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ENGROSSED SENATE BILL 5058

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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  
18 lien for common expenses against a dwelling unit subject to the  
19 horizontal 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;))~~ (ee) Under RCW 64.32.200(2),  
23 in an action or proceeding commenced under chapter 61.12 or 61.24 RCW  
24 to foreclose upon a lien for common expenses against a dwelling unit  
25 subject to the horizontal property regimes act, chapter 64.32 RCW. For  
26 purposes of this subsection (1)(ee), a judicial action is commenced as  
27 provided in superior court civil rule 3(a) and a nonjudicial proceeding  
28 is commenced under chapter 61.24 RCW upon the service of notice of  
29 default described in RCW 61.24.030(8);
- 30 (ff) Under RCW 64.34.364(10), in an action or proceeding commenced  
31 under chapter 61.12 or 61.24 RCW by a unit owners' association to  
32 foreclose a lien for nonpayment of delinquent assessments against  
33 condominium units. For purposes of this subsection 1(ff), a judicial  
34 action is commenced as provided in superior court civil rule (3)(a) and  
35 a nonjudicial proceeding is commenced under chapter 61.24 RCW upon the  
36 service of notice of default described in RCW 61.24.030(8);
- 37 (gg) Upon application of the attorney general under RCW

1 64.36.220(3), in aid of any writ or order restraining or enjoining  
2 violations of chapter 64.36 RCW applicable to timeshares;

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

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

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

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

14 (ll) Upon application of the attorney general or the department of  
15 licensing, in any proceeding that either of them are authorized by  
16 statute to bring to enforce Title 18 or 19 RCW; the securities act of  
17 Washington, chapter 21.20 RCW; the Washington commodities act, chapter  
18 21.30 RCW; the land development act, chapter 58.19 RCW; or under  
19 chapter 64.36 RCW relating to the regulation of timeshares;

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

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

26 (2) The superior courts of this state shall appoint as receiver of  
27 property located in this state a person who has been appointed by a  
28 federal or state court located elsewhere as receiver with respect to  
29 the property specifically or with respect to the owner's property  
30 generally, upon the application of the person or of any party to that  
31 foreign proceeding, and following the appointment shall give effect to  
32 orders, judgments, and decrees of the foreign court affecting the  
33 property in this state held by the receiver, unless the court  
34 determines that to do so would be manifestly unjust or inequitable.  
35 The venue of such a proceeding may be any county in which the person  
36 resides or maintains any office, or any county in which any property  
37 over which the receiver is to be appointed is located at the time the  
38 proceeding is commenced.

1 (3) At least seven days' notice of any application for the  
2 appointment of a receiver shall be given to the owner of property to be  
3 subject thereto and to all other parties in the action, and to other  
4 parties in interest as the court may require. If any execution by a  
5 judgment creditor under Title 6 RCW or any application by a judgment  
6 creditor for the appointment of a receiver, with respect to property  
7 over which the receiver's appointment is sought, is pending in any  
8 other action at the time the application is made, then notice of the  
9 application for the receiver's appointment also shall be given to the  
10 judgment creditor in the other action. The court may shorten or expand  
11 the period for notice of an application for the appointment of a  
12 receiver upon good cause shown.

13 (4) The order appointing a receiver in all cases shall reasonably  
14 describe the property over which the receiver is to take charge, by  
15 category, individual items, or both if the receiver is to take charge  
16 of less than all of the owner's property. If the order appointing a  
17 receiver does not expressly limit the receiver's authority to  
18 designated property or categories of property of the owner, the  
19 receiver is a general receiver with the authority to take charge over  
20 all of the owner's property, wherever located.

21 (5) The court may condition the appointment of a receiver upon the  
22 giving of security by the person seeking the receiver's appointment, in  
23 such amount as the court may specify, for the payment of costs and  
24 damages incurred or suffered by any person should it later be  
25 determined that the appointment of the receiver was wrongfully  
26 obtained.

