

SECOND REGULAR SESSION

[CORRECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 578

98TH GENERAL ASSEMBLY

4539H.03C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 513.430, 515.240, 515.250, and 515.260, RSMo, and to enact in lieu thereof thirty-five new sections relating to insolvency.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 513.430, 515.240, 515.250, and 515.260, RSMo, are repealed and
2 thirty-five new sections enacted in lieu thereof, to be known as sections 513.430, 515.500,
3 515.505, 515.510, 515.515, 515.520, 515.525, 515.530, 515.535, 515.540, 515.545, 515.550,
4 515.555, 515.560, 515.565, 515.570, 515.575, 515.580, 515.585, 515.590, 515.595, 515.600,
5 515.605, 515.610, 515.615, 515.620, 515.625, 515.630, 515.635, 515.640, 515.645, 515.650,
6 515.655, 515.660, and 515.665, to read as follows:

513.430. 1. The following property shall be exempt from attachment and execution to
2 the extent of any person's interest therein:

3 (1) Household furnishings, household goods, wearing apparel, appliances, books,
4 animals, crops or musical instruments that are held primarily for personal, family or household
5 use of such person or a dependent of such person, not to exceed three thousand dollars in value
6 in the aggregate;

7 (2) A wedding ring not to exceed one thousand five hundred dollars in value and other
8 jewelry held primarily for the personal, family or household use of such person or a dependent
9 of such person, not to exceed five hundred dollars in value in the aggregate;

10 (3) Any other property of any kind, not to exceed in value six hundred dollars in the
11 aggregate;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

12 (4) Any implements or professional books or tools of the trade of such person or the
13 trade of a dependent of such person not to exceed three thousand dollars in value in the
14 aggregate;

15 (5) Any motor vehicles, not to exceed three thousand dollars in value in the aggregate;

16 (6) Any mobile home used as the principal residence but not attached to real property
17 in which the debtor has a fee interest, not to exceed five thousand dollars in value;

18 (7) Any one or more unmaturred life insurance contracts owned by such person, other
19 than a credit life insurance contract, and up to fifteen thousand dollars of any matured life
20 insurance proceeds for actual funeral, cremation, or burial expenses where the deceased is the
21 spouse, child, or parent of the beneficiary;

22 (8) The amount of any accrued dividend or interest under, or loan value of, any one or
23 more unmaturred life insurance contracts owned by such person under which the insured is such
24 person or an individual of whom such person is a dependent; provided, however, that if
25 proceedings under Title 11 of the United States Code are commenced by or against such person,
26 the amount exempt in such proceedings shall not exceed in value one hundred fifty thousand
27 dollars in the aggregate less any amount of property of such person transferred by the life
28 insurance company or fraternal benefit society to itself in good faith if such transfer is to pay a
29 premium or to carry out a nonforfeiture insurance option and is required to be so transferred
30 automatically under a life insurance contract with such company or society that was entered into
31 before commencement of such proceedings. No amount of any accrued dividend or interest
32 under, or loan value of, any such life insurance contracts shall be exempt from any claim for
33 child support. Notwithstanding anything to the contrary, no such amount shall be exempt in such
34 proceedings under any such insurance contract which was purchased by such person within one
35 year prior to the commencement of such proceedings;

36 (9) Professionally prescribed health aids for such person or a dependent of such person;

37 (10) Such person's right to receive:

38 (a) A Social Security benefit, unemployment compensation or a public assistance
39 benefit;

40 (b) A veteran's benefit;

41 (c) A disability, illness or unemployment benefit;

42 (d) Alimony, support or separate maintenance, not to exceed seven hundred fifty dollars
43 a month;

44 (e) Any payment under a stock bonus plan, pension plan, disability or death benefit plan,
45 profit-sharing plan, nonpublic retirement plan or any plan described, defined, or established
46 pursuant to section 456.014, the person's right to a participant account in any deferred
47 compensation program offered by the state of Missouri or any of its political subdivisions, or

48 annuity or similar plan or contract on account of illness, disability, death, age or length of
49 service, to the extent reasonably necessary for the support of such person and any dependent of
50 such person unless:

51 a. Such plan or contract was established by or under the auspices of an insider that
52 employed such person at the time such person's rights under such plan or contract arose;

53 b. Such payment is on account of age or length of service; and

54 c. Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, 408A
55 or 409 of the Internal Revenue Code of 1986, as amended, (26 U.S.C. Section 401(a), 403(a),
56 403(b), 408, 408A or 409);

57

58 except that any such payment to any person shall be subject to attachment or execution pursuant
59 to a qualified domestic relations order, as defined by Section 414(p) of the Internal Revenue
60 Code of 1986, as amended, issued by a court in any proceeding for dissolution of marriage or
61 legal separation or a proceeding for disposition of property following dissolution of marriage by
62 a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to
63 dispose of marital property at the time of the original judgment of dissolution;

64 (f) Any money or assets, payable to a participant or beneficiary from, or any interest of
65 any participant or beneficiary in, a retirement plan, profit-sharing plan, health savings plan, or
66 similar plan, including an inherited account or plan, that is qualified under Section 401(a),
67 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, whether
68 such participant's or beneficiary's interest arises by inheritance, designation, appointment, or
69 otherwise, except as provided in this paragraph. Any plan or arrangement described in this
70 paragraph shall not be exempt from the claim of an alternate payee under a qualified domestic
71 relations order; however, the interest of any and all alternate payees under a qualified domestic
72 relations order shall be exempt from any and all claims of any creditor, other than the state of
73 Missouri through its department of social services. As used in this paragraph, the terms
74 "alternate payee" and "qualified domestic relations order" have the meaning given to them in
75 Section 414(p) of the Internal Revenue Code of 1986, as amended. If proceedings under Title
76 11 of the United States Code are commenced by or against such person, no amount of funds shall
77 be exempt in such proceedings under any such plan, contract, or trust which is fraudulent as
78 defined in subsection 2 of section 428.024 and for the period such person participated within
79 three years prior to the commencement of such proceedings. For the purposes of this section,
80 when the fraudulently conveyed funds are recovered and after, such funds shall be deducted and
81 then treated as though the funds had never been contributed to the plan, contract, or trust;

82 (11) The debtor's right to receive, or property that is traceable to, a payment on account
83 of the wrongful death of an individual of whom the debtor was a dependent, to the extent
84 reasonably necessary for the support of the debtor and any dependent of the debtor;

85 (12) **Firearms, fire arm accessories, and ammunition, not to exceed one thousand**
86 **five hundred dollars in value in the aggregate.**

87 2. Nothing in this section shall be interpreted to exempt from attachment or execution
88 for a valid judicial or administrative order for the payment of child support or maintenance any
89 money or assets, payable to a participant or beneficiary from, or any interest of any participant
90 or beneficiary in, a retirement plan which is qualified pursuant to Section 408A of the Internal
91 Revenue Code of 1986, as amended.

515.500. Sections 515.500 to 515.665 may be cited as the "Missouri Commercial
2 **Receivership Act".**

515.505. As used in sections 515.500 to 515.665, the following terms shall mean:

2 (1) **"Affiliate":**

3 (a) **A person that directly or indirectly owns, controls, or holds with power to vote**
4 **twenty percent or more of the outstanding voting interests of a debtor, other than:**

5 a. **An entity that holds such securities in a fiduciary or agency capacity without sole**
6 **discretionary power to vote such interests; or**

7 b. **Solely to secure a debt, if such entity has not in fact exercised such power to vote;**

8 (b) **A person whose business is operated under a lease or operating agreement by**
9 **a debtor, or a person substantially all of whose property is operated under an operating**
10 **agreement with a debtor; or**

11 (c) **A person that directly or indirectly operates the business or substantially all of**
12 **the property of the debtor under a lease or operating agreement or similar arrangement;**

13 (2) **"Claim", a right to payment whether or not such right is reduced to judgment,**
14 **liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed,**
15 **legal, equitable, secured or unsecured, or a right to an equitable remedy for breach of**
16 **performance if such breach gives rise to a right to payment, whether or not such right to**
17 **an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured,**
18 **disputed, undisputed, secured, or unsecured;**

19 (3) **"Court", a circuit court of the state of Missouri before which an application to**
20 **appoint a receiver under sections 515.500 to 515.665 has been made or granted, or before**
21 **which a receivership action under sections 515.500 to 515.665 is pending;**

22 (4) **"Creditor", a person that has a claim against the debtor that arose at the time**
23 **of or before the appointment of a receiver pursuant to sections 515.500 to 515.665;**

