WASHINGTON'S RECEIVERSHIP ACT

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Marc Barreca

K&L Gates LLP

925 Fourth Avenue, Suite 2900 Seattle, WA 98104-1158 Tel: (206) 370-7815 Fax: (206) 370-6012 E-mail: <u>marc.barreca@klgates.com</u>

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By Marc Barreca, K&L Gates LLP

Introduction

In 2004, the Washington State legislature enacted Substitute Senate Bill 6189, an Act relating to Receiverships ("the Act"), substantially replacing the prior receivership statute, Chapter 7.60 RCW and the former assignment for benefit of creditors ("ABC") statute, Chapter 7.08 RCW. The receivership legislation was the result of years of effort by the WSBA Creditor-Debtor Law Section.

The Creditor-Debtor Section's intent was to provide a comprehensive receivership statute giving greater guidance to the bench and bar on the powers and duties of a receiver, in some cases codifying existing receivership case law, and in other cases, expanding or modifying current law. The Act also substantially amended the state's ABC statute, replacing out-of-date and confusing provisions, establishing a more usable standard notice of assignment, and providing the assignee with the powers of a receiver for administration of assets and resolution of claims.

Summary of Provisions

The following is a summary of the Act's major provisions. For purposes of this summary, the person as to whose property the receiver is appointed will be referred to as "debtor," although receivers are appointed in various settings, not necessarily involving insolvency.

Types of Receivers

RCW 7.60.015 now provides a distinction between two types of receiverships – a general receivership and a custodial receivership. A general receiver is appointed to take possession and control of "substantially all of a person's property with authority to liquidate that property." A custodial receiver is "appointed to take charge of limited or specific property of a person or is not given authority to liquidate property." Receivership appointments made solely to collect rents during the pendency of a judicial or non-judicial real property foreclosure are expressly designated as custodial receiverships. As various provisions of the Act only apply in general receiverships, the court is required to specify in the appointment order whether a receiver is a general or custodial receiver but may later convert one type of receivership to the other.

Appointment of Receiver

RCW 7.60.025(1)(a)-(nn) enumerates in one location the various statutory grounds for appointment of a receiver previously scattered throughout the Revised Code of Washington. It

also clarifies that, except where a receiver's appointment is expressly mandated by statute or is made in connection with a real property foreclosure to enforce an assignment of rents, a receiver shall only be appointed if the court finds that the appointment is "reasonably necessary" and that other available remedies are inadequate. See generally, MONY Life Ins. v. Cissne Family LLC, 135 Wn.App 948 (2006). A seven-day notice requirement for receivership applications is established, but may be shortened or expanded for good cause shown.

Note that, pursuant to RCW 7.60.300, Chapter 7.60 is inapplicable to insurance under receiverships initiated under RCW Title 48.

Eligibility to Serve as a Receiver

Receiver eligibility requirements are set forth in RCW 7.60.035 and preclude appointment of a convicted felon, a party to the receivership action, certain insiders, as defined, and parties having a materially adverse interest to persons affected by the receivership.

Receiver's Bond

RCW 7.60.045 requires a receivership bond (or cash deposit in lieu of bond) except where expressly provided by statute or court rule but does not require a minimum amount.

Turnover of Property

RCW 7.60.070 provides that a receiver, by motion, may seek to compel turnover of receivership estate property from any person unless the receiver's interest in the property is in bona fide dispute, in which case a lawsuit by the receiver is required.

Schedules of Property and Liabilities; Inventory of Property, Appraisals

RCW 7.60.090 requires the completion of a schedule of assets and liabilities on a prescribed form. For ABCs, the schedules are to be annexed to the assignment document. In the case of a general receivership, the schedules are to be filed by the receiver within twenty days of the general receiver's appointment. The person making an assignment for benefit of creditors is required to verify the schedules. Under RCW 7.60.080, the debtor has the duty to cooperate with the receiver, provide information necessary for completion of the schedules, deliver control of property and records to the receiver, and submit to an examination by the receiver (equivalent to a Bankruptcy Rule 2004 examination).

Automatic Stay of Certain Proceedings

RCW 7.60.110 provides a limited automatic stay of certain proceedings. Unless otherwise ordered by the court, entry of an order appointing a general receiver or a custodial receiver with respect to all of a person's property (i.e., like a general receiver but without the power to liquidate) creates a stay of actions against the debtor or actions to obtain possession of receivership property. The stay automatically expires as to most litigation matters, sixty days after the appointment unless continued for good cause shown. The sixty day stay expiration does

not modify the stay of foreclosures, other actions regarding possession of receivership assets or actions to perfect security interests.

Affected parties may move for relief from or modification of the stay. The stay does not prevent prosecution of criminal proceedings, proceedings regarding support obligations, regulatory actions, or issuance of a notice of tax deficiency.

Although the automatic stay is a substantial new addition to the state's receivership law, assets of the receivership's stay are already considered to be in the *custodia legis* of the receivership court and not generally subject to new liens or transfer other than after order of the receivership court. No specificity is given for grounds for relief from the stay or grounds for continuation of the stay past the initial sixty-day period. The Act is also indefinite as to who, other than parties to the receivership action, are required to receive notice of motions for relief from stay or motions to continue the stay. Presumably parties will argue by analogy to bankruptcy case law as to grounds for relief from the automatic stay.