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

29 (1) Except as otherwise provided for by this chapter, the court in  
30 all cases has exclusive authority over the receiver, and the exclusive  
31 possession and right of control with respect to all real property and  
32 all tangible and intangible personal property with respect to which the  
33 receiver is appointed, wherever located, and the exclusive jurisdiction  
34 to determine all controversies relating to the collection,  
35 preservation, application, and distribution of all the property, and  
36 all claims against the receiver arising out of the exercise of the  
37 receiver's powers or the performance of the receiver's duties.

1 However, the court does not have exclusive jurisdiction over actions in  
2 which a state agency is a party and in which a statute expressly vests  
3 jurisdiction or venue elsewhere.

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

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

8 (1) In the event of a general assignment of property for the  
9 benefit of creditors under chapter 7.08 RCW, the assignment shall have  
10 annexed as schedule (~~(A)~~) A a true list of all of the person's known  
11 creditors, their mailing addresses, the amount and nature of their  
12 claims, and whether their claims are disputed; and as schedule B a true  
13 list of all property of the estate, including the estimated liquidation  
14 value and location of the property and, if real property, a legal  
15 description thereof, as of the date of the assignment.

16 (2) In all other cases, within (~~twenty~~) thirty-five days after  
17 the date of appointment of a general receiver, the receiver shall file  
18 as schedule A a true list of all of the known creditors and applicable  
19 regulatory and taxing agencies of the person over whose assets the  
20 receiver is appointed, their mailing addresses, the amount and nature  
21 of their claims, and whether their claims are disputed; and as schedule  
22 B a true list of all property of the estate identifiable by the  
23 receiver, including the estimated liquidation value and location of the  
24 property and, if real property, a legal description thereof, as of the  
25 date of appointment of the receiver.

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

27 **SCHEDULE A--CREDITOR LIST**

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

29 Name Address Amount Collateral Whether or not disputed

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

31 Name Address Amount Whether or not disputed

32 3. List all consumer deposits owed, showing:

33 Name Address Amount Whether or not disputed

34 4. List all taxes owed, showing:



1 Name Address Amount Whether or not disputed

2 5. List all unsecured claims, showing:

3 Name Address Amount Whether or not disputed

4 6. List all owners or shareholders, showing:

5 Name Address Percentage of Ownership

6 7. List all applicable regulatory agencies, showing:

7 Name Address

8 SCHEDULE B--LIST OF PROPERTY

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

11 I. Nonexempt Property

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

14 1. Legal Description and street  
15 address of real property,  
16 including leasehold interests:

17 2. Fixtures:

18 3. Cash and bank accounts:

19 4. Inventory:

20 5. Accounts receivable:

21 6. Equipment:

22 7. Prepaid expenses, including  
23 deposits, insurance, rents, and  
24 utilities:

25 8. Other, including loans to third  
26 parties, claims, and choses in  
27 action:

28 II. Exempt Property

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

31  
32 I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct,  
33 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) Except as otherwise ordered by the court, the entry of an order appointing a general receiver or a custodial receiver with respect to all of a person's property shall operate as a stay, applicable to all persons, of:

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

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

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

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

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

(2) The stay shall automatically expire as to the acts specified in subsection (1)(a), (b), and (e) of this section sixty days after the

1 entry of the order of appointment unless before the expiration of the  
2 sixty-day period the receiver, for good cause shown, obtains an order  
3 of the court extending the stay, after notice and a hearing. A person  
4 whose action or proceeding is stayed by motion to the court may seek  
5 relief from the stay for good cause shown. Any judgment obtained  
6 against the person over whose property the receiver is appointed or  
7 estate property following the entry of the order of appointment is not  
8 a lien against estate property unless the receivership is terminated  
9 prior to a conveyance of the property against which the judgment would  
10 otherwise constitute a lien.

