possession of estate property from the
15 receiver, or to interfere with, or exercise control over, estate
16 property;

17 (d) Any act to create, perfect, or enforce any lien or claim
18 against estate property except by exercise of a right of setoff, to the
19 extent that the lien secures a claim against the person that arose
20 before the entry of the order of appointment; or

21 (e) Any act to collect, assess, or recover a claim against the
22 person that arose before the entry of the order of appointment.

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

35 (3) The entry of an order appointing a receiver does not operate as
36 a stay of:

37 (a) The continuation of a judicial action or nonjudicial proceeding

1 of the type described in RCW 7.60.025(1)(b), if the action or
2 proceeding was initiated by the party seeking the receiver's
3 appointment;

4 (b) The commencement or continuation of a criminal proceeding
5 against the person over whose property the receiver is appointed;

6 ~~((b))~~ (c) The commencement or continuation of an action or
7 proceeding to establish paternity, or to establish or modify an order
8 for alimony, maintenance, or support, or to collect alimony,
9 maintenance, or support under any order of a court;

10 ~~((e))~~ (d) Any act to perfect, or to maintain or continue the
11 perfection of, an interest in estate property if the interest perfected
12 would be effective against a creditor of the person over whose property
13 the receiver is appointed holding at the time of the entry of the order
14 of appointment either a perfected nonpurchase money security interest
15 under chapter 62A.9A RCW against the property involved, or a lien by
16 attachment, levy, or the like, whether or not such a creditor exists.
17 If perfection of an interest would require seizure of the property
18 involved or the commencement of an action, the perfection shall instead
19 be accomplished by filing, and by serving upon the receiver, or
20 receiver's counsel, if any, notice of the interest within the time
21 fixed by law for seizure or commencement;

22 ~~((d))~~ (e) The commencement or continuation of an action or
23 proceeding by a governmental unit to enforce its police or regulatory
24 power;

25 ~~((e))~~ (f) The enforcement of a judgment, other than a money
26 judgment, obtained in an action or proceeding by a governmental unit to
27 enforce its police or regulatory power, or with respect to any
28 licensure of the person over whose property the receiver is appointed;

29 ~~((f))~~ (g) The exercise of a right of setoff, including but not
30 limited to (i) any right of a commodity broker, forward contract
31 merchant, stockbroker, financial institution, or securities clearing
32 agency to set off a claim for a margin payment or settlement payment
33 arising out of a commodity contract, forward contract, or securities
34 contract against cash, securities, or other property held or due from
35 the commodity broker, forward contract merchant, stockbroker, financial
36 institution, or securities clearing agency to margin, guarantee,
37 secure, or settle the commodity contract, forward contract, or
38 securities contract, and (ii) any right of a swap participant to set

1 off a claim for a payment due to the swap participant under or in
2 connection with a swap agreement against any payment due from the swap
3 participant under or in connection with the swap agreement or against
4 cash, securities, or other property of the debtor held by or due from
5 the swap participant to guarantee, secure, or settle the swap
6 agreement; or

7 ~~((g))~~ (h) The establishment by a governmental unit of any tax
8 liability and any appeal thereof.

9 **Sec. 5.** RCW 7.60.130 and 2004 c 165 s 15 are each amended to read
10 as follows:

11 (1) A general receiver may assume or reject any executory contract
12 or unexpired lease of the person over whose property the receiver is
13 appointed upon order of the court following notice to the other party
14 to the contract or lease upon notice and a hearing. The court may
15 condition assumption or rejection of any executory contract or
16 unexpired lease on the terms and conditions the court believes are just
17 and proper under the particular circumstances of the case. A general
18 receiver's performance of an executory contract or unexpired lease
19 prior to the court's authorization of its assumption or rejection shall
20 not constitute an assumption of the contract or lease, or an agreement
21 by the receiver to assume it, nor otherwise preclude the receiver
22 thereafter from seeking the court's authority to reject it.