Utility Services

RCW 7.60.120 provides restrictions on discontinuance of utility service. These are not as extensive as the utility provisions of 11 U.S.C. § 366. RCW 7.60.050(14) defines "utility" as "a person providing any service regulated by the Utilities and Transportation Commission." This is more specific and presumably more narrow than the equivalent term used in 11 U.S.C. § 366. RCW 7.60.120 is also more limited than 11 U.S.C. § 366. It prohibits a utility from discontinuing service without providing the receiver at least fifteen days notice of default. RCW 7.60.120 stops short of enjoining utilities from termination of service, but instead states "[t]his section does not prohibit the court, upon motion by the receiver, to prohibit the alteration or cessation of utility service if the receiver can furnish adequate assurance of payment (for service to be provided after entry of the order appointing the receiver)." RCW 7.60.120 applies to any utility providing service to receivership estate property regardless of whether it is a general or custodial receivership.

Executory Contracts and Unexpired Leases

RCW 7.60.130 codifies, clarifies, and amends the common law power of a receiver to assume or reject executory contracts and unexpired leases. This section only applies to a general receiver. RCW 7.60.130 allows a general receiver to assume or reject contracts after notice and opportunity for hearing. To assume a contract, as in bankruptcy, the receiver must cure defaults but does not have to cure financial condition or "ipso facto" clause violations. A receiver may assign executory contracts or unexpired leases after assuming them, but has no express power to override anti-assignment provisions. Additionally, contracts which are inherently non-assignable (such as personal service contracts, certain intellectual property license agreements, and certain governmental contracts), remain non-assignable in receiverships, absent the counterparty's consent.

As in Section 365 of the Bankruptcy Code, the counterparties to certain kinds of executory contracts or unexpired leases are provided special protections in the event of contract rejection. These include buyers of real property in possession of the real property, timeshare

buyers, intellectual property licensees, and real property lessees. The protected parties are allowed to retain the benefits of their contracts, but must continue paying rent, royalties, or performing other obligations arising after rejection and may offset against such payments damages occurring as a result of rejection.

Receivership Financing

RCW 7.60.140 clarifies that a receiver operating a business or managing a person's property may obtain unsecured credit in the ordinary course of business without order of the court and may otherwise be authorized by court order to incur indebtedness on a secured or unsecured basis. There are no provisions authorizing priming of existing security interests by lenders to the receivership.

Abandonment of Property

RCW 7.60.150 allows a receiver (whether a general or custodial receiver) to, after notice and hearing, abandon estate property that is burdensome or of inconsequential value. A receiver may not abandon property that is a hazard or potential hazard to the public in contravention of state statute. This is similar to the restriction on abandonment under 11 U.S.C. § 554, following the Supreme Court's Midlantic Bank decision. <u>Midlantic Nat'l Bank v. New Jersey Dept. of Environmental Protection</u>,106 S.Ct. 775 (1986).

Personal Liability of Receiver

RCW 7.60.170 clarifies the standard for liability of a receiver. A receiver will only be liable if loss or damage is caused by a failure of the receiver to follow a court order or by an act or omission which would expose a member of a board of directors to liability, assuming such director's liability is limited to the maximum extent permitted under RCW 23B.08.320. The range of persons to whom the receiver may be personally liable is also limited. Only the debtor or persons who would otherwise have valid claims against officers of a business corporation organized under the laws of the State of Washington under the same circumstances will have potential personal claims against the receiver. A receiver will have no personal liability to any person for acts or omissions specifically contemplated by an order of the court.

Employment and Compensation of Professionals

RCW 7.60.180 specifically provides for appointment of professionals by the receiver after court approval. Such professionals must not "hold or represent an interest adverse to the estate" but are not disqualified by representation of or relationship with a creditor or other party in interest if the relationship is disclosed in the application and the court determines that there is no actual conflict of interest or inappropriate appearance of conflict. RCW 7.60.180 also provides for notice and opportunity for hearing as to payment of the professionals' bills. Fee applications must provide an itemized billing including the rates of persons performing the work to be compensated. In a custodial receivership in aid of foreclosure, the fees and expenses may be allowed by stipulation of the secured creditor affected by the appointment. If objections are

filed, the receiver or professional seeking compensation may request a hearing on at least five days notice to persons having filed the objections.

Participation of Creditors and Parties in Interest in Receivership Proceeding; Effect of Court Orders on Non-Parties

RCW 7.60.190 clarifies that a creditor or certain other parties in interest may participate in the receivership proceeding without formally joining as a party. Orders regarding sale free and clear of liens or other matters affecting real property are effective as to persons having actual knowledge of receivership whether or not they appear and participate in the receivership. RCW 7.60.190 also provides certain notice periods, including a ten-day notice for receiver's examination of the debtor referred to above and a thirty-day notice regarding claims allowance, abandonment, creditor distributions, dispositions of estate property, compromises, or settlements which may affect distributions to creditors, compensation of receivers and professionals, or applications for termination of the receivership or discharge of the receiver.

Submission of Claims in General Receiverships

RCW 7.60.210 provides that, in a general receivership, creditors must file claims to receive a distribution. A general receiver must provide at least thirty days notice to creditors of a claims bar date except in the case of state agencies. State agencies must receive at least one hundred eighty days notice, equivalent to that required in the Bankruptcy Rules.

Priorities

RCW 7.60.230 provides that claims in a general receivership shall receive distributions in a set priority generally equivalent to that under the Bankruptcy Code. Secured creditors are to be paid from the proceeds of their collateral, after payment of the "reasonable necessary expenses of preserving, protecting or disposing of the property to the extent of any benefit to the creditors." This is a receiver's equivalent of a bankruptcy trustee's right to surcharge collateral under 11 U.S.C. § 506(c). The undersecured portion of a creditor's claim is treated as an unsecured claim. Salary claims within ninety days of the appointment of the receiver or cessation of business are limited in priority to \$2,000. Consumer deposit claims are limited in priority to \$900. Support obligations, as defined in RCW 74.20A.020(10), receive a priority below wage and consumer deposit claims but above tax claims of governmental units. The priority for governmental unit tax claims is not limited as to the type of tax but is limited to unsecured claims.