24 (5) **"Debt", liability on a claim;**

25 (6) "Debtor", a person as to which a receiver is sought to be appointed or a court
26 appoints pursuant to sections 515.500 to 515.665, a person who owns property as to which
27 a receiver is sought to be appointed or a court appoints a receiver pursuant to sections
28 515.500 to 515.665, a person as to which a receiver has been appointed by a court in a
29 foreign jurisdiction, or a person who owns property as to which a receiver has been
30 appointed by a court in a foreign jurisdiction;

31 (7) "Entity", a person other than a natural person;

32 (8) "Estate property", property as to which a court appoints a receiver pursuant
33 to sections 515.500 to 515.665;

34 (9) "Executory contract", a contract, including a lease, where the obligations of the
35 debtor and the counter party or counter parties to the contract are unperformed to the
36 extent that the failure of either party to complete performance of its obligations would
37 constitute a material breach of the contract, thereby excusing the other party's
38 performance of its obligations under the contract;

39 (10) "Foreign jurisdiction", any state or federal jurisdiction other than that of this
40 state;

41 (11) "Insolvent", a financial status or condition such that the sum of the person's
42 debts is greater than the value of such person's property, at fair valuation;

43 (12) "Lien", a charge against property or an interest in property to secure payment
44 of a debt or performance of an obligation whether created voluntarily or by operation of
45 law;

46 (13) "Notice and a hearing", such notice as is appropriate and an opportunity for
47 hearing if one is requested. Absent request for hearing by an appropriate person or party
48 in interest, the term notice and a hearing does not indicate a requirement for an actual
49 hearing unless the court so orders;

50 (14) "Party", a person who is a party to the action, becomes a party to the action,
51 or shall be joined or shall be allowed to intervene in the action pursuant to the rules of the
52 Missouri supreme court, including, without limitation, any person needed for just
53 adjudication of the action;

54 (15) "Party in interest", the debtor, any party, the receiver, any person with an
55 ownership interest in or lien against estate property or property sought to become estate
56 property, any person that, with respect to particular matters presented in the receivership,
57 has an interest that will be affected, and, in a general receivership, any creditor of the
58 debtor;

59 (16) "Person", includes natural persons, partnerships, limited liability companies,
60 corporations, and other entities recognized under the laws of this state;

61 (17) "Property", any right, title, and interest, of the debtor, whether legal or
62 equitable, tangible or intangible, in real and personal property, regardless of the manner
63 by which such rights were or are acquired, but does not include property of an individual
64 person exempt from execution under the laws of this state; provided however, that estate
65 property includes any nonexempt interest in property that is partially exempt. Property
66 includes, but is not limited to, any proceeds, products, offspring, rents, or profits of or from
67 property. Property does not include any power that a debtor may exercise solely for the
68 benefit of another person or property impressed with a trust except to the extent that the
69 debtor has a residual interest;

70 (18) "Receiver", a receiver appointed by a court pursuant to sections 515.500 to
71 515.665;

72 (19) "Receivership", the estate created pursuant to the court's order or orders
73 appointing a receiver pursuant to sections 515.500 to 515.665, including all estate property
74 and the interests, rights, powers, and duties of the receiver and all parties in interest
75 relating to estate property;

76 (20) "Receivership action", the action as to which a receiver is sought to be
77 appointed or a court appoints a receiver pursuant to sections 515.500 to 515.665;

78 (21) "Secured creditor", a creditor that has a security interest or other lien on
79 estate property.

 515.510. 1. To the extent the appointment of a receiver is not otherwise provided
2 for pursuant to sections 49.555, 82.1026, 91.730, 198.099, 257.450, 276.501, 287.360,
3 287.875, 351.498, 351.1189, 354.357, 354.480, 355.736, 369.354, 370.154, 375.650, 375.954,
4 375.1166, 375.1176, 379.1336, 379.1418, 382.409, 393.145, 407.100, 425.030, 441.510,
5 443.893, 513.105, 513.110, 521.310, 537.500, 630.763, or any other statute providing for the
6 appointment of a receiver or administration of a receivership estate in specific
7 circumstances, the court or any judge thereof in vacation, shall have the power to appoint
8 a receiver, whenever such appointment shall be deemed necessary, whose duty it shall be
9 to keep and preserve any moneys or other thing deposited in court, or that may be subject
10 of a tender, and to keep and preserve all property and protect any business or business
11 interest entrusted to the receiver pending any legal or equitable action concerning the
12 same, subject to the order of the court, including in the following instances:

13 (1) In an action brought to dissolve an entity the court may appoint a receiver with
14 the powers of a custodian to manage the business affairs of the entity and to wind up and
15 liquidate the entity;

16 (2) In an action in which the person seeking appointment of a receiver has a lien
17 on or interest in property or its revenue-producing potential, and either:

- 18 **(a) The appointment of a receiver with respect to the property or its revenue-**
19 **producing potential is necessary to keep and preserve the property or its revenue-**
20 **producing potential or to protect any business or business interest concerning the property**
21 **or its revenue-producing potential; or**
- 22 **(b) The appointment of a receiver with respect to the property or its revenue-**
23 **producing potential is provided for by a valid and enforceable contract or contract**
24 **provision; or**
- 25 **(c) The appointment of a receiver is necessary to effectuate or enforce an**
26 **assignment of rents or other revenues from the property;**
- 27 **(3) After judgment, in order to give effect to the judgment, provided that the party**
28 **seeking the appointment demonstrates it has no other adequate remedy to enforce the**
29 **judgment;**
- 30 **(4) To dispose of property according to provisions of a judgment dealing with its**
31 **disposition;**
- 32 **(5) To the extent that property is not exempt from execution, at the instance of a**
33 **judgment creditor either before or after the issuance of any execution, to preserve or**
34 **protect it, or prevent its transfer;**
- 35 **(6) If and to the extent that property is subject to execution to satisfy a judgment,**
36 **to preserve the property during the pendency of an appeal, or when an execution has been**
37 **returned unsatisfied, or when an order requiring a judgment debtor to appear for**
38 **proceedings supplemental to judgment has been issued and the judgment debtor fails to**
39 **submit to examination as ordered;**
- 40 **(7) Upon attachment of real or personal property when the property attached is of**
41 **a perishable nature or is otherwise in danger of waste, impairment, or destruction or where**
42 **a debtor has absconded with, secreted, or abandoned the property, and it is necessary to**
43 **collect, conserve, manage, control, or protect it, or to dispose of it promptly, or when the**
44 **court determines that the nature of the property or the exigency of the case otherwise**
45 **provides cause for the appointment of a receiver;**
- 46 **(8) In an action by a transferor of real or personal property to avoid or rescind the**
47 **transfer on the basis of fraud, or in an action to subject property or a fund to the payment**
48 **of a debt;**
- 49 **(9) In an action against any entity if that person is insolvent or is not generally**
50 **paying the entity's debts as those debts become due unless they are the subject of bona fide**
51 **dispute;**
- 52 **(10) In an action where a mortgagee has posted and the court has approved a**
53 **redemption bond as provided pursuant to section 443.440;**

- 54 (11) If a general assignment for the benefit of creditors has been made;
- 55 (12) Pursuant to the terms of a valid and enforceable contract or contract provision
56 providing for the appointment of a receiver, other than pursuant to a contract or contract
57 provision providing for the appointment of a receiver with respect to the primary residence
58 of a debtor who is a natural person;
- 59 (13) To enforce a valid and enforceable contractual assignment of rents or other
60 revenue from the property; and
- 61 (14) To prevent irreparable injury to the person or persons requesting the
62 appointment of a receiver with respect to the debtor's property.
- 63 2. A court of this state shall appoint as receiver of property located in this state a
64 person appointed in a foreign jurisdiction as receiver with respect to the property
65 specifically or with respect to the debtor's property generally, upon the application of the
66 receiver appointed in the foreign jurisdiction or of any party to that foreign action, and
67 following the appointment shall give effect to orders, judgments, and decrees of the court
68 in the foreign jurisdiction affecting the property in this state held by a receiver appointed
69 in the foreign jurisdiction, unless the court determines that to do so would be manifestly
70 unjust or manifestly inequitable. The venue of such an action may be any county in which
71 the debtor resides or maintains any office, or any county in which any property over which
72 a receiver is to be appointed is located at the time the action is commenced.
- 73 3. At least seven days' notice of any application for the appointment of a receiver
74 shall be given to the debtor and to all other parties to the action in which the request for
75 appointment of a receiver is sought, and to all other parties in interest as the court may
76 require. If any execution by a judgment creditor or any application by a judgment creditor
77 for the appointment of a receiver with respect to property over which the appointment of
78 a receiver is sought is pending in any other action at the time the application is made, then
79 notice of the application for the receiver's appointment also shall be given to the judgment
80 creditor in the other action. The court may shorten or expand the period for notice of an
81 application for the appointment of a receiver upon good cause shown.
- 82 4. The order appointing a receiver shall reasonably describe the property over
83 which the receiver is to take charge, by category, individual items, or both if the receiver
84 is to take charge of less than substantially all of the debtor's property. If the order
85 appointing a receiver does not expressly limit the receiver's authority to designated
86 property or categories of property of the owner, the receiver shall be deemed a general
87 receiver with authority to take charge over all of the debtor's property, wherever located.
- 88 5. The court may condition the appointment of a receiver upon the giving of
89 security by the person seeking the appointment of a receiver, in such amount as the court

90 may specify, for the payment of costs and damages incurred or suffered by any person
91 should it later be determined that the appointment of the receiver was wrongfully obtained.

