

Introduced by

Industry and Business Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 32-10.1 and a new section to chapter 32-19.2 of
2 the North Dakota Century Code, relating to the Uniform Commercial Real Estate Receivership
3 Act and trustees for commercial buildings during foreclosures; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 32-10.1 of the North Dakota Century Code is created and enacted as
6 follows:

7 **32-10.1-01. Definitions.**

8 As used in this chapter:

9 1. "Affiliate" means:

10 a. With respect to an individual:

11 (1) A companion of the individual;

12 (2) A lineal ancestor or descendant, whether by blood or adoption, of:

13 (a) The individual; or

14 (b) A companion of the individual;

15 (3) A companion of an ancestor or descendant described in paragraph 2;

16 (4) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,

17 grandniece, or grandnephew of the individual, whether related by the whole

18 or the half blood or adoption, or a companion of any of those individuals; or

19 (5) Any other individual occupying the residence of the individual; and

20 b. With respect to a person other than an individual:

21 (1) Another person that directly or indirectly controls, is controlled by, or is

22 under common control with the person;

23 (2) An officer, director, manager, member, partner, employee, or trustee or other

24 fiduciary of the person; or

1 (3) A companion of, or an individual occupying the residence of, an individual
2 described in paragraph 1 or 2.

3 2. "Companion" means:

4 a. The spouse of an individual;

5 b. The domestic partner of an individual; or

6 c. Another individual in a civil union with an individual.

7 3. "Court" means the district court.

8 4. "Executory contract" means a contract under which each party has an unperformed
9 obligation and the failure of a party to complete performance would constitute a
10 material breach. The term includes a lease.

11 5. "Governmental unit" means an office, department, division, bureau, board,
12 commission, or other agency of this state or a subdivision of this state.

13 6. "Lien" means an interest in property which secures payment or performance of an
14 obligation.

15 7. "Mortgage" means a record, however denominated, that creates or provides for a
16 consensual lien on real property or rents, even if it also creates or provides for a lien
17 on personal property.

18 8. "Mortgagee" means a person entitled to enforce an obligation secured by a mortgage.

19 9. "Mortgagor" means a person that grants a mortgage or a successor in ownership of
20 the real property described in the mortgage.

21 10. "Owner" means the person for whose property a receiver is appointed.

22 11. "Person" means an individual, estate, business or nonprofit entity, public corporation,
23 government or governmental subdivision, agency, or instrumentality, or other legal
24 entity.

25 12. "Proceeds" means:

26 a. Whatever is acquired on the sale, lease, license, exchange, or other disposition
27 of receivership property;

28 b. Whatever is collected on, or distributed on account of, receivership property;

29 c. Rights arising out of receivership property;

- 1 d. To the extent of the value of receivership property, claims arising out of the loss,
2 nonconformity, or interference with the use of, defects or infringement of rights in,
3 or damage to the property; or
- 4 e. To the extent of the value of receivership property and to the extent payable to
5 the owner or mortgagee, insurance payable by reason of the loss or
6 nonconformity of, defects or infringement of rights in, or damage to the property.
- 7 13. "Property" means all of a person's right, title, and interest, both legal and equitable, in
8 real and personal property, tangible and intangible, wherever located and however
9 acquired. The term includes proceeds, products, offspring, rents, or profits of or from
10 the property.
- 11 14. "Receiver" means a person appointed by the court as the court's agent, and subject to
12 the court's direction, to take possession of, manage, and, if authorized by this chapter
13 or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of
14 receivership property.
- 15 15. "Receivership" means a proceeding in which a receiver is appointed.
- 16 16. "Receivership property" means the property of an owner which is described in the
17 order appointing a receiver or a subsequent order. The term includes any proceeds,
18 products, offspring, rents, or profits of or from the property.
- 19 17. "Record" means information inscribed on a tangible medium or stored on an electronic
20 or other medium and retrievable in perceivable form.
- 21 18. "Rents" means:
- 22 a. Sums payable for the right to possess or occupy, or for the actual possession or
23 occupation of, real property of another person;
- 24 b. Sums payable to a mortgagor under a policy of rental-interruption insurance
25 covering real property;
- 26 c. Claims arising out of a default in the payment of sums payable for the right to
27 possess or occupy real property of another person;
- 28 d. Sums payable to terminate an agreement to possess or occupy real property of
29 another person;