23 (2) Any obligation or liability incurred by a general receiver on
24 account of the receiver's assumption of an executory contract or
25 unexpired lease shall be treated as an expense of the receivership. A
26 general receiver's rejection of an executory contract or unexpired
27 lease shall be treated as a breach of the contract or lease occurring
28 immediately prior to the receiver's appointment; and the receiver's
29 right to possess or use property pursuant to any executory contract or
30 lease shall terminate upon rejection of the contract or lease. The
31 other party to an executory contract or unexpired lease that is
32 rejected by a general receiver may take such steps as may be necessary
33 under applicable law to terminate or cancel the contract or lease. The
34 claim of a party to an executory contract or unexpired lease resulting
35 from a general receiver's rejection of it shall be served upon the
36 receiver in the manner provided for by RCW 7.60.210 within thirty days
37 following the rejection.

1 (3) A general receiver's power under this section to assume an
2 executory contract or unexpired lease shall not be affected by any
3 provision in the contract or lease that would effect or permit a
4 forfeiture, modification, or termination of it on account of either the
5 receiver's appointment, the financial condition of the person over
6 whose property the receiver is appointed, or an assignment for the
7 benefit of creditors by that person.

8 (4) A general receiver may not assume an executory contract or
9 unexpired lease of the person over whose property the receiver is
10 appointed without the consent of the other party to the contract or
11 lease if:

12 (a) Applicable law would excuse a party, other than the person over
13 whose property the receiver is appointed, from accepting performance
14 from or rendering performance to anyone other than the person even in
15 the absence of any provisions in the contract or lease expressly
16 restricting or prohibiting an assignment of the person's rights or the
17 performance of the person's duties;

18 (b) The contract or lease is a contract to make a loan or extend
19 credit or financial accommodations to or for the benefit of the person
20 over whose property the receiver is appointed, or to issue a security
21 of the person; or

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

24 (5) A receiver may not assign an executory contract or unexpired
25 lease without assuming it, absent the consent of the other parties to
26 the contract or lease.

27 (6) If the receiver rejects an executory contract or unexpired
28 lease for:

29 (a) The sale of real property under which the person over whose
30 property the receiver is appointed is the seller and the purchaser is
31 in possession of the real property;

32 (b) The sale of a real property timeshare interest under which the
33 person over whose property the receiver is appointed is the seller;

34 (c) The license of intellectual property rights under which the
35 person over whose property the receiver is appointed is the licensor;
36 or

37 (d) The lease of real property in which the person over whose
38 property the receiver is appointed is the lessor;

1 then the purchaser, licensee, or lessee may treat the rejection as a
2 termination of the contract, license agreement, or lease, or
3 alternatively, the purchaser, licensee, or lessee may remain in
4 possession in which case the purchaser, licensee, or lessee shall
5 continue to perform all obligations arising thereunder as and when they
6 may fall due, but may offset against any payments any damages occurring
7 on account of the rejection after it occurs. The purchaser of real
8 property in such a case is entitled to receive from the receiver any
9 deed or any other instrument of conveyance which the person over whose
10 property the receiver is appointed is obligated to deliver under the
11 executory contract when the purchaser becomes entitled to receive it,
12 and the deed or instrument has the same force and effect as if given by
13 the person. A purchaser, licensee, or lessee who elects to remain in
14 possession under the terms of this subsection has no rights against the
15 receiver on account of any damages arising from the receiver's
16 rejection except as expressly provided for by this subsection. A
17 purchaser of real property who elects to treat rejection of an
18 executory contract as a termination has a lien against the interest in
19 that real property of the person over whose property the receiver is
20 appointed for the recovery of any portion of the purchase price that
21 the purchaser has paid.

22 (7) Any contract with the state shall be deemed rejected if not
23 assumed within sixty days of appointment of a general receiver unless
24 the receiver and state agency agree to its assumption or as otherwise
25 ordered by the court for good cause shown.

26 (8) Nothing in this chapter affects the enforceability of
27 antiassignment prohibitions provided under contract or applicable law.