92 6. The appointment of a receiver is not required to be relief ancillary or in addition
93 to any other claim, and may be sought as an independent claim and remedy.

94 7. Sections 515.500 to 515.665 shall not apply to persons or entities who are, or who
95 should be, regulated as public utilities by the public service commission.

515.515. A receiver shall be either a general receiver or a limited receiver. A
2 receiver shall be a general receiver if the receiver is appointed to take possession and
3 control of all or substantially all of a debtor's property and provided the power to liquidate
4 such property. A receiver shall be a limited receiver if the receiver is appointed to take
5 possession and control of only limited or specific property of a debtor, whether to preserve
6 or to liquidate such property. A receiver appointed at the request of a person having a lien
7 on or interest in specific property that constitutes all or substantially all of a debtor's
8 property may be either a general receiver or a limited receiver. The court shall specify in
9 the order appointing a receiver whether the receiver is appointed as a general receiver or
10 as a limited receiver. The court by order, upon notice and a hearing, may convert either
11 a general receiver into a limited receiver or a limited receiver into a general receiver for
12 good cause shown. In the absence of a clear designation by the court of the type of receiver
13 appointed, whether limited or general, the receiver shall be presumed to be a general
14 receiver and shall have the rights, powers, and duties attendant thereto.

515.520. 1. Upon entry of an order appointing a receiver or upon conversion of a
2 limited receiver to a general receiver pursuant to section 515.515 and within ten business
3 days thereof, or within such additional time as the court may allow, the receiver shall give
4 notice of the appointment or conversion to all parties in interest, including the secretary
5 of state for the state of Missouri, and state and federal taxing authorities. Such notice shall
6 be made by first class mail and proof of service thereof shall be filed with the court. The
7 content of such notice shall include:

- 8 (1) The caption reflecting the action in which the receiver is appointed;
- 9 (2) The date the action was filed;
- 10 (3) The date the receiver was appointed;
- 11 (4) The name, address, and contact information of the appointed receiver;
- 12 (5) Whether the receiver is a limited or general receiver;
- 13 (6) A description of the estate property;
- 14 (7) The debtor's name and address and the name and address of the attorney for
15 the debtor, if any;
- 16 (8) The court address at which pleadings, motions, or other papers may be filed;

17 **(9) Such additional information as the court directs; and**

18 **(10) A copy of the court's order appointing the receiver.**

19 **2. A general receiver shall also give notice of the receivership by publication in a**
20 **newspaper of general circulation published in the county or counties in which estate**
21 **property is known to be located once a week for three consecutive weeks. The first notice**
22 **shall be published within thirty days after the date of appointment of the receiver. The**
23 **notice of the receivership shall include the date of appointment of the receiver, the name**
24 **of the court and the action number, the last day on which claims may be filed, if established**
25 **by the court, and the name and address of the debtor, the receiver, and the receiver's**
26 **attorney, if any. For purposes of this section, all intangible property included as estate**
27 **property is deemed to be located in the county in which the debtor, if a natural person,**
28 **resides, or in which the debtor, if an entity, maintains its principal administrative offices.**

29 **3. The debtor shall cooperate with all reasonable requests for information from the**
30 **receiver for purposes of assisting the receiver in providing notice pursuant to subsection**
31 **1 of this section. In the court's discretion, the failure of such debtor to cooperate with any**
32 **reasonable request for information may be punished as a contempt of court.**

515.525. Except as provided in sections 515.500 to 515.665 or otherwise by statute,
2 **any person, whether or not a resident of this state, may serve as a receiver. A person may**
3 **not be appointed as a receiver, and shall be replaced as receiver if already appointed, if it**
4 **should appear to the court that the person:**

5 **(1) Has been found guilty of a felony or other crime involving moral turpitude or**
6 **is controlled by a person who has been convicted of a felony or other crime involving moral**
7 **turpitude;**

8 **(2) Is a party to the action, or is a parent, grandparent, grandchild, sibling, partner,**
9 **director, officer, agent, attorney, employee, secured or unsecured creditor or lienor of, or**
10 **holder of any equity interest in, or controls or is controlled by, the debtor, or who is the**
11 **agent, affiliate, or attorney of any disqualified person;**

12 **(3) Has an interest materially adverse to the interest of persons to be affected by**
13 **the receivership generally; or**

14 **(4) Is a sheriff of any county.**

515.530. Except as otherwise provided for by statute or court rule, before entering
2 **upon duties of receiver, a receiver shall execute a bond with one or more sureties approved**
3 **by the court, in the amount the court specifies, conditioned that the receiver will faithfully**
4 **discharge the duties of receiver in accordance with orders of the court and state law.**
5 **Unless otherwise ordered by the court, the receiver's bond runs in favor of all persons**

6 having an interest in the receivership proceeding or property held by the receiver and in
7 favor of state agencies.

2 **515.535.** As of the time of appointment, and subject to the provisions of subdivision
3 (3) of subsection 3 of section 515.575, the receiver shall have the powers and priority as if
4 it were a creditor that obtained a judicial lien at the time of appointment on all of the
5 debtor's property that is subject to the receivership, subject to satisfaction of recording
6 requirements as to real property pursuant to paragraph (c) of subsection 2 of section
6 515.545.

2 **515.540. 1.** Except as otherwise provided for by sections 515.500 to 515.665, the
3 court in all cases has exclusive authority over the receiver, and the exclusive possession and
4 right of control with respect to all real property and all tangible and intangible personal
5 property with respect to which the receiver is appointed, wherever located, and the
6 exclusive authority to determine all controversies relating to the collection, preservation,
7 application, and distribution of all property, and all claims against the receiver arising out
8 of the exercise of the receiver's powers or the performance of the receiver's duties.
9 However, the court does not have exclusive authority over actions in which a state agency
9 is a party and in which jurisdiction or venue is vested elsewhere.

10 **2.** For good cause shown, the court has power to shorten or expand the time frames
11 specified in sections 515.500 to 515.665.

515.545. 1. A receiver has the following powers and authority:

2 (1) To incur or pay expenses incidental to the receiver's preservation and use of
3 estate property, and otherwise in the performance of the receiver's duties, including the
4 power to pay obligations incurred prior to the receiver's appointment if and to the extent
5 that payment is determined by the receiver to be prudent in order to preserve the value of
6 estate property and the funds used for this purpose are not subject to any lien or right of
7 setoff in favor of a creditor who has not consented to the payment and whose interest is not
8 otherwise adequately protected;

9 (2) If the appointment applies to all or substantially all of the property of an
10 operating business or any revenue-producing property of the debtor, to do all the things
11 which the owner of the business or property may do in the exercise of ordinary business
12 judgment, or in the ordinary course of the operation of the business as a going concern or
13 use of the property including, but not limited to, the purchase and sale of goods or services
14 in the ordinary course of such business, and the incurring and payment of expenses of the
15 business or property in the ordinary course;

16 (3) To assert any rights, claims, or choses in action of the debtor, if and to the extent
17 that the rights, claims, or choses in action are themselves property within the scope of the

18 appointment or relate to any estate property, to maintain in the receiver's name or in the
19 name of the debtor any action to enforce any right, claim, or chose in action, and to
20 intervene in actions in which the debtor is a party for the purpose of exercising the powers
21 under this subsection;

22 (4) To intervene in any action in which a claim is asserted against the debtor, for
23 the purpose of prosecuting or defending the claim and requesting the transfer of venue of
24 the action to the court appointing the receiver. However, the court shall not transfer
25 actions in which a state agency is a party and as to which a statute expressly vests
26 jurisdiction or venue elsewhere. This power is exercisable with court approval by a limited
27 receiver, and with or without court approval by a general receiver;

28 (5) To assert rights, claims, or choses in action of the receiver arising out of
29 transactions in which the receiver is a participant;

30 (6) To pursue in the name of the receiver any claim under sections 428.005 to
31 428.059 assertable by any creditor of the debtor, if pursuit of the claim is determined by
32 the receiver to be appropriate in the exercise of the receiver's business judgment;

33 (7) To seek and obtain advice or instruction from the court with respect to any
34 course of action with respect to which the receiver is uncertain in the exercise of the
35 receiver's powers or the discharge of the receiver's duties;

36 (8) To obtain appraisals with respect to estate property;

37 (9) To compel by subpoena any person to submit to an examination under oath, in
38 the manner of a deposition in accordance with rule 57.03 of the Missouri rules of civil
39 procedure, with respect to estate property or any other matter that may affect the
40 administration of the receivership;

41 (10) To use, sell, or lease property other than in the ordinary course of business
42 pursuant to section 515.645, and to execute in the debtor's stead such documents,
43 conveyances, and borrower consents as may be required in connection therewith; and

44 (11) All other powers as may be conferred upon the receiver specifically by sections
45 515.500 to 515.665, by statute, court rule, or by the court.