- 1 e. Sums payable to a mortgagor for payment or reimbursement of expenses
2 incurred in owning, operating, and maintaining real property or constructing or
3 installing improvements on real property; or
4 f. Other sums payable under an agreement relating to the real property of another
5 person which constitute rent under any other provision of law.
6 19. "Secured obligation" means an obligation the payment or performance of which is
7 secured by a security agreement.
8 20. "Security agreement" means an agreement that creates or provides for a lien.
9 21. "Sign" means, with present intent to authenticate or adopt a record:
10 a. To execute or adopt a tangible symbol; or
11 b. To attach to or logically associate with the record an electronic sound, symbol, or
12 process.
13 22. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
14 United States Virgin Islands, or any territory or insular possession subject to the
15 jurisdiction of the United States.

16 **32-10.1-02. Notice and opportunity for hearing.**

- 17 1. Except as provided under subsection 2, the court may issue an order under this
18 chapter only after notice and opportunity for a hearing appropriate in the
19 circumstances.
20 2. The court may issue an order under this chapter:
21 a. Without prior notice if the circumstances require issuance of an order before
22 notice is given;
23 b. After notice and without a prior hearing if the circumstances require issuance of
24 an order before a hearing is held; or
25 c. After notice and without a hearing if no interested party timely requests a hearing.

26 **32-10.1-03. Scope - Exclusions.**

- 27 1. Except as provided under subsection 2 or 3, this chapter applies to a receivership for
28 an interest in real property and any personal property related to or used in operating
29 the real property.
30 2. This chapter does not apply to a receivership for an interest in real property improved
31 by one to four dwelling units unless:

- 1 a. The interest is used for agricultural, commercial, industrial, or mineral-extraction
2 purposes, other than incidental uses by an owner occupying the property as the
3 owner's primary residence;
- 4 b. The interest secures an obligation incurred at a time when the property was used
5 or planned for use for agricultural, commercial, industrial, or mineral-extraction
6 purposes;
- 7 c. The owner planned or is planning to develop the property into one or more
8 dwelling units to be sold or leased in the ordinary course of the owner's business;
9 or
- 10 d. The owner is collecting or has the right to collect rents or other income from the
11 property from a person other than an affiliate of the owner.
- 12 3. This chapter does not apply to a receivership authorized by any other provision of law
13 in which the receiver is a governmental unit or an individual acting in an official
14 capacity on behalf of the unit except to the extent provided by the other law.
- 15 4. This chapter does not limit the authority of a court to appoint a receiver under any
16 other provision of law.
- 17 5. Unless displaced by a particular provision of this chapter, the principles of law and
18 equity supplement this chapter.

19 **32-10.1-04. Power of court.**

20 The court that appoints a receiver under this chapter has exclusive jurisdiction to direct the
21 receiver and determine any controversy related to the receivership or receivership property.

22 **32-10.1-05. Appointment of receiver.**

- 23 1. The court may appoint a receiver:
- 24 a. Before judgment, to protect a party that demonstrates an apparent right, title, or
25 interest in real property that is the subject of the action, if the property or its
26 revenue-producing potential:
- 27 (1) Is being subjected to or is in danger of waste, loss, dissipation, or
28 impairment; or
- 29 (2) Has been or is about to be the subject of a voidable transaction;
- 30 b. After judgment:
- 31 (1) To carry the judgment into effect; or

1 (2) To preserve nonexempt real property pending appeal or when an execution
2 has been returned unsatisfied and the owner refuses to apply the property
3 in satisfaction of the judgment;

4 c. In an action in which a receiver for real property may be appointed on equitable
5 grounds; or

6 d. During the time allowed for redemption, to preserve real property sold in an
7 execution or foreclosure sale and secure its rents to the person entitled to the
8 rents.