Secured Claims Against After-Acquired Property

RCW 7.60.240 clarifies that pre-receivership security interests which include an afteracquired property clause will attach to after-acquired property of the receivership. This is significantly different than the limitation on after-acquired property provided in 11 U.S.C. § 552.

Receiver's Disposition of Property; Sales Free and Clear

RCW 7.60.260 codifies the receiver's common law right to sell assets of the receivership free and clear of liens. The court may authorize a general receiver to sell estate property free and clear of liens and rights of redemption whether or not sale proceeds would be sufficient to satisfy all secured claims. Sale notices require 30 days notice under RCW 7.60.190(4). Absent consent of the owner, farm property and homestead property may not be sold by the receiver. Additionally, if the owner or a creditor secured by an interest in the property objects to the sale, the court must determine that "the amount likely to be realized by the objecting person from the receiver's sale is less than the person would realize within a reasonable time in the absence of the receiver's sale." Secured creditors are allowed to bid their debt but must provide for payment of senior secured creditors. This is the equivalent of 11 U.S.C. § 365(k).

The receiver is given the right as a co-owner to seek partition of property to the extent provided under applicable state or federal law but is not given the equivalent of a trustee's right to force the sale of both a debtor and non-debtor's jointly owned property as provided under 11 U.S.C. § 363(h). RCW 7.60.260 also provides protection to a good faith buyer from reversal or modification on appeal of the order of sale equivalent to that provided in 11 U.S.C. § 363(m).

Assignments for the Benefit of Creditors

The Act substantially replaced RCW Chapter 7.08 regarding assignments for the benefit of creditors. RCW 7.08.010 provides that general assignments of the property of a person who is insolvent or "in contemplation of insolvency" for the benefit of the creditors must be for the benefit of all of the assignor creditors in proportion to their claims. RCW 7.08.030 provides that assignments must be in substantially the form provided which includes an articulation of the duties of an assignee to take possession of and administer estate assets, liquidate assets, and pay, to the extent of available funds, the costs of administration and debts due from the debtor/assignor. Through the assignment form, the assignor declares under penalty of perjury that the list of creditors and property is true and correct to the best of the assigner's knowledge and the assignee accepts the assets in trust and agrees to faithfully carry out the assignee's duties.

RCW 7.08.030(3) provides that the assignee shall be appointed as a general receiver with respect to the assignor's property by the superior court upon the filing of a petition by the assignor, assignee, or any creditor of the assignor with the clerk of the superior court. Venue is provided for in the county of the assignor's residence or, for non-individual assignors, the assignor's principal place of business or registered office within the state. In effect, all ABCs must now be converted after the execution of the assignment into receivership actions. This also provides a clear avenue for debtors to initiate receiverships.

Once such an order is entered, the assignment proceeding is, in effect, converted to a general receivership. Two or more creditors may file a motion within thirty days of the mailing of a notice of assignment for benefit of creditors, directing the clerk of court to order a meeting of creditors to determine whether the assignee should be appointed as general receiver or whether an alternative party should be appointed as general receiver. These provisions are generally equivalent to those providing for election of trustees in bankruptcy.

Repealers; Elimination of Preference Statute

Various inconsistent or redundant provisions were repealed. Additionally, the state's corporate voidable preference law found at RCW 23.72.030 is repealed. This also eliminated the use of RCW 23.72.030 in Washington corporate bankruptcies.

Federal Preemption

The Ninth Circuit Court of Appeals has created uncertainty about the reach of state court insolvency proceedings. See, Sherwood Partners Inc. v. Lycos Inc., 394 F.3d 1198 (9th Cir. 2005). The <u>Sherwood</u> case involved a preference action brought in state court by the assignee of International Thinklink Corporation under California's ABC statute. The matter was removed to U.S. District Court. The preference defendant Lycos moved to dismiss on grounds that federal bankruptcy law preempted the state law preference statutes in which an assignee, rather than creditors was allowed to sue to recover preferences. The District Court denied dismissal, but the Court of Appeals reversed and granted dismissal based on its analysis of federal preemption precedents, including the 1929 Supreme Court case striking down state court granted discharges of debt in ABC cases, <u>International Shoe v. Pinkers</u>, 278 US 261, 49 S. Ct. 108, 73 L.Ed. 318 (1929). The Circuit Court ruled that federal preemption implicated federal bankruptcy law when a state attempts to achieve the bankruptcy goal of equitable distribution to creditors in a "collective procedure."