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

13 (a) The continuation of a judicial action or nonjudicial proceeding  
14 of the type described in RCW 7.60.025(1) (b), (ee), or (ff), if the  
15 action or proceeding was initiated by the party seeking the receiver's  
16 appointment;

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

19 (~~(b)~~) (c) The commencement or continuation of an action or  
20 proceeding to establish paternity, or to establish or modify an order  
21 for alimony, maintenance, or support, or to collect alimony,  
22 maintenance, or support under any order of a court;

23 (~~(e)~~) (d) Any act to perfect, or to maintain or continue the  
24 perfection of, an interest in estate property if the interest perfected  
25 would be effective against a creditor of the person over whose property  
26 the receiver is appointed holding at the time of the entry of the order  
27 of appointment either a perfected nonpurchase money security interest  
28 under chapter 62A.9A RCW against the property involved, or a lien by  
29 attachment, levy, or the like, whether or not such a creditor exists.  
30 If perfection of an interest would require seizure of the property  
31 involved or the commencement of an action, the perfection shall instead  
32 be accomplished by filing, and by serving upon the receiver, or  
33 receiver's counsel, if any, notice of the interest within the time  
34 fixed by law for seizure or commencement;

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

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

5        ~~((f))~~ (g) The exercise of a right of setoff, including but not  
6 limited to (i) any right of a commodity broker, forward contract  
7 merchant, stockbroker, financial institution, or securities clearing  
8 agency to set off a claim for a margin payment or settlement payment  
9 arising out of a commodity contract, forward contract, or securities  
10 contract against cash, securities, or other property held or due from  
11 the commodity broker, forward contract merchant, stockbroker, financial  
12 institution, or securities clearing agency to margin, guarantee,  
13 secure, or settle the commodity contract, forward contract, or  
14 securities contract, and (ii) any right of a swap participant to set  
15 off a claim for a payment due to the swap participant under or in  
16 connection with a swap agreement against any payment due from the swap  
17 participant under or in connection with the swap agreement or against  
18 cash, securities, or other property of the debtor held by or due from  
19 the swap participant to guarantee, secure, or settle the swap  
20 agreement; or

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

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

25        (1) A general receiver may assume or reject any executory contract  
26 or unexpired lease of the person over whose property the receiver is  
27 appointed upon order of the court following notice to the other party  
28 to the contract or lease upon notice and a hearing. The court may  
29 condition assumption or rejection of any executory contract or  
30 unexpired lease on the terms and conditions the court believes are just  
31 and proper under the particular circumstances of the case. A general  
32 receiver's performance of an executory contract or unexpired lease  
33 prior to the court's authorization of its assumption or rejection shall  
34 not constitute an assumption of the contract or lease, or an agreement  
35 by the receiver to assume it, nor otherwise preclude the receiver  
36 thereafter from seeking the court's authority to reject it.

1           (2) Any obligation or liability incurred by a general receiver on  
2 account of the receiver's assumption of an executory contract or  
3 unexpired lease shall be treated as an expense of the receivership. A  
4 general receiver's rejection of an executory contract or unexpired  
5 lease shall be treated as a breach of the contract or lease occurring  
6 immediately prior to the receiver's appointment; and the receiver's  
7 right to possess or use property pursuant to any executory contract or  
8 lease shall terminate upon rejection of the contract or lease. The  
9 other party to an executory contract or unexpired lease that is  
10 rejected by a general receiver may take such steps as may be necessary  
11 under applicable law to terminate or cancel the contract or lease. The  
12 claim of a party to an executory contract or unexpired lease resulting  
13 from a general receiver's rejection of it shall be served upon the  
14 receiver in the manner provided for by RCW 7.60.210 within thirty days  
15 following the rejection.