9 2. In connection with the foreclosure or other enforcement of a mortgage, the court may
10 appoint a receiver for the mortgaged property if:

11 a. Appointment is necessary to protect the property from waste, loss, transfer,
12 dissipation, or impairment;

13 b. The mortgagor agreed in a signed record to appointment of a receiver on default;

14 c. The owner agreed, after default and in a signed record, to appointment of a
15 receiver;

16 d. The property and any other collateral held by the mortgagee are not sufficient to
17 satisfy the secured obligation;

18 e. The owner fails to turn over to the mortgagee proceeds or rents the mortgagee
19 was entitled to collect; or

20 f. The holder of a subordinate lien obtains appointment of a receiver for the
21 property.

22 3. The court may condition appointment of a receiver without prior notice under
23 subdivision a of subsection 2 of section 32-10.1-02 or without a prior hearing under
24 subdivision b of subsection 2 of section 32-10.1-02 on the giving of security by the
25 person seeking the appointment for the payment of damages, reasonable attorney's
26 fees, and costs incurred or suffered by any person if the court later concludes the
27 appointment was not justified. If the court later concludes the appointment was
28 justified, the court shall release the security.

29 **32-10.1-06. Disqualification from appointment as receiver - Disclosure of interest.**

30 1. The court may not appoint a person as receiver unless the person submits a
31 statement to the court under penalty of perjury that the person is not disqualified.

- 1 2. Except as provided under subsection 3, a person is disqualified from appointment as
2 receiver if the person:
- 3 a. Is an affiliate of a party;
4 b. Has an interest materially adverse to an interest of a party;
5 c. Has a material financial interest in the outcome of the action, other than
6 compensation the court may allow the receiver;
7 d. Has a debtor-creditor relationship with a party; or
8 e. Holds an equity interest in a party, other than a noncontrolling interest in a
9 publicly traded company.
- 10 3. A person is not disqualified from appointment as receiver because the person:
- 11 a. Was appointed receiver or is owed compensation in an unrelated matter involving
12 a party or was engaged by a party in a matter unrelated to the receivership;
- 13 b. Is an individual obligated to a party on a debt that is not in default and was
14 incurred primarily for personal, family, or household purposes; or
- 15 c. Maintains with a party a deposit account as defined under section 41-09-02.
- 16 4. A person seeking appointment of a receiver may nominate a person to serve as
17 receiver, but the court is not bound by the nomination.

18 **32-10.1-07. Receiver's bond - Alternative security.**

- 19 1. Except as provided under subsection 2, a receiver shall post a bond with the court
20 which:
- 21 a. Is conditioned on the faithful discharge of the receiver's duties;
22 b. Has one or more sureties approved by the court;
23 c. Is in an amount the court specifies; and
24 d. Is effective as of the date of the receiver's appointment.
- 25 2. The court may approve the posting by a receiver with the court of alternative security,
26 including a letter of credit or deposit of funds. The receiver may not use receivership
27 property as alternative security. Interest that accrues on deposited funds must be paid
28 to the receiver on the receiver's discharge.
- 29 3. The court may authorize a receiver to act before the receiver posts the bond or
30 alternative security required by this section.

1 4. A claim against a receiver's bond or alternative security must be made not later than
2 twelve months after the date the receiver is discharged.

3 **32-10.1-08. Status of receiver as lien creditor.**

4 On appointment of a receiver, the receiver has the status of a lien creditor under:

5 1. Chapter 41-09 as to receivership property that is personal property or fixtures; and

6 2. Chapter 47-19 as to receivership property that is real property.

7 **32-10.1-09. Security agreement covering after-acquired property.**

8 Except as otherwise provided by law, property that a receiver or owner acquires after
9 appointment of the receiver is subject to a security agreement entered before the appointment
10 to the same extent as if the court had not appointed the receiver.

11 **32-10.1-10. Collection and turnover of receivership property.**

12 1. Unless the court orders otherwise, on demand by a receiver:

13 a. A person that owes a debt that is receivership property and is matured or payable
14 on demand or on order shall pay the debt to or on the order of the receiver,

15 except to the extent the debt is subject to setoff or recoupment; and

16 b. Subject to subsection 3, a person that has possession, custody, or control of
17 receivership property shall turn the property over to the receiver.