46 2. A receiver has the following duties:

47 (1) The duty to notify all federal and state taxing and applicable regulatory
48 agencies of the receiver's appointment in accordance with any applicable laws imposing
49 this duty, including but not limited to, 26 U.S.C. Section 6036;

50 (2) The duty to comply with state law;

51 (3) If a receiver is appointed with respect to any real property, the duty to record
52 as soon as practicable within the land records in any county in which such real property
53 may be situated a notice of lis pendens as provided in section 527.260, together with a

54 certified copy of the order of appointment, together with a legal description of the real
55 property if one is not included in that order; and

56 (4) Other duties as may be required specifically by sections 515.500 to 515.665, by
57 statute, court rule, or by the court.

58 3. The various powers, authorities, and duties of a receiver provided by sections
59 515.500 to 515.665 may be expanded, modified, or limited by order of the court.

515.550. 1. Upon demand by a receiver, any person, including the debtor, shall
2 turn over any estate property that is within the possession or control of that person unless
3 otherwise ordered by the court for good cause shown. A receiver by motion may seek to
4 compel turnover of estate property as against any person over which the court first
5 establishes jurisdiction, unless there exists a bona fide dispute with respect to the existence
6 or nature of the receiver's possessory interest in the estate property, in which case turnover
7 shall be sought by means of a legal action. In the absence of a bona fide dispute with
8 respect to the receiver's right to possession of estate property, the failure to relinquish
9 possession and control to the receiver shall be punishable as a contempt of the court.

10 2. Should the court after notice and a hearing pursuant to subsection 1 of this
11 section order the turnover of property to the receiver, the party against which such order
12 is made shall have the right to deliver a bond executed by such party as principal together
13 with one or more sufficient sureties providing that the principal and each such surety shall
14 each be bound to the receiver in double the amount of the value of the property to be
15 turned over, should the property not be turned over to the receiver when such order
16 becomes final. Absent such bond, the property ordered to be turned over to the receiver
17 shall be immediately turned over to the receiver within ten days of the entry of such order.

515.555. 1. In addition to other duties and requirements set forth in sections
2 515.500 to 515.665 and as ordered by the court, the debtor shall:

3 (1) Within fourteen days of the appointment of a general receiver, make available
4 for inspection by the receiver during normal business hours all information and data
5 required to be filed with the court pursuant to section 515.560, in the form and manner the
6 same are maintained in the ordinary course of the debtor's business;

7 (2) Assist and cooperate fully with the receiver in the administration of the estate
8 and the discharge of the receiver's duties, and comply with all orders of the court;

9 (3) Supply to the receiver information necessary to enable the receiver to complete
10 any schedules or reports that the receiver may be required to file with the court, and
11 otherwise assist the receiver in the completion of the schedules;

12 (4) Upon the receiver's appointment, deliver into the receiver's possession all the
13 property of the receivership estate in the person's possession, custody, or control,

14 including, but not limited to, all accounts, books, papers, records, and other documents;
15 and

16 (5) Following the receiver's appointment, submit to examination by the receiver,
17 or by any other person upon order of the court, under oath, concerning the acts, conduct,
18 property, liabilities, and financial condition of that person or any matter relating to the
19 receiver's administration of the estate.

20 2. When the debtor is an entity, each of the officers, directors, managers, members,
21 partners, or other individuals exercising or having the power to exercise control over the
22 affairs of the entity are subject to the requirements of this section.

515.560. 1. Within thirty days after the date of appointment of a general receiver,
2 the debtor shall file with the court and submit to the receiver the following schedules:

3 (1) A true list of all of the known creditors and applicable regulatory and taxing
4 agencies of the debtor, including the mailing addresses for each, the amount and nature of
5 their claims, and whether their claims are disputed; and

6 (2) A true list of all estate property, including the estimated liquidation value and
7 location of the property and, if real property, a legal description thereof, as of the date of
8 appointment of the receiver.

9 2. The Missouri supreme court may from time to time prescribe by court rule the
10 schedules to be filed in receiverships as the supreme court shall deem appropriate to the
11 effective administrations of sections 515.500 to 515.665.

515.565. 1. A receiver shall not be obligated to obtain any appraisal or other
2 independent valuation of property in the receiver's possession unless ordered by the court
3 to do so.

4 2. A court may order the receiver to file such additional schedules, reports of assets,
5 liabilities, claims, or inventories as necessary and proper.

6 3. Whenever a list or schedule required pursuant to this section is not prepared and
7 filed as required by the debtor, the court may order the receiver, a petitioning creditor, or
8 such other person as the court in its discretion deems appropriate to prepare and file such
9 list or schedule within a time fixed by the court. The court may approve reimbursement
10 of the cost incurred in complying with such order as an administrative expense.

515.570. 1. A general receiver shall file with the court a monthly report of the
2 receiver's operations and financial affairs unless otherwise ordered by the court. Except
3 as otherwise ordered by the court, each report of a general receiver shall be due by the last
4 day of the subsequent month and shall include the following:

5 (1) A balance sheet;

6 (2) A statement of income and expenses;

- 7 **(3) A statement of cash receipts and disbursements;**
8 **(4) A statement of accrued accounts receivable of the receiver;**
9 **(5) A statement disclosing amounts considered to be uncollectable;**
10 **(6) A statement of accounts payable of the receiver, including professional fees.**
11 **Such statement shall list the name of each creditor and the amounts owing and remaining**
12 **unpaid over thirty days; and**
13 **(7) A tax disclosure statement, which shall list post filing taxes due or tax deposits**
14 **required, the name of the taxing agency, the amount due, the date due, and an explanation**
15 **for any failure to make payments or deposits.**
16 **2. A limited receiver shall file with the court all such reports as the court may**
17 **require.**

- 515.575. 1. Except as otherwise ordered by the court, the entry of an order**
2 **appointing a general receiver shall operate as a stay, applicable to all persons, of:**
3 **(1) The commencement or continuation, including the issuance, employment, or**
4 **service of process, of a judicial, administrative, or other action or proceeding against the**
5 **debtor that was or could have been commenced before the entry of the order of**
6 **appointment, or to recover a claim against the debtor that arose before the entry of the**
7 **order of appointment;**
8 **(2) The enforcement against the debtor or any estate property of a judgment**
9 **obtained before the order of appointment;**
10 **(3) Any act to obtain possession of estate property from the receiver, or to interfere**
11 **with, or exercise control over, estate property;**
12 **(4) Any act to create, perfect, or enforce any lien or claim against estate property**
13 **except by exercise of a right of setoff, to the extent that the lien secures a claim against the**
14 **debtor that arose before the entry of the order of appointment; or**
15 **(5) Any act to collect, assess, or recover a claim against the debtor that arose before**
16 **the entry of the order of appointment.**
17 **2. The stay shall automatically expire as to the acts specified in subdivisions (1), (2)**
18 **and (3) of subsection 1 of this section sixty days after the entry of the order of appointment**
19 **unless before the expiration of the sixty-day period the debtor or receiver, for good cause**
20 **shown, obtains an order of the court extending the stay, after notice and a hearing. A**
21 **person whose action or proceeding is stayed by motion to the court may seek relief from**
22 **the stay for good cause shown. Any judgment obtained against the debtor or estate**
23 **property following the entry of the order of appointment is not a lien against estate**
24 **property unless the receivership is terminated prior to a conveyance of the property**
25 **against which the judgment would otherwise constitute a lien.**