The <u>Sherwood Partners</u> decision has seemingly not been embraced by other courts. Two opinions of the California Court of Appeals have directly rejected the Sherwood Partners holding, <u>Haberbush v. Charles and Dorothy Cummins Family Ltd. P'ship</u>, 43 Cal.Rptr.3d 814 (Cal.Ct.App. May 31, 2006); <u>Credit Managers Ass'n of Ca. v. Countrywide Home Loans, Inc.</u>, 50 Cal.Rptr.3d 259 (Cal.Ct.App. Jan. 24, 2007); <u>See also</u>, Susan Power Johnson, <u>Federal</u> Preemption of State Preference Statute in Sherwood Partners v. Lycos-An Unduly Restrictive Standard?, Norton Ann. Surv. Bankr.Law, Part 1 § 6 (2007) (contending that <u>Sherwood Partners</u> rests on multiple misunderstandings of relevant precedents); Alan Feld, <u>The Limits of</u> Bankruptcy Code Preemption: Debt Discharge and Voidable Preference Reconsidered in Light of Sherwood Partners, 28 Cardozo L.Rev. 1447, 1448 (2006) (same). Additionally, the U.S. District Court for the Western District of Wisconsin has rejected the <u>Sherwood Partners</u> preemption analysis and upheld use of Wisconsin's preference statute by a receiver appointed in connection with an ABC. <u>Ready Fixtures Co. v. Stevens Cabinets</u>, 488 F.Supp.2d 7787 (U.S.D. W.D.Wis. 2007.); <u>See also</u>, <u>Spector v. Melee Entertainment LLC</u>, WL 362125 (unreported decision, Del. Superior Court, Newcastle County).

It is unclear if the Ninth Circuit would expand <u>Sherwood Partners</u>' preemption logic to other insolvency related state laws such as Washington's receivership provisions for automatic stay, sales free and clear of liens or rejection of executory contracts, especially in light of subsequent criticism of the <u>Sherwood Partners</u> decision.

CONCLUSION

The Act was intended to make it easier for practitioners to utilize receiverships and provide greater certainty in judicial application. This greater clarity should make both judicial

receiverships more attractive than prior law as an alternative to bankruptcy liquidations in appropriate circumstances. The changes to the ABC laws also should make the hybrid ABC/receivership procedure a viable alternative to bankruptcy liquidation, depending on the ultimate effect of the preemption analysis articulated in the Ninth Circuit's <u>Sherwood Partners</u> decision.

Powers of Receiver

| Statutory Provision | Power of Receiver | Comments |
|---------------------|--|--|
| RCW §7.60.190(1)(a) | Pay or incur expenses related to estate | |
| RCW §7.60.190(1)(b) | Use of estate property in ordinary course of business | Only applies if appointment applies to all or substantially all of the property of an ongoing business |
| RCW §7.60.190(1)(c) | The power to assert any rights or claims which are property of the estate | |
| RCW §7.60.190(1)(d) | Power to intervene in actions asserted against estate | |
| RCW §7.60.190(1)(e) | Power to assert rights or claims arising out of receiver's transactions | |
| RCW §7.60.190(1)(f) | The power to pursue fraudulent transfer claims under chapter 19.40 RCW | |
| RCW §7.60.190(1)(g) | Power to seek advice from court on any action | |
| RCW §7.60.190(1)(h) | Power to obtain appraisals | |
| RCW §7.60.190(1)(i) | Power to subpoena for examination under oath | |
| RCW §7.60.190(1)(j) | Any other powers that may be conferred by court | |
| RCW §7.60.140 | obtain unsecured credit and incur unsecured debt | No court order necessary if in ordinary course, must petition court if outside of ordinary course |
| RCW §7.60.150 | Abandon estate property that is burdensome or of inconsequential value | Requires hearing and notice |
| RCW §7.60.180 | Hire professionals | |

Duties of Receiver

| Statutory Provision | Duty of Receiver | Comments | Time Limit |
|--|---|---|---|
| RCW §7.60.190(2)(a) RCW §7.60.190(2)(b) | Notify all federal and state taxing and applicable regulatory agencies of the receiver's appointment Comply with State law | Department of Labor and Industries Department of Revenue Internal Revenue Service | 30 days from appointment |
| RCW §7.60.190(2)(c) | File order of appointment with county auditor along with legal description of real property (if not in order) | | |
| RCW §7.60.190(2)(d) | Other duties as ordered by court | | |
| RCW §7.60.090 | File schedules | | 20 days from appointment |
| RCW §7.60.100 | File monthly operating report | May petition court for variance from monthly filing requirement | Due last day of subsequent month |
| RCW §7.60.110 | Automatic Stay | | Expires 60 days after appointment of receiver |
| RCW §7.60.130 | Assumption or rejection of executory contracts and leases | No time frame for most assumption or rejection, except for contracts with the state which are deemed rejected after 60 days unless the state agrees to extend time | 60 days |
| RCW §7.60.1 | | | |

Chapter 7.08 RCW ASSIGNMENT FOR BENEFIT OF CREDITORS

RCW SECTIONS

<u>7.08.010</u> Assignment must be for benefit of all creditors. <u>7.08.030</u> Assignment—Procedure—Creditor's selection of new assignee.

NOTES:

Fraud in assignment for benefit of creditors: RCW 9.45.100.

RCW 7.08.010 Assignment must be for benefit of all creditors.

No general assignment of property by an insolvent, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all of the assignor's creditors in proportion to the amount of their respective claims.

[2004 c 165 § 36; 1893 c 100 § 1; 1890 p 83 § 1; RRS § 1086.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.08.030 Assignment—Procedure—Creditor's selection of new assignee.

(1) An assignment under this chapter must be in substantially the following form:

ASSIGNMENT

WHEREAS, the assignor has been engaged in the business of

WHEREAS, the assignor is indebted to creditors, as set forth in Schedule A annexed hereto, is unable to pay debts as they become due, and is desirous of providing for the payment of debts, so far as it is possible by an assignment of all property for that purpose.