18 2. A person that has notice of the appointment of a receiver and owes a debt that is
19 receivership property may not satisfy the debt by payment to the owner.

20 3. If a creditor has possession, custody, or control of receivership property and the
21 validity, perfection, or priority of the creditor's lien on the property depends on the
22 creditor's possession, custody, or control, the creditor may retain possession, custody,
23 or control until the court orders adequate protection of the creditor's lien.

24 4. Unless a bona fide dispute exists about a receiver's right to possession, custody, or
25 control of receivership property, the court may sanction a person's failure to turn the
26 property over when required by this section as civil contempt.

27 **32-10.1-11. Powers and duties of receiver.**

28 1. Except as limited by court order or any other provision of law, a receiver may:

29 a. Collect, control, manage, conserve, and protect receivership property;

- 1 b. Operate a business constituting receivership property, including preservation,
- 2 use, sale, lease, license, exchange, collection, or disposition of the property in
- 3 the ordinary course of business;
- 4 c. In the ordinary course of business, incur unsecured debt and pay expenses
- 5 incidental to the receiver's preservation, use, sale, lease, license, exchange,
- 6 collection, or disposition of receivership property;
- 7 d. Assert a right, claim, cause of action, or defense of the owner which relates to
- 8 receivership property;
- 9 e. Seek and obtain instruction from the court concerning receivership property,
- 10 exercise of the receiver's powers, and performance of the receiver's duties;
- 11 f. On subpoena, compel a person to submit to examination under oath, or to
- 12 produce and permit inspection and copying of designated records or tangible
- 13 things, with respect to receivership property or any other matter that may affect
- 14 administration of the receivership;
- 15 g. Engage a professional under section 32-10.1-14;
- 16 h. Apply to a court of another state for appointment as ancillary receiver with
- 17 respect to receivership property located in that state; and
- 18 i. Exercise any power conferred by court order, this chapter, or any other provision
- 19 of law.
- 20 2. With court approval, a receiver may:
- 21 a. Incur debt for the use or benefit of receivership property other than in the ordinary
- 22 course of business;
- 23 b. Make improvements to receivership property;
- 24 c. Use or transfer receivership property other than in the ordinary course of
- 25 business under section 32-10.1-15;
- 26 d. Adopt or reject an executory contract of the owner under section 32-10.1-16;
- 27 e. Pay compensation to the receiver under section 32-10.1-20, and to each
- 28 professional engaged by the receiver under section 32-10.1-14;
- 29 f. Recommend allowance or disallowance of a claim of a creditor under section
- 30 32-10.1-19; and
- 31 g. Make a distribution of receivership property under section 32-10.1-19.

- 1 3. A receiver shall:
- 2 a. Prepare and retain appropriate business records, including a record of each
- 3 receipt, disbursement, and disposition of receivership property;
- 4 b. Account for receivership property, including the proceeds of a sale, lease,
- 5 license, exchange, collection, or other disposition of the property;
- 6 c. File with the county recorder wherein the property is located a copy of the order
- 7 appointing the receiver and, if a legal description of the real property is not
- 8 included in the order, the legal description;
- 9 d. Disclose to the court any fact arising during the receivership which would
- 10 disqualify the receiver under section 32-10.1-06; and
- 11 e. Perform any duty imposed by court order, this chapter, or any other provision of
- 12 law.
- 13 4. The powers and duties of a receiver may be expanded, modified, or limited by court
- 14 order.

15 **32-10.1-12. Duties of owner.**

- 16 1. An owner shall:
- 17 a. Assist and cooperate with the receiver in the administration of the receivership
- 18 and the discharge of the receiver's duties;
- 19 b. Preserve and turn over to the receiver all receivership property in the owner's
- 20 possession, custody, or control;
- 21 c. Identify all records and other information relating to the receivership property,
- 22 including a password, authorization, or other information needed to obtain or
- 23 maintain access to or control of the receivership property, and make available to
- 24 the receiver the records and information in the owner's possession, custody, or
- 25 control;
- 26 d. On subpoena, submit to examination under oath by the receiver concerning the
- 27 acts, conduct, property, liabilities, and financial condition of the owner or any
- 28 matter relating to the receivership property or the receivership; and
- 29 e. Perform any duty imposed by court order, this chapter, or any other provision of
- 30 law.