28 **Sec. 6.** RCW 7.60.190 and 2004 c 165 s 21 are each amended to read
29 as follows:

30 (1) Creditors and parties in interest to whom written notice of the
31 pendency of the receivership is given in accordance with RCW 7.60.210,
32 and creditors or other persons submitting written claims in the
33 receivership or otherwise appearing and participating in the
34 receivership, are bound by the acts of the receiver with regard to
35 management and disposition of estate property whether or not they are
36 formally joined as parties.

1 (2) Any person having a claim against or interest in any estate
2 property or in the receivership proceedings may appear in the
3 receivership, either in person or by an attorney. Appearance must be
4 made by filing a written notice of appearance, including the name and
5 mailing address of the party in interest, and the name and address of
6 the person's attorney, if any, with the clerk, and by serving a copy of
7 the notice upon the receiver and the receiver's attorney of record, if
8 any. The receiver shall maintain a master mailing list of all persons
9 joined as parties in the receivership and of all persons serving and
10 filing notices of appearance in the receivership in accordance with
11 this section. A creditor or other party in interest has a right to be
12 heard with respect to all matters affecting the person, whether or not
13 the person is joined as a party to the action.

14 (3) Any request for relief against a state agency shall be mailed
15 to or otherwise served on the agency and on the office of the attorney
16 general.

17 (4) Orders of the court with respect to the treatment of claims and
18 disposition of estate property, including but not limited to orders
19 providing for sales of property free and clear of liens, are effective
20 as to any person having a claim against or interest in the receivership
21 estate and who has actual knowledge of the receivership, whether or not
22 the person receives written notice from the receiver and whether or not
23 the person appears or participates in the receivership.

24 (5) The receiver shall give not less than ten days' written notice
25 by mail of any examination by the receiver of the person with respect
26 to whose property the receiver has been appointed and to persons who
27 serve and file an appearance in the proceeding.

28 (6) Persons on the master mailing list are entitled to not less
29 than thirty days' written notice of the hearing of any motion or other
30 proceeding involving any proposed:

31 (a) Allowance or disallowance of any claim or claims;

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

36 (c) Compromise or settlement of a controversy that might affect the
37 distribution to creditors from the estate;

1 (d) Compensation of the receiver or any professional employed by
2 the receiver; or

3 (e) Application for termination of the receivership or discharge of
4 the receiver. Notice of the application shall also be sent to state
5 taxing and applicable regulatory agencies.

6 Any opposition to any motion to authorize any of the actions under
7 (a) through (e) of this subsection must be filed and served upon the
8 receiver and the receiver's attorney, if any, at least three days
9 before the date of the proposed action. Persons on the master mailing
10 list shall be served with all pleadings or in opposition to any motion.
11 The court may require notice to be given to persons on the master
12 mailing list of additional matters the court deems appropriate(~~(, and~~
13 ~~may enlarge or reduce any time period provided for by this section for~~
14 ~~good cause shown~~)). The receiver shall make a copy of the current
15 master mailing list available to any person on that list upon the
16 person's request.

17 (7) All persons duly notified by the receiver of any hearing to
18 approve or authorize an action or a proposed action by the receiver is
19 bound by any order of the court with respect to the action, whether or
20 not the persons have appeared or objected to the action or proposed
21 action or have been joined formally as parties to the particular
22 action.

23 (8) Whenever notice is not specifically required to be given under
24 this chapter, the court may consider motions and grant or deny relief
25 without notice or hearing, if it appears that no person joined as a
26 party or who has appeared in the receivership would be prejudiced or
27 harmed by the relief requested.