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

23           (4) A general receiver may not assume an executory contract or  
24 unexpired lease of the person over whose property the receiver is  
25 appointed without the consent of the other party to the contract or  
26 lease if:

27           (a) Applicable law would excuse a party, other than the person over  
28 whose property the receiver is appointed, from accepting performance  
29 from or rendering performance to anyone other than the person even in  
30 the absence of any provisions in the contract or lease expressly  
31 restricting or prohibiting an assignment of the person's rights or the  
32 performance of the person's duties;

33           (b) The contract or lease is a contract to make a loan or extend  
34 credit or financial accommodations to or for the benefit of the person  
35 over whose property the receiver is appointed, or to issue a security  
36 of the person; or

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

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

4 (6) If the receiver rejects an executory contract or unexpired  
5 lease for:

6 (a) The sale of real property under which the person over whose  
7 property the receiver is appointed is the seller and the purchaser is  
8 in possession of the real property;

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

11 (c) The license of intellectual property rights under which the  
12 person over whose property the receiver is appointed is the licensor;  
13 or

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

16 then the purchaser, licensee, or lessee may treat the rejection as a  
17 termination of the contract, license agreement, or lease, or  
18 alternatively, the purchaser, licensee, or lessee may remain in  
19 possession in which case the purchaser, licensee, or lessee shall  
20 continue to perform all obligations arising thereunder as and when they  
21 may fall due, but may offset against any payments any damages occurring  
22 on account of the rejection after it occurs. The purchaser of real  
23 property in such a case is entitled to receive from the receiver any  
24 deed or any other instrument of conveyance which the person over whose  
25 property the receiver is appointed is obligated to deliver under the  
26 executory contract when the purchaser becomes entitled to receive it,  
27 and the deed or instrument has the same force and effect as if given by  
28 the person. A purchaser, licensee, or lessee who elects to remain in  
29 possession under the terms of this subsection has no rights against the  
30 receiver on account of any damages arising from the receiver's  
31 rejection except as expressly provided for by this subsection. A  
32 purchaser of real property who elects to treat rejection of an  
33 executory contract as a termination has a lien against the interest in  
34 that real property of the person over whose property the receiver is  
35 appointed for the recovery of any portion of the purchase price that  
36 the purchaser has paid.

37 (7) Any contract with the state shall be deemed rejected if not

1 assumed within sixty days of appointment of a general receiver unless  
2 the receiver and state agency agree to its assumption or as otherwise  
3 ordered by the court for good cause shown.

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

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

8 (1) Creditors and parties in interest to whom written notice of the  
9 pendency of the receivership is given in accordance with RCW 7.60.210,  
10 and creditors or other persons submitting written claims in the  
11 receivership or otherwise appearing and participating in the  
12 receivership, are bound by the acts of the receiver with regard to  
13 management and disposition of estate property whether or not they are  
14 formally joined as parties.

15 (2) Any person having a claim against or interest in any estate  
16 property or in the receivership proceedings may appear in the  
17 receivership, either in person or by an attorney. Appearance must be  
18 made by filing a written notice of appearance, including the name and  
19 mailing address of the party in interest, and the name and address of  
20 the person's attorney, if any, with the clerk, and by serving a copy of  
21 the notice upon the receiver and the receiver's attorney of record, if  
22 any. The receiver shall maintain a master mailing list of all persons  
23 joined as parties in the receivership and of all persons serving and  
24 filing notices of appearance in the receivership in accordance with  
25 this section. A creditor or other party in interest has a right to be  
26 heard with respect to all matters affecting the person, whether or not  
27 the person is joined as a party to the action.

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

31 (4) Orders of the court with respect to the treatment of claims and  
32 disposition of estate property, including but not limited to orders  
33 providing for sales of property free and clear of liens, are effective  
34 as to any person having a claim against or interest in the receivership  
35 estate and who has actual knowledge of the receivership, whether or not  
36 the person receives written notice from the receiver and whether or not  
37 the person appears or participates in the receivership.