1 2. If an owner is a person other than an individual, this section applies to each officer,
2 director, manager, member, partner, trustee, or other person exercising or having the
3 power to exercise control over the affairs of the owner.

4 3. If a person knowingly fails to perform a duty imposed by this section, the court may:

5 a. Award the receiver actual damages caused by the person's failure, reasonable
6 attorney's fees, and costs; and

7 b. Sanction the failure as civil contempt.

8 **32-10.1-13. Stay - Injunction.**

9 1. Except as otherwise provided in subsection 4 or ordered by the court, an order
10 appointing a receiver operates as a stay, applicable to all persons, of an act, action, or
11 proceeding:

12 a. To obtain possession of, exercise control over, or enforce a judgment against
13 receivership property; and

14 b. To enforce a lien against receivership property to the extent the lien secures a
15 claim against the owner which arose before entry of the order.

16 2. Except as otherwise provided in subsection 4, the court may enjoin an act, action, or
17 proceeding against or relating to receivership property if the injunction is necessary to
18 protect the property or facilitate administration of the receivership.

19 3. A person whose act, action, or proceeding is stayed or enjoined under this section
20 may apply to the court for relief from the stay or injunction for cause.

21 4. An order under subsection 1 or 2 does not operate as a stay or injunction of:

22 a. An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the
23 person seeking appointment of the receiver;

24 b. An act, action, or proceeding to perfect, or maintain or continue the perfection of,
25 an interest in receivership property;

26 c. Commencement or continuation of a criminal proceeding;

27 d. Commencement or continuation of an action or proceeding, or enforcement of a
28 judgment other than a money judgment in an action or proceeding, by a
29 governmental unit to enforce its police or regulatory power; or

30 e. Establishment by a governmental unit of a tax liability against the owner or
31 receivership property or an appeal of the liability.

- 1 5. The court may void an act that violates a stay or injunction under this section.
- 2 6. If a person knowingly violates a stay or injunction under this section, the court may:
- 3 a. Award actual damages caused by the violation, reasonable attorney's fees, and
- 4 costs; and
- 5 b. Sanction the violation as civil contempt.

6 **32-10.1-14. Engagement and compensation of professional.**

- 7 1. With court approval, a receiver may engage an attorney, accountant, appraiser,
- 8 auctioneer, broker, or other professional to assist the receiver in performing a duty or
- 9 exercising a power of the receiver. The receiver shall disclose to the court:
- 10 a. The identity and qualifications of the professional;
- 11 b. The scope and nature of the proposed engagement;
- 12 c. Any potential conflict of interest; and
- 13 d. The proposed compensation.
- 14 2. A person is not disqualified from engagement under this section because of the
- 15 person's engagement by, representation of, or other relationship with the receiver, a
- 16 creditor, or a party. This chapter does not prevent the receiver from serving in the
- 17 receivership as an attorney, accountant, auctioneer, or broker when authorized by law.
- 18 3. A receiver or professional engaged under subsection 1 shall file with the court an
- 19 itemized statement of the time spent, work performed, and billing rate of each person
- 20 that performed the work and an itemized list of expenses. The receiver shall pay the
- 21 amount approved by the court.

22 **32-10.1-15. Use or transfer of receivership property not in ordinary course of**

23 **business.**

- 24 1. As used in this section, "good faith" means honesty in fact and the observance of
- 25 reasonable commercial standards of fair dealing.
- 26 2. With court approval, a receiver may use receivership property other than in the
- 27 ordinary course of business.
- 28 3. With court approval, a receiver may transfer receivership property other than in the
- 29 ordinary course of business by sale, lease, license, exchange, or other disposition.
- 30 Unless the agreement of sale provides otherwise, a sale under this section is free of a

1 lien of the person that obtained appointment of the receiver, any subordinate lien, and
2 any right of redemption but is subject to a senior lien.

3 4. A lien on receivership property which is extinguished by a transfer under subsection 3
4 attaches to the proceeds of the transfer with the same validity, perfection, and priority
5 the lien had on the property immediately before the transfer, even if the proceeds are
6 not sufficient to satisfy all obligations secured by the lien.