NOW, THEREFORE, the assignor, in consideration of the assignee's acceptance of this assignment, and for other good and valuable consideration, hereby grants, assigns, conveys, transfers, and sets over, unto the assignee, and the assignee's successors and assigns, all of assignor's property, except such property as is exempt by law from levy and sale under an execution (and then only to the extent of such exemption), including, but not limited to, all real property, fixtures, goods, stock, inventory, equipment, furniture, furnishings, accounts receivable, general intangibles, bank deposits, cash, promissory notes, cash value and proceeds of insurance policies, claims, and demands belonging to the assignor, wherever such property may be located (hereinafter collectively the "estate"), which property is, to the best knowledge and belief of the assignor, fully and accurately set forth on Schedule B annexed hereto.

By making this assignment, the assignor consents to the appointment of the assignee as a general receiver with respect to the assignee's property in accordance with chapter 7.60 RCW.

The assignee shall take possession and administer the estate, and shall liquidate the estate with reasonable dispatch and convert the estate into money, collect all claims and demands hereby assigned as and to the extent they may be collectible, and pay and discharge all reasonable expenses, costs, and disbursements in connection with the execution and administration of this assignment from the proceeds of such liquidations and collections.

The assignee shall then pay and discharge in full, to the extent that funds are available in the estate after payment of administrative expenses, costs, and disbursements, all of the debts and liabilities now due from the assignor, including interest on such debts and liabilities in full, according to their priority as established by law, and on a pro rata basis within each class.

In the event that all debts and liabilities are paid in full, the remainder of the estate shall be returned to the assignor.

To accomplish the purposes of this assignment, the assignor hereby irrevocably appoints the assignee as the assignor's true and lawful attorney in fact, with full power and authority to do all acts and things which may be necessary to execute and fulfill the assignment hereby created, to the same extent as such acts and things might be done by assignor in the absence of this assignment, including but not limited to the power to demand and recover from all persons all property of the estate; to sue for the recovery of such property; to execute, acknowledge, and deliver all necessary deeds, instruments, and conveyances, and to grant and convey any or all of the real or personal property of the estate pursuant thereto; and to appoint one or more attorneys to assist the assignee in carrying out the assignee's duties hereunder.

The assignor hereby authorizes the assignee to sign the name of the assignor to any check, draft, promissory note, or other instrument in writing which is payable to the order of the assignor, or to sign the name of the assignor to any instrument in writing, whenever it shall be necessary to do so, to carry out the purposes of this assignment.

The assignor declares, under penalty of perjury under the laws of the state of Washington, that the attached list of creditors and of the property of the assignor is true and complete to the best of the assignor's knowledge.

The assignment shall be signed by the assignor and duly acknowledged in the same manner as conveyances of real property before a notary public of this state, and shall include an acceptance of the assignment by the assignee in substantially the following form:

The assignee hereby accepts the trust created by the foregoing assignment, and agrees faithfully and without delay to carry out the assignee's duties under the foregoing assignment.

| Assignor | Assignor |
|----------|----------|
| Date: | Date: |

(2) The assignor shall annex to such assignment schedules in the form provided for by RCW 7.60.090(3) in the case of general receiverships, setting forth the creditors and the property of the assignor.

(3) Every assignment shall be effective when a petition to appoint the assignee as receiver has been filed by the assignor, by the assignee, or by any creditor of the assignor with the clerk of the superior court in the county of the assignor's residence if the assignor is an individual or a marital community, or in the county of the assignor's principal place of business or registered office within this state if the assignor is any other person. A petition shall set forth the name and address of the assignor and the name and address of the assignee, and shall include a copy of the assignment and the schedules affixed thereto, and a request that the court fix the amount of the receiver's bond to be filed with the clerk of the court.

(4) A person to whom a general assignment of property for the benefit of creditors has been made shall be appointed as general receiver with respect to the assignor's property by the superior court upon the filing of a petition under subsection (3) of this section. Except as provided for by subsection (5) of this section, following the assignee's appointment as general receiver, all proceedings involving the administration of the assignor's property and the claims of the assignee's creditors shall be governed by the provisions of chapter 7.60 RCW applicable to general receiverships and court rules applicable thereto.

(5) Upon motion of two or more creditors of the assignor served and filed at any time within thirty days following the date upon which notice is mailed to all known creditors under RCW 7.60.200, it shall be the duty of the court to direct the clerk of the court to order a meeting of the creditors of the assignor, to determine whether a person other than the assignee named in the assignment should be appointed as general receiver with respect to the property of the assignor; and thereupon the clerk of the court shall immediately give notice to all the creditors identified in the schedules affixed to the assignment to meet at the clerk's office or at such other location within the county as the clerk may specify, at a time stated not to exceed fifteen days from the date of such notice, to determine whether a person other than the assignee named in the assignment should be appointed as general receiver with respect to the property of the assignor. The assignor's creditors may appear in person or by proxy at the meeting, and a majority in both number and value of claims of the creditors attending or represented at the meeting may select a person other than the assignee named in the assignment to serve as general receiver with respect

to the assignor's property, whereupon the court shall appoint the selected person as receiver under subsection (4) of this section if a receiver has not already been appointed, and shall appoint the person to replace the original assignee as receiver if the appointment already, has been made, unless the court determines upon good cause shown that the appointment as receiver of the person selected by the creditors would not be in the best interests of creditors in general, in which event the court shall appoint or substitute as the receiver a person selected by the court other than the original assignee. If at least one-third of the number or amount of claims represented in person or by proxy at the meeting of creditors vote for the appointment as receiver of a person or persons other than the assignee named in the assignment, then the court upon motion of any creditor served and filed within ten days following the meeting shall appoint as receiver a person selected by the court other than the original assignee, discharging the original assignee if the person previously was appointed as receiver. A creditor may not vote at any meeting of creditors called for the purpose of determining whether a person other than the assignee named in the assignment should be appointed as receiver, until the creditor has presented to the clerk, who presides at the meeting, a proof of claim in accordance with RCW 7.60.210.