26 **3. The entry of an order appointing a receiver does not operate as a stay of:**

27 **(1) The commencement or continuation of a criminal proceeding against the**
28 **debtor;**

29 **(2) The commencement or continuation of an action or proceeding to establish**
30 **paternity, or to establish or modify an order for alimony, maintenance, or support, or to**
31 **collect alimony, maintenance, or support under any order of a court;**

32 **(3) Any act to perfect or to maintain or continue the perfection of an interest in**
33 **estate property pursuant to any generally applicable Missouri law that permits perfection**
34 **of an interest in property to be effective against an entity that acquires rights in such**
35 **property before the date of perfection. Such right to perfect an interest in estate property**
36 **includes any act to perfect an interest in purchase moneys collateral pursuant to sections**
37 **400.9-301 to 400.9-339, perfection of a lien that may be placed against real property under**
38 **the provisions of chapter 429, or the assertion of a right to continue in possession of any**
39 **estate property that is in the possession of a person entitled to retain possession of such**
40 **property pending payment for work performed with respect to such property. If**
41 **perfection of an interest would otherwise require seizure of the property involved or the**
42 **commencement of an action, the perfection shall instead be accomplished by filing, and by**
43 **-serving upon the receiver, or receiver's counsel, if any, notice of the interest within the time**
44 **fixed by law for seizure or commencement;**

45 **(4) The commencement or continuation of an action or proceeding by a**
46 **governmental unit to enforce its police or regulatory power;**

47 **(5) The enforcement of a judgment, other than a money judgment, obtained in an**
48 **action or proceeding by a governmental unit to enforce its police or regulatory power, or**
49 **with respect to any licensure of the debtor;**

50 **(6) The exercise of a right of setoff, including but not limited to, any right of a**
51 **commodity broker, forward contract merchant, stockbroker, financial institution, or**
52 **securities clearing agency to set off a claim for a margin payment or settlement payment**
53 **arising out of a commodity contract, forward contract, or securities contract against cash,**
54 **securities, or other property held or due from the commodity broker, forward contract**
55 **merchant, stockbroker, financial institution, or securities clearing agency to margin,**
56 **guarantee, secure, or settle the commodity contract, forward contract, or securities**
57 **contract, and any right of a swap participant to set off a claim for a payment due to the**
58 **swap participant under or in connection with a swap agreement against any payment due**
59 **from the swap participant under or in connection with the swap agreement or against cash,**
60 **securities, or other property of the debtor held by or due from the swap participant to**
61 **guarantee, secure, or settle the swap agreement;**

62 (7) The establishment by a governmental unit of any tax liability and any appeal
63 thereof; or

64 (8) Any action pending in a court other than that in which the receiver is appointed
65 until transcription of the order appointing the receiver or extending the stay is made to the
66 other court in which an action against the debtor is pending.

67 4. For the purposes of subdivision (8) of subsection 3 of this section, the receiver or
68 any party in interest is authorized to cause to be transcribed any order appointing a
69 receiver or extending the stay to any and all courts in which any action against a debtor
70 is pending in this state. A court that receives a transcript of an order of receivership or
71 extension of stay may on its own order sua sponte transfer the matter before the court to
72 the court issuing an order of receivership.

515.580. 1. A public utility, as defined in section 386.020, providing service to estate
2 property may not alter, refuse, or discontinue service to the property without first giving
3 the receiver fifteen days' notice, or such other notice as may be required by the rules of the
4 public service commission for a customer of that class, of any default or intention to alter,
5 refuse, or discontinue service to estate property. This section does not prohibit the court,
6 upon motion by the receiver, to prohibit the alteration or cessation of utility service if the
7 receiver can furnish adequate assurance of payment in the form of deposit or other
8 security for service to be provided after entry of the order appointing the receiver.

9 2. Any public utility regulated by the public service commission which violates this
10 section shall be subject to appropriate remedial measures by the commission upon
11 receiving notice that the utility has violated the provisions of this section.

12 3. When a utility service provider not regulated by the public service commission
13 violates this section, upon direction of the court, an action may be brought by the receiver
14 against the utility to enforce compliance with the provisions of this section.

515.585. 1. A receiver may assume or reject any executory contract or unexpired
2 lease of the debtor upon order of the court following notice and a hearing, which shall
3 include notice to persons party to the executory contract or unexpired lease to be assumed
4 or rejected. The court may condition assumption or rejection of any executory contract
5 or unexpired lease on the terms and conditions the court believes are just and proper under
6 the particular circumstances of the action. Such terms and conditions may include a
7 requirement that the receiver cures or provides adequate assurance that the receiver will
8 promptly cure any default. A general receiver's performance of an executory contract or
9 unexpired lease prior to the court's authorization of its assumption or rejection shall not
10 constitute an assumption of the executory contract or unexpired lease, or an agreement by

11 the receiver to assume it, nor otherwise preclude the receiver thereafter from seeking the
12 court's authority to reject it.

13 **2. Any person party to an executory contract or unexpired lease may by motion**
14 **seek to compel the rejection thereof at any time, such rejection the court shall order in its**
15 **discretion, and as the interests of justice may require. In determining a motion to compel**
16 **the rejection of an executory contract or unexpired lease, the court may consider, among**
17 **other factors:**

18 **(1) Whether rejection is in the best interests of the receivership estate and the**
19 **interests of creditors;**

20 **(2) The extent to which the executory contract or unexpired lease burdens the**
21 **receivership estate financially;**

22 **(3) Whether the debtor is performing or is in breach of the executory contract or**
23 **unexpired lease;**

24 **(4) If the debtor is in breach of a financial provision of the executory contract or**
25 **unexpired lease, the debtor's ability to cure such breach within a reasonable time; and**

26 **(5) Harm suffered by the non-debtor person party to the executory contract or**
27 **unexpired lease that results or may result from refusing the rejection thereof.**

28 **3. Any obligation or liability incurred by a general receiver on account of the**
29 **receiver's assumption of an executory contract or unexpired lease shall be treated as an**
30 **expense of the receivership. A receiver's rejection of an executory contract or unexpired**
31 **lease shall be treated as a breach of the contract or lease occurring immediately prior to**
32 **the receiver's appointment; and the receiver's right to possess or use property pursuant to**
33 **any executory contract or unexpired lease shall terminate upon rejection of such contract**
34 **or lease. A non-debtor party to an executory contract or unexpired lease that is rejected**
35 **by a receiver may take such steps as may be necessary under applicable law to terminate**
36 **or cancel such contract or lease. The claim of a non-debtor party to an executory contract**
37 **or unexpired lease resulting from a receiver's rejection of it shall be served upon the**
38 **receiver within thirty days following the date the receiver gives notice of such rejection to**
39 **such person, which notice shall indicate the right to file a claim within the thirty day**
40 **period.**

41 **4. A receiver's power under this section to assume an executory contract or**
42 **unexpired lease shall not be affected by any provision in such contract or lease that would**
43 **effect or permit a forfeiture, modification, or termination of it on account of either the**
44 **receiver's appointment, the financial condition of the debtor, or an assignment for the**
45 **benefit of creditors by the debtor.**

46 **5. A receiver may not assume an executory contract or unexpired lease of debtor**
47 **without the consent of the other person party to such contract or lease if:**

48 **(1) Applicable law would excuse a person, other than the debtor, from accepting**
49 **performance from or rendering performance to anyone other than the debtor even in the**
50 **absence of any provisions in the contract or lease expressly restricting or prohibiting an**
51 **assignment of the person's rights or the performance of the debtor's duties;**

52 **(2) The contract or lease is a contract to make a loan or extend credit or financial**
53 **accommodations to or for the benefit of the debtor, or to issue a security of the debtor; or**

54 **(3) The executory contract or lease expires by its own terms, or under applicable**
55 **law prior to the receiver's assumption thereof.**

56 **6. A receiver may not assign an executory contract or unexpired lease without**
57 **assuming it, absent the consent of the other parties to the contract or lease.**

58 **7. If the receiver rejects an executory contract or unexpired lease for:**

59 **(1) The sale of real property under which the debtor is the seller and the purchaser**
60 **is in possession of the real property;**

61 **(2) The sale of a real property timeshare interest under which the debtor is the**
62 **seller;**

63 **(3) The license of intellectual property rights under which the debtor is the licensor;**
64 **or**