7 5. A transfer under subsection 3 may occur by means other than a public auction sale. A
8 creditor holding a valid lien on the property to be transferred may purchase the
9 property and offset against the purchase price part or all of the allowed amount
10 secured by the lien, if the creditor tenders funds sufficient to satisfy in full the
11 reasonable expenses of transfer and the obligation secured by any senior lien
12 extinguished by the transfer.

13 6. A reversal or modification of an order approving a transfer under subsection 3 does
14 not affect the validity of the transfer to a person that acquired the property in good faith
15 or revive against the person any lien extinguished by the transfer, whether the person
16 knew before the transfer of the request for reversal or modification, unless the court
17 stayed the order before the transfer.

18 **32-10.1-16. Executory contract.**

19 1. As used in this section, "timeshare interest" means an interest having a duration of
20 more than three years which grants its holder the right to use and occupy an
21 accommodation, facility, or recreational site, whether improved or not, for a specific
22 period less than a full year during any given year.

23 2. Except as otherwise provided in subsection 8, with court approval, a receiver may
24 adopt or reject an executory contract of the owner relating to receivership property.
25 The court may condition the receiver's adoption and continued performance of the
26 contract on terms appropriate under the circumstances. If the receiver does not
27 request court approval to adopt or reject the contract within a reasonable time after the
28 receiver's appointment, the receiver is deemed to have rejected the contract.

29 3. A receiver's performance of an executory contract before court approval under
30 subsection 2 of its adoption or rejection is not an adoption of the contract and does not
31 preclude the receiver from seeking approval to reject the contract.

- 1 4. A provision in an executory contract which requires or permits a forfeiture,
2 modification, or termination of the contract because of the appointment of a receiver or
3 the financial condition of the owner does not affect a receiver's power under
4 subsection 2 to adopt the contract.
- 5 5. A receiver's right to possess or use receivership property pursuant to an executory
6 contract terminates on rejection of the contract under subsection 2. Rejection is a
7 breach of the contract effective immediately before appointment of the receiver. A
8 claim for damages for rejection of the contract must be submitted by the later of:
9 a. The time set for submitting a claim in the receivership; or
10 b. Thirty days after the court approves the rejection.
- 11 6. If at the time a receiver is appointed, the owner has the right to assign an executory
12 contract relating to receivership property under any other provision of law, the receiver
13 may assign the contract with court approval.
- 14 7. If a receiver rejects under subsection 2 an executory contract for the sale of
15 receivership property that is real property in possession of the purchaser or a
16 real-property timeshare interest, the purchaser may:
17 a. Treat the rejection as a termination of the contract, and in that case the purchaser
18 has a lien on the property for the recovery of any part of the purchase price the
19 purchaser paid; or
20 b. Retain the purchaser's right to possession under the contract, and in that case
21 the purchaser shall continue to perform all obligations arising under the contract
22 and may offset any damages caused by nonperformance of an obligation of the
23 owner after the date of the rejection, but the purchaser has no right or claim
24 against other receivership property or the receiver on account of the damages.
- 25 8. A receiver may not reject an unexpired lease of real property under which the owner is
26 the landlord if:
27 a. The tenant occupies the leased premises as the tenant's primary residence;
28 b. The receiver was appointed at the request of a person other than a mortgagee;
29 or
30 c. The receiver was appointed at the request of a mortgagee and:
31 (1) The lease is superior to the lien of the mortgage;

- 1 (2) The tenant has an enforceable agreement with the mortgagee or the holder
2 of a senior lien under which the tenant's occupancy will not be disturbed as
3 long as the tenant performs its obligations under the lease;
- 4 (3) The mortgagee has consented to the lease, either in a signed record or by
5 its failure timely to object that the lease violated the mortgage; or
- 6 (4) The terms of the lease were commercially reasonable at the time the lease
7 was agreed to and the tenant did not know or have reason to know the
8 lease violated the mortgage.