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

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

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

9 (b) Abandonment, disposition, or distribution of estate property,  
10 other than an emergency disposition of (~~perishable~~) property subject  
11 to eroding value or a disposition of property in the ordinary course of  
12 business;

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

15 (d) Compensation of the receiver or any professional employed by  
16 the receiver; or

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

20 Any opposition to any motion to authorize any of the actions under  
21 (a) through (e) of this subsection must be filed and served upon the  
22 receiver and the receiver's attorney, if any, at least three days  
23 before the date of the proposed action. Persons on the master mailing  
24 list shall be served with all pleadings or in opposition to any motion.  
25 The court may require notice to be given to persons on the master  
26 mailing list of additional matters the court deems appropriate(~~(, and~~  
27 ~~may enlarge or reduce any time period provided for by this section for~~  
28 ~~good cause shown)~~). The receiver shall make a copy of the current  
29 master mailing list available to any person on that list upon the  
30 person's request.

31 (7) All persons duly notified by the receiver of any hearing to  
32 approve or authorize an action or a proposed action by the receiver is  
33 bound by any order of the court with respect to the action, whether or  
34 not the persons have appeared or objected to the action or proposed  
35 action or have been joined formally as parties to the particular  
36 action.

37 (8) Whenever notice is not specifically required to be given under  
38 this chapter, the court may consider motions and grant or deny relief



1 without notice or hearing, if it appears that no person joined as a  
2 party or who has appeared in the receivership would be prejudiced or  
3 harmed by the relief requested.

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

6 (1) A general receiver shall give notice of the receivership by  
7 publication in a newspaper of general circulation published in the  
8 county or counties in which estate property is known to be located once  
9 a week for three consecutive weeks, the first notice to be published  
10 within ((~~twenty~~)) thirty days after the date of appointment of the  
11 receiver; and by mailing notice to all known creditors and other known  
12 parties in interest within ((~~twenty~~)) thirty days after the date of  
13 appointment of the receiver. The notice of the receivership shall  
14 include the date of appointment of the receiver; the name of the court  
15 and the case number; the last day on which claims may be filed with the  
16 court and mailed to or served upon the receiver; and the name and  
17 address of the debtor, the receiver, and the receiver's attorney, if  
18 any. For purposes of this section, all intangible property of a person  
19 is deemed to be located in the county in which an individual owner  
20 thereof resides, or in which any entity owning the property maintains  
21 its principal administrative offices.

22 (2) The notice of the receivership shall be in substantially the  
23 following form:

24

25

IN THE SUPERIOR COURT, IN AND FOR

26

\_\_\_\_\_ COUNTY, WASHINGTON

27

[Case Name]

)

Case No.

28

)

29

)

NOTICE OF RECEIVERSHIP

30

)

31

)

32

\_\_\_\_\_

)

33

TO CREDITORS AND OTHER PARTIES IN INTEREST:

1 PLEASE TAKE NOTICE that a receiver was appointed for \_\_\_\_\_, whose last known address  
2 is \_\_\_\_\_, on \_\_\_\_\_, \_\_\_\_.

3 YOU ARE HEREBY FURTHER NOTIFIED that in order to receive any dividend in this proceeding you  
4 must file proof of claim with the court within 30 days after the date of this notice. If you are a state agency,  
5 you must file proof of claim with the receiver (~~(on or before~~ \_\_\_\_\_, \_\_\_\_ 120)) within 180 days ((from))  
6 after the date of ((appointment of the receiver)) this notice. A copy of your claim must also be either mailed  
7 to or served upon the receiver.

8 \_\_\_\_\_  
9 RECEIVER

10 Attorney for receiver (if any): \_\_\_\_\_

11 Address: \_\_\_\_\_

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

14 (1) Allowed claims in a general receivership shall receive  
15 distribution under this chapter in the order of priority under (a)  
16 through (h) of this subsection and, with the exception of (a) and (c)  
17 of this subsection, on a pro rata basis.