65 **(4) The lease of real property in which the debtor is the lessor;**

66

67 **then the purchaser, licensee, or lessee may treat the rejection as a termination of the**
68 **contract, license agreement, or lease, or alternatively, the purchaser, licensee, or lessee may**
69 **remain in possession in which circumstance the purchaser, licensee, or lessee shall continue**
70 **to perform all obligations arising thereunder as and when they may fall due, but may offset**
71 **against any payments any damages occurring on account of the rejection after it occurs.**
72 **The purchaser of real property in such a circumstance is entitled to receive from the**
73 **receiver any deed or any other instrument of conveyance which the debtor is obligated to**
74 **deliver under the executory contract when the purchaser becomes entitled to receive it, and**
75 **the deed or instrument has the same force and effect as if given by the person. A**
76 **purchaser, licensee, or lessee who elects to remain in possession under the terms of this**
77 **subsection has no rights against the receiver on account of any damages arising from the**
78 **receiver's rejection except as expressly provided for by this subsection. A purchaser of real**
79 **property who elects to treat rejection of an executory contract as a termination has a lien**
80 **against the interest in that real property of the debtor for the recovery of any portion of**
81 **the purchase price that the purchaser has paid.**

82 **8. Any contract with the state shall be deemed rejected if not assumed within sixty**
83 **days of appointment of a general receiver unless the receiver and state agency agree to its**
84 **assumption.**

85 **9. Nothing in sections 515.500 to 515.665 affects the enforceability of anti-**
86 **assignment prohibitions provided under contract or applicable law.**

515.590. 1. If a receiver is authorized to operate the business of a debtor or manage
2 **a debtor's property, the receiver may obtain unsecured credit and incur unsecured debt**
3 **in the ordinary course of business as an administrative expense of the receiver without**
4 **order of the court.**

5 **2. The court after notice and a hearing may authorize a receiver to obtain credit**
6 **or incur debt other than in the ordinary course of business. The court may allow the**
7 **receiver to mortgage, pledge, hypothecate, or otherwise encumber estate property as**
8 **security for repayment of any debt that the receiver may incur, including that the court**
9 **may provide that additional credit extended to a receiver by a secured creditor of the**
10 **debtor be afforded the same priority as the secured creditor's existing lien.**

11 **3. When determining the propriety of allowing a receiver to obtain credit or incur**
12 **debt pursuant to subsection 2 of this section, the court shall consider the likely impact on**
13 **the interests of unsecured creditors of the debtor.**

515.595. 1. A receiver has the right to sue and be sued in the receiver's capacity as
2 **such, without leave of court, in all circumstances necessary or proper for the conduct of**
3 **the receivership. However, an action seeking to dispossess a receiver of any estate property**
4 **or otherwise to interfere with the receiver's management or control of any estate property**
5 **may not be maintained or continued unless permitted by order of the court obtained upon**
6 **notice and a hearing.**

7 **2. An action by or against a receiver is adjunct to the receivership action. The clerk**
8 **of the court may assign or refer a case number that reflects the relationship of any action**
9 **to the receivership action. All pleadings in an adjunct action shall include the case number**
10 **of the receivership action as well as the adjunct action case number assigned by the clerk**
11 **of the court. All adjunct actions shall be referred to the judge, if any, assigned to the**
12 **receivership action.**

13 **3. A receiver may be joined or substituted as a party in any action or proceeding**
14 **that was pending at the time of the receiver's appointment and in which the debtor is a**
15 **party, upon application by the receiver to the court, agency, or other forum before which**
16 **the action or proceeding is pending.**

17 **4. Venue for adjunct actions by or against a receiver shall lie in the court in which**
18 **the receivership is pending, if the court has jurisdiction over the action. Actions in other**

19 courts in this state shall be transferred to the court upon the receiver's filing of a motion
20 for change of venue, provided that the receiver files the motion within thirty days following
21 service of original process upon the receiver. However, actions in other courts or forums
22 in which a state agency is a party shall not be transferred on request of the receiver absent
23 consent of the affected state agency or grounds provided under other applicable law.

24 **5. An action by or against a receiver does not abate by reason of death or**
25 **resignation or removal of the receiver, but continues against the successor receiver or**
26 **against the debtor, if a successor receiver is not appointed.**

27 **6. Whenever the assets of any domestic or foreign corporation, that has been doing**
28 **business in this state, has been placed in the hands of any general receiver and the receiver**
29 **is in possession of its assets, service of all process upon the corporation may be made upon**
30 **the receiver.**

31 **7. A judgment against a general receiver or the debtor is not a lien on estate**
32 **property, nor shall any execution issue thereon. Upon entry of a judgment against a**
33 **general receiver or the debtor in the court in which a general receivership is pending, or**
34 **upon filing in a general receivership of a certified copy of a judgment against a general**
35 **receiver or the debtor entered by another court in this state or a foreign jurisdiction, the**
36 **judgment shall be treated as an allowed claim in the receivership. A judgment against a**
37 **limited receiver shall be treated and has the same effect as a judgment against the debtor,**
38 **except that the judgment is not enforceable against estate property unless otherwise**
39 **ordered by the court upon notice and a hearing.**

515.600. 1. A receiver appointed pursuant to sections 515.500 to 515.665, and the
2 **agents, attorneys, and employees of the receivership employed by the receiver pursuant to**
3 **section 515.605 shall enjoy judicial immunity for acts and omissions arising out of and**
4 **performed in connection with his or her official duties on behalf of the court and within**
5 **the scope of his or her appointment. A person other than a successor receiver duly**
6 **appointed by the court does not have a right of action against a receiver under this section**
7 **to recover property or the value thereof for or on behalf of the estate except as provided**
8 **in subsection 2 of this section. A successor receiver may recover only actual damages**
9 **incurred by the receivership estate from a prior receiver.**

10 **2. A person, other than a successor receiver duly appointed by the court, shall not**
11 **have the right to bring an action against a receiver or the agents, attorneys, and employees**
12 **of the receivership employed by the receiver pursuant to section 515.605 for any act or**
13 **omission while acting in the performance of their functions and duties in connection with**
14 **the receivership unless such person first files a verified application with the appointing**
15 **court requesting leave to bring such action and the court grants such application after**

16 notice and hearing. The appointing court shall only approve the application to bring
17 claims against the receiver under this section upon a prima facie showing by the person
18 making such request that the receiver's actions are not protected by the grant of immunity
19 set forth in subsection 1 of this section. No other court apart from the appointing court
20 shall have the authority to review or approve the application to bring claims against the
21 receiver under this section.

22 3. If a person requests leave to bring claims under subsection 2 of this section and
23 such leave is denied, the court shall grant judgment in favor of the receiver for the costs
24 of the proceeding and reasonable attorney's fee if the court finds that the position of the
25 person was not substantially justified.

515.605. 1. The receiver, with the court's approval, may employ one or more
2 attorneys, accountants, appraisers, auctioneers, or other professional persons that do not
3 hold or represent an interest adverse to the receivership to represent or assist the receiver
4 in carrying out the receiver's duties.

5 2. A person is not disqualified for employment under this section solely because of
6 the person's employment by, representation of, or other relationship with a creditor or
7 other party in interest, if the relationship is disclosed in the application for the person's
8 employment and if the court determines that there is no actual conflict of interest or
9 inappropriate appearance of a conflict.

10 3. This section does not preclude the court from authorizing the receiver to act as
11 attorney or accountant if the authorization is in the best interests of the receivership.

12 4. The receiver and any professionals employed by the receiver shall maintain
13 itemized billing records containing a description of services, the time spent, billing rates
14 of all who perform work to be compensated, and a detailed list of expenses. The receiver,
15 and any professionals employed by the receiver may file a motion requesting the allowance
16 of fees and expenses. Notice of the motion shall be served on all persons required to be
17 identified on the master mailing list maintained pursuant to section 515.610, advising that
18 objections to the application shall be filed within ten days from the date of the notice, and
19 if objections are not timely filed, the court may approve the motion without further notice
20 or hearing. If an objection is filed, the receiver or professional whose compensation is
21 affected may notice the objection for a hearing. Upon request of any person required to
22 receive notice pursuant to this subsection, the receiver and any professionals employed by
23 the receiver shall provide a copy of their itemized billing records upon which their motion
24 for fees and expenses is based within five days of the date of the request.

515.610. 1. Creditors and parties in interest to whom are given notice as provided
2 by sections 515.500 to 515.665 and creditors or other persons submitting written claims in

3 the receivership or otherwise appearing and participating in the receivership are bound
4 by the acts of the receiver and the orders of the court relating to the receivership whether
5 or not the person is a party to the receivership action.

6 2. Creditors and parties in interest have a right to notice and a hearing as provided
7 in sections 515.500 to 515.665 whether or not the person is a party to the receivership
8 action.