(6) From the time a motion is made to elect a new assignee in accordance with subsection (5) of this section, and until either the meeting of creditors occurs without a selection of a new assignee, or until the court enters an order appointing as receiver a person other than the original assignee if the creditors vote to select a new assignee at that meeting, no property of the assignor, except perishable property, may be sold or disposed of by the assignee, whether or not the assignee has been appointed as receiver; but the same shall be safely and securely kept until then.

[2004 c 165 § 37; 1890 p 83 § 3; RRS § 1088. Formerly RCW 7.0.8.030 and 7.08.040.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Chapter 7.60 RCW RECEIVERS

RCW SECTIONS

- 7.60.005 Definitions.
- 7.60.015 Types of receivers.
- <u>7.60.025</u> Appointment of receiver.
- 7.60.035 Eligibility to serve as receiver.
- 7.60.045 Receiver's bond.
- 7.60.055 Powers of the court.
- 7.60.060 Powers and duties of receiver generally.
- <u>7.60.070</u> Turnover of property.
- 7.60.030 Duties of person over whose property the receiver is appointed.
- 7.60.090 Schedules of property and liabilities—Inventory of property—Appraisals.
- 7.60.100 Receiver's reports.
- 7.60.110 Automatic stay of certain proceedings.
- 7.60.120 Utility service.
- 7.60.130 Executory contracts and unexpired leases.
- 7.60.140 Receivership financing.
- 7.60.150 Abandonment of property.
- 7.60.160 Actions by and against the receiver or affecting property held by receiver.
- 7.60.170 Personal liability of receiver.
- 7.60.180 Employment and compensation of professionals.
- <u>7.60.190</u> Participation of creditors and parties in interest in receivership proceeding—Effect of court orders on nonparties.
- 7.60.200 Notice to creditors and other parties in interest.
- 7.60.210 Submission of claims in general receiverships.
- 7.60.220 Objection to and allowance of claims.
- 7.60.230 Priorities.
- 7.60.240 Secured claims against after-acquired property.
- 7.60.250 Interest on claims.
- 7.60.260 Receiver's disposition of property—Sales free and clear.
- 7.60.270 Ancillary receiverships.
- 7.60.280 Resignation or removal of receiver.
- 7.60.290 Termination of receivership.
- 7.60.300 Applicability.

NOTES:

Rules of court: Cf. CR 66, 43(e)(2).

RCW 7.60.005 Definitions.

The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Court" means the superior court of this state in which the receivership is pending.

(2) "Entity" means a person other than a natural person.

(3) "Estate" means the entirety of the property with respect to which a receiver's appointment applies, but does not include trust fund taxes or property of an individual person exempt from execution under the laws of this state. Estate property includes any nonexempt interest in property that is partially exempt, including fee title to property subject to a homestead exemption under chapter 6.13 RCW.

(4) "Executory contract" means a contract where the obligation of both the person over whose property the receiver is appointed and the other party to the contract are so far unperformed that the failure of either party to the contract to complete performance would constitute a material breach of the contract, thereby excusing the other party's performance of the contract.

(5) "Insolvent" or "insolvency" means a financial condition of a person such that the sum of the person's debts and other obligations is greater than all of that person's property, at a fair valuation, exclusive of (a) property transferred, concealed, or removed with intent to hinder, delay, or defraud any creditors of the person, and (b) any property exempt from execution under any statutes of this state.

(6) "Lien" means a charge against or interest in property to secure payment of a debt or the performance of an obligation.

(7) "Notice and a hearing" or any similar phrase means notice and opportunity for a hearing.

(8) "Person" means an individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, governmental entity, or other entity, of any kind or nature.

(9) "Property" includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired. "Property" includes any proceeds, products, offspring, rents, or profits of or from property in the estate. "Property" does not include any power that a person may exercise solely for the benefit of another person or trust fund taxes.

(10) "Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, or dispose of property of a person.

(11) "Receivership" means the case in which the receiver is appointed. "General receivership" means a receivership in which a general receiver is appointed. "Custodial receivership" means a receivership in (1) A receiver may be appointed by the superior court of this state in the following instances, but except which a custodial receiver is appointed.

(12) "Security interest" means a lien created by an agreement.

(13) "State agent" and "state agency" means any office, department, division, bureau, board, commission, or other agency of the state of Washington or of any subdivision thereof, or any individual acting in an official capacity on behalf of any state agent or state agency.

(14) "Utility" means a person providing any service regulated by the utilities and transportation commission.

[2004 c 165 § 2.]

NOTES:

Purpose—2004 c 165: "The purpose of this act is to create more comprehensive, streamlined, and cost-effective procedures applicable to proceedings in which property of a person is administered by the courts of this state for the benefit of creditors and other persons having an interest therein." [2004 c 165 § 1.]

Captions not law—2004 c 165: "Captions used in this act are not part of the law." [2004 c 165 § 48.]

RCW 7.60.015 Types of receivers.

A receiver must be either a general receiver or a custodial receiver. A receiver must be a general receiver if the receiver is appointed to take possession and control of all or substantially all of a person's property with authority to liquidate that property and, in the case of a business over which the receiver is appointed, wind up affairs. A receiver must be a custodial receiver if the receiver is appointed to take charge of limited or specific property of a person or is not given authority to liquidate property. The court shall specify in the order appointing a receiver whether the receiver is appointed as a general receiver or as a custodial receiver. When the sole basis for the appointment is the pendency of an action to foreclose upon a lien against real property, or the giving of a notice of a trustee's sale under RCW 61.24.040 or a notice of forfeiture under RCW 61.30.040, the court shall appoint the receiver as a custodial receiver. The court by order may convert either a general receivership or a custodial receiver.