9 **32-10.1-17. Defenses and immunities of receiver.**

- 10 1. A receiver is entitled to all defenses and immunities provided by any other provision of
11 law for an act or omission within the scope of the receiver's appointment.
- 12 2. A receiver may be sued personally for an act or omission in administering receivership
13 property only with approval of the court that appointed the receiver.

14 **32-10.1-18. Interim report of receiver.**

15 A receiver may file or, if ordered by the court, shall file an interim report that includes:

- 16 1. The activities of the receiver since appointment or a previous report;
- 17 2. Receipts and disbursements, including a payment made or proposed to be made to a
18 professional engaged by the receiver;
- 19 3. Receipts and dispositions of receivership property;
- 20 4. Fees and expenses of the receiver and, if not filed separately, a request for approval
21 of payment of the fees and expenses; and
- 22 5. Any other information required by the court.

23 **32-10.1-19. Notice of appointment - Claim against receivership - Distribution to**
24 **creditors.**

- 25 1. Except as otherwise provided in subsection 6, a receiver shall give notice of
26 appointment of the receiver to creditors of the owner by:
- 27 a. Deposit for delivery through first-class mail or other commercially reasonable
28 delivery method to the last-known address of each creditor; and
- 29 b. Publication as directed by the court.
- 30 2. Except as otherwise provided in subsection 6, the notice required under subsection 1
31 must specify the date by which each creditor holding a claim against the owner which

- 1 arose before appointment of the receiver must submit the claim to the receiver. The
2 date specified must be at least ninety days after the later of notice under subdivision a
3 of subsection 1 or last publication under subdivision b of subsection 1. The court may
4 extend the period for submitting the claim. Unless the court orders otherwise, a claim
5 that is not submitted timely is not entitled to a distribution from the receivership.
- 6 3. A claim submitted by a creditor under this section must:
- 7 a. State the name and address of the creditor;
8 b. State the amount and basis of the claim;
9 c. Identify any property securing the claim;
10 d. Be signed by the creditor under penalty of perjury; and
11 e. Include a copy of any record on which the claim is based.
- 12 4. An assignment by a creditor of a claim against the owner is effective against the
13 receiver only if the assignee gives timely notice of the assignment to the receiver in a
14 signed record.
- 15 5. At any time before entry of an order approving a receiver's final report, the receiver
16 may file with the court an objection to a claim of a creditor, stating the basis for the
17 objection. The court shall allow or disallow the claim according to any other provision
18 of law.
- 19 6. If the court concludes receivership property is likely to be insufficient to satisfy claims
20 of each creditor holding a perfected lien on the property, the court may order that:
- 21 a. The receiver need not give notice under subsection 1 of the appointment to all
22 creditors of the owner, but only such creditors as the court directs; and
23 b. Unsecured creditors need not submit claims under this section.
- 24 7. Subject to section 32-10.1-20:
- 25 a. A distribution of receivership property to a creditor holding a perfected lien on the
26 property must be made in accordance with the creditor's priority under any other
27 provision of law; and
28 b. A distribution of receivership property to a creditor with an allowed unsecured
29 claim must be made as the court directs according to any other provision of law.

1 **32-10.1-20. Fees and expenses.**

- 2 1. The court may award a receiver from receivership property the reasonable and
3 necessary fees and expenses of performing the duties of the receiver and exercising
4 the powers of the receiver.
- 5 2. The court may order one or more of the following to pay the reasonable and necessary
6 fees and expenses of the receivership, including reasonable attorney's fees and costs:
- 7 a. A person that requested the appointment of the receiver, if the receivership does
8 not produce sufficient funds to pay the fees and expenses.
- 9 b. A person whose conduct justified or would have justified the appointment of the
10 receiver under subdivision a of subsection 1 of section 32-10.1-05.

11 **32-10.1-21. Removal of receiver - Replacement - Termination of receivership.**

- 12 1. The court may remove a receiver for cause.
- 13 2. The court shall replace a receiver that dies, resigns, or is removed.
- 14 3. If the court finds that a receiver that resigns or is removed, or the representative of a
15 receiver who is deceased, has accounted fully for and turned over to the successor
16 receiver all receivership property and has filed a report of all receipts and
17 disbursements during the service of the replaced receiver, the replaced receiver is
18 discharged.
- 19 4. The court may discharge a receiver and terminate the court's administration of the
20 receivership property if the court finds appointment of the receiver was improvident or
21 the circumstances no longer warrant continuation of the receivership. If the court finds
22 the appointment was sought wrongfully or in bad faith, the court may assess against
23 the person that sought the appointment:
- 24 a. The fees and expenses of the receivership, including reasonable attorney's fees
25 and costs; and
- 26 b. Actual damages caused by the appointment, including reasonable attorney's fees
27 and costs.