9 3. Any party in interest may appear in the receivership in the manner prescribed
10 by court rule and shall file with the court a written notice including the name and mailing
11 address of the party in interest, and the name and address of the party in interest's
12 attorney, if any, with the clerk, and by serving a copy of the notice upon the receiver and
13 the receiver's attorney of record, if any. The receiver shall maintain a master mailing list
14 of all parties and of all parties in interest that file and serve a notice of appearance in
15 accordance with this subsection and such parties in interest's attorneys, if any. The
16 receiver shall make a copy of the current master mailing list available to any party or upon
17 request.

18 4. Any request for relief against a state agency shall be mailed to or otherwise
19 served on the agency and on the office of the attorney general.

20 5. The receiver shall give not less than ten days' written notice of any examination
21 by the receiver of the debtor to all persons required to be identified on the master mailing
22 list.

23 6. All persons required to be identified on the master mailing list are entitled to not
24 less than thirty days' written notice of the hearing of any motion or other proceeding
25 involving any proposed:

26 (1) Allowance or disallowance of any claim or claims;

27 (2) Abandonment, disposition, or distribution of estate property, other than an
28 emergency disposition of property subject to eroding value or a disposition of estate
29 property in the ordinary course of business;

30 (3) Compromise or settlement of a controversy that might affect the distribution
31 to creditors from the receivership;

32 (4) Motion for termination of the receivership or removal or discharge of the
33 receiver. Notice of the motion shall also be sent to the department of revenue and other
34 applicable regulatory agencies;

35 (5) Any opposition to any motion to authorize any of the actions under subdivisions

36 (1) to (4) of this subsection shall be filed and served upon all persons required to be
37 identified on the master mailing list at least ten days before the date of the proposed action.

38 **7. Whenever notice is not specifically required to be given under sections 515.500**
39 **to 515.665 or otherwise by court rule, the court may consider motions and grant or deny**
40 **relief without notice or hearing, unless a party or party in interest would be prejudiced or**
41 **harmed by the relief requested.**

515.615. 1. The claims administration process identified in this section shall be
2 **administered by a general receiver and may be ordered by the court to be administered by**
3 **a limited receiver.**

4 **2. All claims, other than claims of duly perfected secured creditors, arising prior**
5 **to the receiver's appointment shall be in the form required by this section and served and**
6 **noticed as required by this section. Any claim not in the form required by this section and**
7 **so served and noticed is barred from participating in any distribution to creditors.**

8 **3. Claims shall be served on the receiver within thirty days from the date notice is**
9 **given under this section, unless the court reduces or extends the period for cause shown,**
10 **except that a claim arising from the rejection of an executory contract or an unexpired**
11 **lease of the debtor may be served within thirty days after the rejection. Claims by state**
12 **agencies shall be served by such state agencies on the receiver within sixty days from the**
13 **date notice is given by mail under this section.**

14 **4. Claims shall be in written form entitled "Proof of Claim", setting forth the name**
15 **and address of the creditor and the nature and amount of the claim, and executed by the**
16 **creditor or the creditor's authorized agent. When a claim or an interest in estate property**
17 **securing the claim is based on a writing, the original or a copy of the writing shall be**
18 **included as a part of the proof of claim together with evidence of perfection of any security**
19 **interest or other lien asserted by the claimant. Unless otherwise ordered by the court,**
20 **creditors may amend such claims and such amendments shall relate back to the original**
21 **filing of such claim.**

22 **5. Notices of claim shall be filed with the court. A notice shall be filed with the**
23 **court relating to each served claim. A notice of claim shall not include the claim or**
24 **supporting documentation served upon the receiver. A notice of claim shall include the**
25 **name and address of the creditor asserting the claim, together with the name and address**
26 **of the attorney, if any representing the creditor, the amount of the claim, whether or not**
27 **the claim is secured or unsecured, and if secured, a brief description of any estate property**
28 **and other collateral securing the claim.**

29 **6. A claim properly noticed, executed, and served in accordance with this section**
30 **constitutes prima facie evidence of the validity and amount of the claim.**

515.620. 1. At any time prior to the entry of an order approving the general
2 **receiver's final report, the receiver or any party in interest may file with the court an**

3 objection to a claim, such objection shall be in writing and shall set forth the grounds for
4 the objection to the claim. A copy of the objection shall be mailed to the creditor who shall
5 have thirty days to file with the court any suggestions in support of the claim. Upon the
6 filing of any suggestions in support of the claim, the court may adjudicate the claim
7 objection or set a hearing relating to the claim objection. Claims that comply with the
8 requirements of section 515.615 that are not disallowed by the court are entitled to share
9 in distributions from the receivership in accordance with the priorities provided for by
10 sections 515.500 to 515.665 or otherwise by law.

11 2. Upon order of the court, the general receiver, or any party in interest objecting
12 to the creditor's claim, an objection may be subject to mediation prior to adjudication of
13 the objection. However, state claims are not subject to mediation absent agreement of the
14 state.

15 3. Upon motion of the general receiver or other party in interest, the following
16 claims may be estimated for purpose of allowance under this section under the rules or
17 orders applicable to the estimation of claims under this section:

18 (1) Any contingent or unliquidated claim, the fixing or liquidation of which, as the
19 circumstance may be, would unduly delay the administration of the receivership; or

20 (2) Any right to payment arising from a right to an equitable remedy for breach
21 of performance.

22 Claims subject to this subsection shall be allowed in the estimated amount thereof.

515.625. 1. Claims not disallowed by the court shall receive distribution under
2 sections 515.500 to 515.665 in the order of priority under subdivisions (1) to (8) of this
3 section and, with the exception of subdivisions (1) to (3) of this subsection, on a pro rata
4 basis:

5 (1) Any secured creditor that is duly perfected under applicable law, whether or
6 not such secured creditor has filed a proof of claim, shall receive the proceeds from the
7 disposition of the estate property that secures its claim. However, the receiver may recover
8 from estate property secured by a lien or the proceeds thereof the reasonable, necessary
9 expenses of preserving, protecting, or disposing of the estate property to the extent of any
10 benefit to a duly perfected secured creditor. If and to the extent that the proceeds are less
11 than the amount of a duly perfected secured creditor's claim or a duly perfected secured
12 creditor's lien is avoided on any basis, the duly perfected secured creditor's claim is an
13 unsecured claim under subdivision (8) of this subsection. Duly perfected secured claims
14 shall be paid from the proceeds in accordance with their respective priorities under
15 otherwise applicable law;

16 **(2) Actual, necessary costs and expenses incurred during the administration of the**
17 **receivership, other than those expenses allowable under subdivision (1) of this subsection,**
18 **including allowed fees and reimbursement of reasonable charges and expenses of the**
19 **receiver and professional persons employed by the receiver. Notwithstanding subdivision**
20 **(1) of this subsection, expenses incurred during the administration of the estate have**
21 **priority over the secured claim of any secured creditor obtaining or consenting to the**
22 **appointment of the receiver;**

23 **(3) A secured creditor that is not duly perfected under applicable law shall receive**
24 **the proceeds from the disposition of the estate property that secures its claim if and to the**
25 **extent that unsecured claims are made subject to those liens under applicable law;**

26 **(4) Claims for wages, salaries, or commissions, including vacation, severance, and**
27 **sick leave pay, or contributions to an employee benefit plan earned by the claimant within**
28 **one hundred eighty days of the date of appointment of the receiver or the cessation of any**
29 **business relating to the receivership, whichever occurs first, but only to the extent of ten**
30 **thousand nine hundred fifty dollars;**

31 **(5) Unsecured claims, to the extent of two thousand four hundred twenty-five**
32 **dollars for each natural person, arising from the deposit with the person debtor before the**
33 **date of appointment of the receiver of moneys in connection with the purchase, lease, or**
34 **rental of estate property or the purchase of services for personal, family, or household use**
35 **that were not delivered or provided;**

36 **(6) Claims for a marital, family, or other support debt, but not to the extent that**
37 **the debt is assigned to another person, voluntarily, by operation of law, or otherwise; or**
38 **includes a liability designated as a support obligation unless that liability is actually in the**
39 **nature of a support obligation;**

40 **(7) Unsecured claims of governmental units for taxes which accrued prior to the**
41 **date of appointment of the receiver;**

42 **(8) Other unsecured claims.**

43 **2. If all of the classes under subsection 1 of this section have been paid in full, any**
44 **residue shall be paid to the debtor.**

515.630. Except as otherwise provided for by statute, estate property acquired by
2 **the estate, the receiver, or the debtor of the receiver is subject to an allowed secured claim**
3 **to the same extent as would exist in the absence of a receivership.**

515.635. To the extent that funds are available in the estate for distribution to
2 **creditors in a general receivership, the holder of an allowed noncontingent, liquidated**
3 **claim is entitled to receive interest at the legal rate or other applicable rate from the date**
4 **of appointment of the receiver or the date on which the claim became a noncontingent,**

5 liquidated claim. If there are sufficient funds in the estate to fully pay all interest owing
6 to all members of the class, then interest shall be paid proportionately to each member of
7 the class.