[2004 c 165 § 3.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.025 Appointment of receiver.

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

(a) On application of any party, when the party is determined to have a probable right to or interest in property that is a subject of the action and in the possession of an adverse party, or when the property or its revenue-producing potential is in danger of being lost or materially injured or impaired. A receiver may be appointed under this subsection (1)(a) whether or not the application for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment or other relief;

(b) Provisionally, during the pendency of any action to foreclose upon any lien against or for forfeiture of any interest in real or personal property, or after notice of a trustee's sale has been given under RCW 61.24.040, or after notice of forfeiture has been given under RCW 61.30.040, on application of any person, when the interest in the property that is the subject of foreclosure or forfeiture of the person seeking the receiver's appointment is determined to be probable and either:

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

(ii) The appointment of a receiver with respect to the real or personal property that is the subject of the action, the notice of trustee's sale or notice of forfeiture is provided for by agreement or is reasonably necessary to effectuate or enforce an assignment of rents or other revenues from the property;

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

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

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

(f) If and to the extent that property is subject to execution to satisfy a judgment, to preserve the property during the pendency of an appeal, or when an execution has been returned unsatisfied, or when an order requiring a judgment debtor to appear for proceedings supplemental to judgment has been issued and the judgment debtor fails to submit to examination as ordered;

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

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

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

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

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

(1) As provided under RCW 11.64.022;

(m) In an action by the department of licensing under RCW 18.35.220(3) with respect to persons engaged in the business of dispensing of hearing aids, RCW 18.85.350 in the case of persons engaged in the business of a real estate broker, associate real estate broker, or real estate salesperson, or RCW 19.105.470 with respect to persons engaged in the business of camping resorts;

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

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

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

(q) Under RCW 19.100.210(1), in an action by the attorney general or director of financial institutions to restrain any actual or threatened violation of the franchise investment protection act;

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

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

(t) In an action for dissolution of a business corporation under RCW 23B.14.310 or 23B.14.320, for dissolution of a nonprofit corporation under RCW 24.03.270, for dissolution of a mutual corporation under RCW 24.06.305, or in any other action for the dissolution or winding up of any other entity provided for by Title 23, 23B, 24, or 25 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(kk) Under RCW 87.56.065, in connection with the dissolution of an irrigation

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

district:

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

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

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

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

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

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

[2004 c 165 § 4.]

NOTES:

Purpose—Captions not law—2004 c 165: ee notes following RCW 7.60.005.

RCW 7.60.060 Powers and duties of receiver Generally.

(1) A receiver has the following powers and authority in addition to those specifically conferred by this chapter or otherwise by statute, court rule, or court order:

(a) The power to incur or pay expenses incidental to the receiver's preservation and use of the property with respect to which the appointment applies, and otherwise in the performance of the receiver's duties, including the power to pay obligations incurred prior to the receiver's appointment if and to the extent that payment is determined by the receiver to be prudent in order to preserve the value of property in the receiver's possession and the funds used for this purpose are not subject to any lien or right of setoff in favor of a creditor who has not consented to the payment and whose interest is not otherwise adequately protected;

(b) If the appointment applies to all or substantially all of the property of an operating business or any revenue-producing property of any person, to do all things which the owner of the business or property might do in the ordinary course of the operation of the business as a going concern or use of the property including, but not limited to, the purchase and sale of goods or services in the ordinary course of such business, and the incurring and payment of expenses of the business or property in the ordinary course;

(c) The power to assert any rights, claims, or choses in action of the person over whose property the receiver is appointed relating thereto, if and to the extent that the claims are themselves property within the scope of the appointment or relate to any property, to maintain in the receiver's name or in the name. of such a person any action to enforce any right, claim, or chose in action, and to intervene in actions in which the person over whose property the receiver is appointed is a party for the purpose of exercising the powers under this subsection (1)(c);

(d) The power to intervene in any action in which a claim is asserted against the person over whose property the receiver is appointed relating thereto, for the purpose of prosecuting or defending the claim and requesting the transfer of venue of the action to the court. However, the court shall not transfer.: actions in which both a state agency is a party and as to which a statute expressly vests jurisdiction or venue elsewhere. This power is exercisable with court approval in the case of a liquidating receiver, and with or without court approval in the case of a general receiver;

(e) The power to assert rights, claims, or choses in action of the receiver arising out of transactions in which the receiver is a participant;

(f) The power to pursue in the name of the receiver any claim under chapter 19.40 RCW assertable by any creditor of the person over whose property the receiver is. appointed, if pursuit of the claim is determined by the receiver to be appropriate;

(g) The power to seek and obtain advice or instruction from the court with respect to any course of action with respect to which the receiver is uncertain in the exercise of the receiver's powers or the discharge of the receiver's duties;

receiver;

(h) The power to obtain appraisals with respect to property in the hands of the

(i) The power by subpoena to compel any person to submit to an examination under oath, in the manner of a deposition in a civil case, with respect to estate property or any other matter that may affect the administration of the receivership; and

(j) Other powers as may be conferred upon the receiver by the court or otherwise by statute or rule. (2) A receiver has the following duties in addition to those specifically conferred by this chapter or otherwise by statute or court rule:

(k) The duty to notify all federal and state taxing and applicable regulatory agencies of the receiver's appointment in accordance with any applicable laws imposing this duty, including but not limited to 26 U.S.C. Sec. 6036 and RCW 51.14.073, 51.16.160, and 82.32.240, or any successor statutes;

(1) The duty to comply with state law;

(m) If the receiver is appointed with respect to any real property, the duty to file with the auditor of the county in which the real property is located, or the registrar of lands in accordance with RCW 65.12.600 in the case of registered lands, a certified copy of the order of appointment, together with a legal description of the real property if one is not included in that order; and

(n) Other duties as the receiver may be directed to perform by the court or as may be provided for by statute or rule.