28 **Sec. 7.** RCW 7.60.200 and 2004 c 165 s 22 are each amended to read
29 as follows:

30 (1) A general receiver shall give notice of the receivership by
31 publication in a newspaper of general circulation published in the
32 county or counties in which estate property is known to be located once
33 a week for three consecutive weeks, the first notice to be published
34 within (~~(twenty)~~) thirty days after the date of appointment of the
35 receiver; and by mailing notice to all known creditors and other known
36 parties in interest within (~~(twenty)~~) thirty days after the date of
37 appointment of the receiver. The notice of the receivership shall

1 include the date of appointment of the receiver; the name of the court
2 and the case number; the last day on which claims may be filed with the
3 court and mailed to or served upon the receiver; and the name and
4 address of the debtor, the receiver, and the receiver's attorney, if
5 any. For purposes of this section, all intangible property of a person
6 is deemed to be located in the county in which an individual owner
7 thereof resides, or in which any entity owning the property maintains
8 its principal administrative offices.

9 (2) The notice of the receivership shall be in substantially the
10 following form:
11

12 IN THE SUPERIOR COURT, IN AND FOR
13 _____ COUNTY, WASHINGTON

14 [Case Name]) Case No.
15)
16) NOTICE OF RECEIVERSHIP
17)
18)
19 _____)

20 TO CREDITORS AND OTHER PARTIES IN INTEREST:

21 PLEASE TAKE NOTICE that a receiver was appointed for _____, whose last known address
22 is _____, on _____, ____.

23 YOU ARE HEREBY FURTHER NOTIFIED that in order to receive any dividend in this proceeding you
24 must file proof of claim with the court within 30 days after the date of this notice. If you are a state agency,
25 you must file proof of claim with the receiver ((on or before _____, __ 120)) within 180 days ((from))
26 after the date of ((appointment of the receiver)) this notice. A copy of your claim must also be either mailed
27 to or served upon the receiver.

28 _____
29 RECEIVER

30 Attorney for receiver (if any): _____

31 Address: _____

32 **Sec. 8.** RCW 7.60.230 and 2004 c 165 s 25 are each amended to read
33 as follows:

34 (1) Allowed claims in a general receivership shall receive

1 distribution under this chapter in the order of priority under (a)
2 through (h) of this subsection and, with the exception of (a) and (c)
3 of this subsection, on a pro rata basis.

4 (a) Creditors with liens on property of the estate, which liens are
5 duly perfected under applicable law, shall receive the proceeds from
6 the disposition of their collateral. However, the receiver may recover
7 from property securing an allowed secured claim the reasonable,
8 necessary expenses of preserving, protecting, or disposing of the
9 property to the extent of any benefit to the creditors. If and to the
10 extent that the proceeds are less than the amount of a creditor's
11 allowed claim or a creditor's lien is avoided on any basis, the
12 creditor is an unsecured claim under (h) of this subsection. Secured
13 claims shall be paid from the proceeds in accordance with their
14 respective priorities under otherwise applicable law.

15 (b) Actual, necessary costs and expenses incurred during the
16 administration of the estate, other than those expenses allowable under
17 (a) of this subsection, including allowed fees and reimbursement of
18 reasonable charges and expenses of the receiver and professional
19 persons employed by the receiver under RCW 7.60.180. Notwithstanding
20 (a) of this subsection, expenses incurred during the administration of
21 the estate have priority over the secured claim of any creditor
22 obtaining or consenting to the appointment of the receiver.

23 (c) Creditors with liens on property of the estate, which liens
24 have not been duly perfected under applicable law, shall receive the
25 proceeds from the disposition of their collateral if and to the extent
26 that unsecured claims are made subject to those liens under applicable
27 law.

28 (d) Claims for wages, salaries, or commissions, including vacation,
29 severance, and sick leave pay, or contributions to an employee benefit
30 plan, earned by the claimant within (~~ninety~~) one hundred eighty days
31 of the date of appointment of the receiver or the cessation of the
32 estate's business, whichever occurs first, but only to the extent of
33 (~~two~~) ten thousand nine hundred fifty dollars.

34 (e) Allowed unsecured claims, to the extent of (~~nine hundred~~) two
35 thousand four hundred twenty-five dollars for each individual, arising
36 from the deposit with the person over whose property the receiver is
37 appointed before the date of appointment of the receiver of money in

1 connection with the purchase, lease, or rental of property or the
2 purchase of services for personal, family, or household use by
3 individuals that were not delivered or provided.