2 515.640. The receiver or any party upon order of the court following notice and a
3 hearing and upon the terms and conditions the court considers just and proper may
4 abandon any estate property that is burdensome to the receiver or is of inconsequential
5 value or benefit. However, a receiver may not abandon property that is a hazard or
6 potential hazard to the public in contravention of a state statute or rule that is reasonably
7 designed to protect the public health or safety from identified hazards. Property that is
8 abandoned no longer constitutes estate property.

2 515.645. 1. The receiver with the court's approval after notice and a hearing may
3 use, sell, or lease estate property other than in the ordinary course of business.

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

8 (1) The property to be sold is real property used principally in the production of
9 crops, livestock, or aquaculture, or the property is a homestead, and the owner of the
10 property has not consented to the sale following the appointment of the receiver; or

11 (2) A party in interest, including but not limited to, an owner of the property to be
12 sold or a secured creditor as regards to the property to be sold serves and files a timely
13 opposition to the receiver's sale, and the court determines that the amount likely to be
14 realized by the receiver's sale is less than the amount that may be realized within a
15 reasonable time in the absence of the receiver's sale.

16

17 Upon any sale free and clear of liens authorized by this section, all liens encumbering the
18 property sold shall transfer and attach to the proceeds of the sale, net of reasonable
19 expenses incurred in the disposition of the property sold, in the same order, priority, and
20 validity as the liens had with respect to the property sold immediately before the
21 conveyance. The court may authorize the receiver at the time of sale to satisfy, in whole
22 or in part, any lien on the property sold out of the proceeds of its sale if the interest of any
23 other creditor having a lien against the proceeds of the sale would not thereby be impaired.

24 3. At a public sale of estate property under subsection 1 of this section, a creditor
25 with a lien against the property to be sold may credit bid at the sale of the property. A
26 creditor with a lien against the property to be sold who purchases the property from a

27 receiver may offset against the purchase price its secured claim against the property,
28 provided that such secured creditor tenders cash sufficient to satisfy in full all secured
29 claims payable out of the proceeds of sale having priority over such secured creditor's
30 secured claim. If the lien or the claim it secures is the subject of a bona fide dispute, the
31 court may order the holder of the lien or claim to provide the receiver with adequate
32 security to assure full payment of the purchase price in the event the lien, the claim, or any
33 part thereof is determined to be invalid or unenforceable.

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

37 5. The reversal or modification on appeal of an authorization to sell or lease estate
38 property under this section does not affect the validity of a sale or lease under that
39 authorization to any person that purchased or leased the property in good faith, whether
40 or not the person knew of the pendency of the appeal, unless the authorization and sale or
41 lease were stayed pending the appeal.

42 6. The notice of a proposed use, sale, or lease of estate property required by
43 subsection 1 of this section shall include the time and place of any public sale, the terms
44 and conditions of any private sale and the time fixed for filing objections, and shall be
45 mailed to all parties in interest, and to such other persons as the court in the interests of
46 justice may require.

47 7. In determining whether a sale free and clear of liens, claims, encumbrances, and
48 of all rights of redemption is in the best interest of the estate, the court may consider,
49 among such other factors as the court deems appropriate, the following:

50 (1) Whether the sale shall be conducted in a commercially reasonable manner
51 considering assets of a similar type or nature;

52 (2) Whether an independent appraisal supports the purchase price to be paid;

53 (3) Whether creditors and parties in interest received adequate notice of the sale,
54 sale procedures, and details of the proposed sale;

55 (4) Any relationship between the buyer and the debtor;

56 (5) Whether the sale is an arm's length transaction; and

57 (6) Whether parties asserting a lien as to the property to be sold consent to the
58 proposed sale.

515.650. 1. A receiver appointed in any action pending in the courts of this state,
2 without first seeking approval of the court, may apply to any court outside of this state for
3 appointment as receiver with respect to any property or business of the person over whose
4 property the receiver is appointed constituting estate property which is located in any other

5 jurisdiction, if the appointment is necessary to the receiver's possession, control,
6 management, or disposition of property in accordance with orders of the court.

7 **2. A receiver appointed by a court of another state, or by a federal court in any**
8 **district outside of this state, or any other person having an interest in that proceeding, may**
9 **obtain appointment by a court of this state of that same receiver with respect to any**
10 **property or business of the person over whose property the receiver is appointed**
11 **constituting property of the foreign receivership that is located in this jurisdiction if the**
12 **person is eligible to serve as receiver and the appointment is necessary to the receiver's**
13 **possession, control, or disposition of the property in accordance with orders of the court**
14 **in the foreign proceeding. Upon the receiver's request, the court shall enter the orders not**
15 **offensive to the laws and public policy of this state, necessary to effectuate orders entered**
16 **by the court in the foreign receivership proceeding. A receiver appointed in an ancillary**
17 **receivership in this state is required to comply with sections 515.500 to 515.665 requiring**
18 **notice to creditors or other parties in interest only as may be required by the superior court**
19 **in the ancillary receivership.**

515.655. 1. The court shall remove or replace the receiver on application of the
2 **debtor, the receiver, or any creditor, or any party or on the court's own motion if the**
3 **receiver fails to perform the receiver's duties or obligations under sections 515.500 to**
4 **515.665, as ordered by the court.**

5 **2. Upon removal, resignation, or death of the receiver the court shall appoint a**
6 **successor receiver if the court determines that further administration of the estate is**
7 **required. The successor receiver shall immediately take possession of the estate and**
8 **assume the duties of receiver.**

9 **3. Whenever the court is satisfied that the receiver so removed or replaced has fully**
10 **accounted for and turned over to the successor receiver appointed by the court all of the**
11 **property of the estate and has filed a report of all receipts and disbursements during the**
12 **person's tenure as receiver, the court shall enter an order discharging that person from all**
13 **further duties and responsibilities as receiver after notice and a hearing.**

515.660. 1. Upon distribution or disposition of all property of the estate, or the
2 **completion of the receiver's duties with respect to estate property, the receiver shall move**
3 **the court to be discharged upon notice and a hearing.**

4 **2. The receiver's final report and accounting setting forth all receipts and**
5 **disbursements of the estate shall be included in the petition for discharge and filed with the**
6 **court.**

7 **3. Upon approval of the final report, the court shall discharge the receiver.**

8 **4. The receiver's discharge releases the receiver from any further duties and**
9 **responsibilities as receiver under sections 515.500 to 515.665.**

10 **5. Upon motion of any party in interest, or upon the court's own motion, the court**
11 **has the power to discharge the receiver and terminate the court's administration of the**
12 **property over which the receiver was appointed. If the court determines that the**
13 **appointment of the receiver was wrongfully procured or procured in bad faith, the court**
14 **may assess against the person who procured the receiver's appointment all of the receiver's**
15 **fees and other costs of the receivership and any other sanctions the court determines to be**
16 **appropriate.**

17 **6. A certified copy of an order terminating the court's administration of the**
18 **property over which the receiver was appointed shall operate as a release of any lis**
19 **pendens notice recorded pursuant to section 515.545 and the same shall be recorded within**
20 **the land records in any county in which such real property may be situated, together with**
21 **a legal description of the real property if one is not included in that order.**

515.665. Orders of the court pursuant to sections 515.500 to 515.665 are appealable
2 **to the extent allowed under existing law, including subdivision (2) of section 512.020.**

3

 [515.240. The court, or any judge thereof in vacation, shall have power
2 to appoint a receiver, whenever such appointment shall be deemed necessary,
3 whose duty it shall be to keep and preserve any money or other thing deposited
4 in court, or that may be subject of a tender, and to keep and preserve all property
5 and protect any business or business interest entrusted to him pending any legal
6 or equitable proceeding concerning the same, subject to the order of the court.]

7

 [515.250. Such receiver shall give bond, and have the same powers and
2 be subject to all the provisions, as far as they may be applicable, enjoined upon
3 a receiver appointed by virtue of the law providing for suits by attachment.]

4

 [515.260. The court shall allow such receiver such compensation for his
2 services and expenses as may be reasonable and just, and cause the same to be
3 taxed as costs, and paid as other costs in the cause.]

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