(3) The various powers and duties of a receiver provided for by this chapter may be expanded, modified, or limited by order of the court for good cause shown.

[2004 c 165 § 8.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.070 Turnover of property.

Upon demand by a receiver appointed under this chapter, any person shall turn over any property over which the receiver has been appointed that is within the possession or control of that person unless otherwise ordered by the court for good cause shown. A receiver by motion may seek to compel turnover of estate property unless there exists a bona fide dispute with respect to the existence or nature of the receiver's interest in the property, in which case turnover shall be sought by means of an action under RCW 7,60.10. In the absence of a bona fide dispute with respect to the respect to the receiver's right to possession of estate property, the failure to relinquish possession and control to the receiver shall be punishable as a contempt of the court.

[2004 c 165 § 9.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.100 Receiver's reports.

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

- (1) A balance sheet;
- (2) A statement of income and expenses;

(3) A statement of cash receipts and disbursements;

(4) A statement of accrued accounts receivable of the receiver. The statement shall disclose amounts considered to be uncollectable;

(5) A statement of accounts payable of the receiver, including professional fees. The. statement. shall: list the name of each creditor and the amounts owing and remaining unpaid over thirty days; and

(6) A tax disclosure statement, which shall list postfiling taxes due or tax deposits required, the name of the taxing agency, the amount due, the date due, and an explanation for any failure to make payments or deposits.

A custodial receiver shall file with the court all such reports the court may require.

[2004 c 165 § 12.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.110

Automatic stay of certain proceedings.

(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 entry of the order of appointment unless before the expiration of the sixty-day period the receiver, for good cause shown, obtains an order of the court extending the stay, after notice and a hearing. A person whose action or proceeding is stayed by motion to the court may seek relief from the stay for good cause shown. Any judgment obtained against the person over whose property the receiver is appointed or estate property following the entry of the order of appointment is not a lien against estate property unless the receivership is terminated prior to a conveyance of the property against which the judgment would otherwise constitute a lien. (3) The entry of an order appointing a receiver does not operate as a stay of:

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

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

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

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

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

(f) The exercise of a right of setoff, including but not limited to (i) any right of a commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to set off a claim for a margin payment or settlement payment arising out of a commodity contract, forward contract, or securities contract against cash, securities, or other property held or due from the commodity broker, forward contract merchant, stockbroker, financial institution, or securities clearing agency to margin, guarantee, secure, or settle the commodity contract, forward contract, or securities contract, and (ii) any right of a swap participant to set off a claim for a payment due to the swap participant under or in connection with a swap agreement against any payment due from the swap participant under or in connection with the swap agreement or against cash, securities, or other property of the debtor held by or due from the swap participant to guarantee, secure, or settle the swap agreement; or

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

[2004 c 165 § 13.]

NOTES:

Purpose—Captions not law 2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.120 Utility service.

A utility providing service to estate property may not alter, refuse, or discontinue service to the property without first giving the receiver fifteen days' notice of any default or intention to alter, refuse, or discontinue service to estate property. This section does not prohibit the court, upon motion by the receiver, to prohibit the alteration or cessation of utility service if the receiver can furnish adequate assurance of payment, in the form of deposit or other security, for service to be provided after entry of the order appointing the receiver.

[2004 c 165 § 14.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.130 Executory contracts and unexpired leases.

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

(2) Any obligation or liability incurred by a general receiver on account of the receiver's assumption of an executory contract or unexpired lease shall be treated as an expense of the receivership. A general receiver's rejection of an executory contract or unexpired lease shall be treated as a breach of the contract or lease occurring immediately prior to the receiver's appointment; and the receiver's right to possess or use property pursuant to any executory contract or lease shall terminate upon rejection of the contract or lease. The other party to an executory contract or unexpired lease that is rejected by a general receiver may take such steps as may be necessary under applicable law to terminate or cancel the contract or lease. The claim of a party to an executory contract or unexpired lease resulting from a general receiver's rejection of it shall be served upon the receiver in the manner provided for by RCW 7_60.21 U within thirty days following the rejection.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Any contract with the state shall be deemed rejected if not assumed within sixty days of. appointment of a general receiver unless the receiver and state agency agree to its assumption.

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

[2004 c 165 § 15.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.140 Receivership financing.

(1) If a receiver is authorized to operate the business of a person or manage a person's property, the receiver may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under RCW 7.60.230(1)(a) as an administrative expense of the receiver without order of the court.

(2) The court, after notice and a hearing, may authorize a receiver to obtain credit or incur indebtedness other than in the ordinary course of business. The court may allow the receiver to mortgage, pledge, hypothecate, or otherwise encumber estate property as security for repayment of any indebtedness that the receiver may incur.

[2004 c 165 § 16.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

RCW 7.60.260 Receiver's disposition of property—Sales free and clear.

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

(2) The court may order that a general receiver's sale of estate property under subsection (1) of this section be effected free and clear of liens and of all rights of redemption, whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property, unless either:

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

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

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

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

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

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

[2004 c 165 § 28.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.