18 (a) Creditors with liens on property of the estate, which liens are  
19 duly perfected under applicable law, shall receive the proceeds from  
20 the disposition of their collateral. However, the receiver may recover  
21 from property securing an allowed secured claim the reasonable,  
22 necessary expenses of preserving, protecting, or disposing of the  
23 property to the extent of any benefit to the creditors. If and to the  
24 extent that the proceeds are less than the amount of a creditor's  
25 allowed claim or a creditor's lien is avoided on any basis, the  
26 creditor is an unsecured claim under (h) of this subsection. Secured  
27 claims shall be paid from the proceeds in accordance with their  
28 respective priorities under otherwise applicable law.

29 (b) Actual, necessary costs and expenses incurred during the  
30 administration of the estate, other than those expenses allowable under  
31 (a) of this subsection, including allowed fees and reimbursement of  
32 reasonable charges and expenses of the receiver and professional  
33 persons employed by the receiver under RCW 7.60.180. Notwithstanding  
34 (a) of this subsection, expenses incurred during the administration of  
35 the estate have priority over the secured claim of any creditor  
36 obtaining or consenting to the appointment of the receiver.

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

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

12 (e) Allowed unsecured claims, to the extent of (~~nine hundred~~) two  
13 thousand four hundred twenty-five dollars for each individual, arising  
14 from the deposit with the person over whose property the receiver is  
15 appointed before the date of appointment of the receiver of money in  
16 connection with the purchase, lease, or rental of property or the  
17 purchase of services for personal, family, or household use by  
18 individuals that were not delivered or provided.

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

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

26 (h) Other unsecured claims.

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

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

32 (1) The receiver, with the court's approval after notice and a  
33 hearing, may use, sell, or lease estate property other than in the  
34 ordinary course of business. Except in the case of a leasehold estate  
35 with a remaining term of less than two years or a vendor's interest in  
36 a real estate contract, estate property consisting of real property may

1 not be sold by a custodial receiver other than in the ordinary course  
2 of business.

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

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

14 ~~((+b))~~ (ii) The owner of the property or a creditor with an  
15 interest in the property serves and files a timely opposition to the  
16 receiver's sale, and the court determines that the amount likely to be  
17 realized by the objecting person from the receiver's sale is less than  
18 the person would realize within a reasonable time in the absence of the  
19 receiver's sale.

20 Upon any sale free and clear of liens authorized by this section,  
21 all security interests and other liens encumbering the property  
22 conveyed transfer and attach to the proceeds of the sale, net of  
23 reasonable expenses incurred in the disposition of the property, in the  
24 same order, priority, and validity as the liens had with respect to the  
25 property immediately before the conveyance. The court may authorize  
26 the receiver at the time of sale to satisfy, in whole or in part, any  
27 allowed claim secured by the property out of the proceeds of its sale  
28 if the interest of any other creditor having a lien against the  
29 proceeds of the sale would not thereby be impaired.

30 (3) At a public sale of property under subsection (1) of this  
31 section, a creditor with an allowed claim secured by a lien against the  
32 property to be sold may bid at the sale of the property. A secured  
33 creditor who purchases the property from a receiver may offset against  
34 the purchase price its allowed secured claim against the property,  
35 provided that the secured creditor tenders cash sufficient to satisfy  
36 in full all secured claims payable out of the proceeds of sale having  
37 priority over the secured creditor's secured claim. If the lien or the  
38 claim it secures is the subject of a bona fide dispute, the court may

1 order the holder of the claim to provide the receiver with adequate  
2 security to assure full payment of the purchase price in the event the  
3 lien, the claim, or any part thereof is determined to be invalid or  
4 unenforceable.

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

9 (5) The reversal or modification on appeal of an authorization to  
10 sell or lease estate property under this section does not affect the  
11 validity of a sale or lease under that authorization to an entity that  
12 purchased or leased the property in good faith, whether or not the  
13 entity knew of the pendency of the appeal, unless the authorization and  
14 sale or lease were stayed pending the appeal.

--- END ---