28 **32-10.1-22. Final report of receiver - Discharge.**

- 29 1. On completion of a receiver's duties, the receiver shall file a final report that includes:
- 30 a. A description of the activities of the receiver in the conduct of the receivership;

- 1 b. A list of receivership property at the commencement of the receivership and any
- 2 receivership property received during the receivership;
- 3 c. A list of disbursements, including payments to professionals engaged by the
- 4 receiver;
- 5 d. A list of dispositions of receivership property;
- 6 e. A list of distributions made or proposed to be made from the receivership for
- 7 creditor claims;
- 8 f. If not filed separately, a request for approval of the payment of fees and
- 9 expenses of the receiver; and
- 10 g. Any other information required by the court.

- 11 2. If the court approves a final report filed under subsection 1 and the receiver distributes
- 12 all receivership property, the receiver is discharged.

13 **32-10.1-23. Receivership in another state - Ancillary proceeding.**

- 14 1. The court may appoint a receiver appointed in another state, or that person's nominee,
- 15 as an ancillary receiver with respect to property located in this state or subject to the
- 16 jurisdiction of the court for which a receiver could be appointed under this chapter, if:
- 17 a. The person or nominee would be eligible to serve as receiver under section
- 18 32-10.1-06; and
- 19 b. The appointment furthers the person's possession, custody, control, or
- 20 disposition of property subject to the receivership in the other state.
- 21 2. The court may issue an order that gives effect to an order entered in another state
- 22 appointing or directing a receiver.
- 23 3. Unless the court orders otherwise, an ancillary receiver appointed under subsection 1
- 24 has the rights, powers, and duties of a receiver appointed under this chapter.

25 **32-10.1-24. Effect of enforcement by mortgagee.**

- 26 1. A request by a mortgagee for appointment of a receiver, the appointment of a receiver,
- 27 or application by a mortgagee of receivership property or proceeds to the secured
- 28 obligation does not:
- 29 a. Make the mortgagee a mortgagee in possession of the real property;
- 30 b. Make the mortgagee an agent of the owner;

- 1 c. Constitute an election of remedies that precludes a later action to enforce the
2 secured obligation;
3 d. Make the secured obligation unenforceable;
4 e. Limit any right available to the mortgagee with respect to the secured obligation;
5 or
6 f. Except as otherwise provided in subsection 2, bar a deficiency judgment in
7 accordance with any other provision of law governing or relating to a deficiency
8 judgment.
9 2. If a receiver sells receivership property that under subsection 3 of section 32-10.1-15
10 is free of a lien, the ability of a creditor to enforce an obligation that had been secured
11 by the lien is subject to the law of this state other than this chapter relating to a
12 deficiency judgment.

13 **32-10.1-25. Uniformity of application and construction.**

14 In applying and construing this chapter, a court shall consider the promotion of uniformity of
15 the law among states that enact it.

16 **32-10.1-26. Relation to Electronic Signatures in Global and National Commerce Act.**

17 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
18 National Commerce Act [15 U.S.C. Section 7001 et seq.], but does not modify, limit, or
19 supersede section 101(c) of that act, [15 U.S.C. Section 7001(c)], or authorize electronic
20 delivery of any of the notices described in section 103(b) of that act, [15 U.S.C. Section
21 7003(b)].

22 **SECTION 2.** A new section to chapter 32-19.2 of the North Dakota Century Code is created
23 and enacted as follows:

24 **Applicability.**

25 This chapter does not apply to a commercial real estate receivership under chapter 32-10.1.

26 **SECTION 3. APPLICATION.** Section 1 of this Act does not apply to a receivership for which
27 the receiver was appointed before the effective date of this Act.