4 (f) Claims for a support debt as defined in RCW 74.20A.020(10), but
5 not to the extent that the debt (i) is assigned to another entity,
6 voluntarily, by operation of law, or otherwise; or (ii) includes a
7 liability designated as a support obligation unless that liability is
8 actually in the nature of a support obligation.

9 (g) Unsecured claims of governmental units for taxes which accrued
10 prior to the date of appointment of the receiver.

11 (h) Other unsecured claims.

12 (2) If all of the classes under subsection (1) of this section have
13 been paid in full, any residue shall be paid to the person over whose
14 property the receiver is appointed.

15 **Sec. 9.** RCW 7.60.260 and 2004 c 165 s 28 are each amended to read
16 as follows:

17 (1) The receiver, with the court's approval after notice and a
18 hearing, may use, sell, or lease estate property other than in the
19 ordinary course of business. Except in the case of a leasehold estate
20 with a remaining term of less than two years or a vendor's interest in
21 a real estate contract, estate property consisting of real property may
22 not be sold by a custodial receiver other than in the ordinary course
23 of business.

24 (2) The court may order that a general receiver's sale of estate
25 property either (a) under subsection (1) of this section, or (b)
26 consisting of real property which the debtor intended to sell in its
27 ordinary course of business be effected free and clear of liens and of
28 all rights of redemption, whether or not the sale will generate
29 proceeds sufficient to fully satisfy all claims secured by the
30 property, unless either:

31 ~~((a))~~ (i) The property is real property used principally in the
32 production of crops, livestock, or aquaculture, or the property is a
33 homestead under RCW 6.13.010(1), and the owner of the property has not
34 consented to the sale following the appointment of the receiver; or

35 ~~((b))~~ (ii) The owner of the property or a creditor with an
36 interest in the property serves and files a timely opposition to the
37 receiver's sale, and the court determines that the amount likely to be

1 realized by the objecting person from the receiver's sale is less than
2 the person would realize within a reasonable time in the absence of the
3 receiver's sale.

4 Upon any sale free and clear of liens authorized by this section,
5 all security interests and other liens encumbering the property
6 conveyed transfer and attach to the proceeds of the sale, net of
7 reasonable expenses incurred in the disposition of the property, in the
8 same order, priority, and validity as the liens had with respect to the
9 property immediately before the conveyance. The court may authorize
10 the receiver at the time of sale to satisfy, in whole or in part, any
11 allowed claim secured by the property out of the proceeds of its sale
12 if the interest of any other creditor having a lien against the
13 proceeds of the sale would not thereby be impaired.

14 (3) At a public sale of property under subsection (1) of this
15 section, a creditor with an allowed claim secured by a lien against the
16 property to be sold may bid at the sale of the property. A secured
17 creditor who purchases the property from a receiver may offset against
18 the purchase price its allowed secured claim against the property,
19 provided that the secured creditor tenders cash sufficient to satisfy
20 in full all secured claims payable out of the proceeds of sale having
21 priority over the secured creditor's secured claim. If the lien or the
22 claim it secures is the subject of a bona fide dispute, the court may
23 order the holder of the claim to provide the receiver with adequate
24 security to assure full payment of the purchase price in the event the
25 lien, the claim, or any part thereof is determined to be invalid or
26 unenforceable.

27 (4) If estate property includes an interest as a co-owner of
28 property, the receiver shall have the rights and powers of a co-owner
29 afforded by applicable state or federal law, including but not limited
30 to any rights of partition.

31 (5) The reversal or modification on appeal of an authorization to
32 sell or lease estate property under this section does not affect the
33 validity of a sale or lease under that authorization to an entity that
34 purchased or leased the property in good faith, whether or not the
35 entity knew of the pendency of the appeal, unless the authorization and
36 sale or lease were stayed pending the appeal.

--- END ---