

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 2327

(SENATE AUTHORS: THOMPSON and Latz)

DATE	D-PG	OFFICIAL STATUS
03/08/2016	4902	Introduction and first reading Referred to Judiciary
03/14/2016	5015	Comm report: To pass
	5016	Second reading

1.1

A bill for an act

1.2

relating to civil actions; clarifying certain provisions for receiverships and

1.3

assignments for the benefit of creditors; providing for a short form of assignment

1.4

for recording with a deed to transfer real property; amending Minnesota Statutes

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2014, sections 559.17, subdivision 2; 576.22; 576.29, subdivision 1; 576.30;

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576.45, subdivision 3; 576.47; 577.12; 577.15.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

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Section 1. Minnesota Statutes 2014, section 559.17, subdivision 2, is amended to read:

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Subd. 2. **Assignment; conditions.** A mortgagor may assign, as additional security

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for the debt secured by the mortgage, the rents and profits from the mortgaged real

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property, if the mortgage:

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(1) was executed, modified or amended subsequent to August 1, 1977;

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(2) secured an original principal amount of \$100,000 or more or is a lien upon

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residential real estate containing more than four dwelling units; and

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(3) is not a lien upon property which was:

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(i) entirely homesteaded as agricultural property; or

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(ii) residential real estate containing four or fewer dwelling units where at least

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one of the units is homesteaded. The assignment may be enforced, but only against the

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nonhomestead portion of the mortgaged property, as follows:

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(a) if, by the terms of an assignment, a receiver is to be appointed upon the

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occurrence of some specified event, and a showing is made that the event has occurred,

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the court shall, without regard to waste, adequacy of the security, or solvency of the

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mortgagor, appoint a receiver who shall, with respect to the excess cash remaining after

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application as provided in section 576.25, subdivision 5, apply it as prescribed by the

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assignment. If the assignment so provides, the receiver shall apply the excess cash in the

manner set out herein from the date of appointment through the entire redemption period from any foreclosure sale. Subject to the terms of the assignment, the receiver shall have the powers and duties as set forth in section 576.25, subdivision 5; or

(b) if no provision is made for the appointment of a receiver in the assignment or if by the terms of the assignment a receiver may be appointed, the assignment shall be binding upon the assignor unless or until a receiver is appointed without regard to waste, adequacy of the security or solvency of the mortgagor, but only in the event of default in the terms and conditions of the mortgage, and only in the event the assignment requires the holder thereof to first apply the rents and profits received as provided in section 576.25, subdivision 5, or, as to an assignment executed prior to August 1, 2012, as provided in Minnesota Statutes 2010, section 576.01, subdivision 2, in which case the same shall operate against and be binding upon the occupiers of the premises from the date of recording by the holder of the assignment in the office of the county recorder or the office of the registrar of titles for the county in which the property is located of a notice of default in the terms and conditions of the mortgage and service of a copy of the notice upon the occupiers of the premises. The holder of the assignment shall apply the rents and profits received in accordance with the terms of the assignment, and, if the assignment so provides, for the entire redemption period from any foreclosure sale. A holder of an assignment who enforces it in accordance with this clause shall not be deemed to be a mortgagee in possession with attendant liability.

Nothing contained herein shall prohibit the right to reinstate the mortgage debt granted pursuant to section 580.30, nor the right to redeem granted pursuant to sections 580.23 and 581.10, and any excess cash, as that term is used herein, collected by the receiver under clause (a), or any rents and profits taken by the holder of the assignment under clause (b), shall be credited to the amount required to be paid to effect a reinstatement or redemption.

Sec. 2. Minnesota Statutes 2014, section 576.22, is amended to read:

576.22 APPLICABILITY OF CHAPTER AND OF COMMON LAW.

(a) This chapter applies to receiverships provided for in section 576.25, subdivisions 2 to 6, and to receiverships:

(1) pursuant to section 193.147, in connection with a mortgage on an armory;

(2) pursuant to section 223.17, subdivision 8, paragraph (b), in connection with a defaulting grain buyer;

(3) pursuant to section 232.22, subdivision 7, paragraph (c), in connection with a defaulting public grain warehouse;

(4) pursuant to section 296A.22, in connection with nonpayment of tax;

(5) pursuant to ~~section~~ sections 302A.751, 302A.753, 308A.941, 308A.945, 308B.931, 308B.935, 317A.751, 317A.753, or 322B.833, and 322B.836, or in an action relating to the dissolution of an a foreign entity and relating to, in like cases, with property within the state of foreign entities;

(6) pursuant to section 321.0703, in connection with the rights of a creditor of a partner or transferee;

(7) pursuant to section 322.22, in connection with the rights of creditors of limited partners;

(8) pursuant to section 323A.0504, in connection with a partner's transferable interest;

(9) pursuant to section 453.55, in connection with bonds and notes;

(10) pursuant to section 453A.05, in connection with bonds and notes;

(11) pursuant to section 513.47, in connection with a proceeding for relief with respect to a transfer fraudulent as to a creditor or creditors;

(12) pursuant to section 514.06, in connection with the severance of a building and resale;

(13) pursuant to section 515.23, in connection with an action by a unit owners' association to foreclose a lien for nonpayment of delinquent assessments against condominium units;

(14) pursuant to section 518A.71, in connection with the failure to pay, or to provide security for, maintenance or support payments;

(15) pursuant to section 559.17, in connection with assignments of rents; however, any receiver appointed under section 559.17 shall be a limited receiver, and the court shall apply the provisions of this chapter to the extent not inconsistent with section 559.17;

(16) pursuant to section 571.84, in connection with a garnishee in possession of property subject to a garnishment proceeding;

(17) pursuant to section 575.05, in connection with property applied to judgment;

(18) pursuant to section 575.06, in connection with adverse claimants;

(19) pursuant to sections 582.05 to 582.10, in connection with mortgage foreclosures; however, any receiver appointed under sections 582.05 to 582.10 shall be a limited receiver, and the court shall apply the provisions of this chapter to the extent not inconsistent with sections 582.05 to 582.10;

(20) pursuant to section 609.904, in connection with criminal penalties; or

(21) pursuant to section 609.907, in connection with preservation of property subject to forfeiture.

(b) This chapter does not apply to any receivership in which the receiver is a state agency or in which the receiver is appointed, controlled, or regulated by a state agency unless otherwise provided by law.

(c) In receiverships not specifically referenced in paragraph (a) or (b), the court, in its discretion, may apply provisions of this chapter to the extent not inconsistent with the statutes establishing the receiverships.

(d) Unless explicitly displaced by this chapter, the provisions of other statutory law and the principles of common law remain in full force and effect and supplement the provisions of this chapter.

Sec. 3. Minnesota Statutes 2014, section 576.29, subdivision 1, is amended to read:

Subdivision 1. **Powers.** (a) A receiver, whether general or limited, shall have the following powers in addition to those specifically conferred by this chapter or otherwise by statute, rule, or order of the court:

(1) the power to collect, control, manage, conserve, and protect receivership property;

(2) the power to incur and pay expenses incidental to the receiver's exercise of the powers or otherwise in the performance of the receiver's duties;

(3) the power to assert rights, claims, causes of action, or defenses that relate to receivership property; and

(4) the power to seek and obtain instruction from the court with respect to any matter relating to the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

(b) In addition to the powers provided in paragraph (a), a general receiver shall have the power:

(1) to (i) assert, or when authorized by the court, to release, any rights, claims, causes of action, or defenses of the respondent to the extent any rights, claims, causes of action, or defenses are receivership property; (ii) maintain in the receiver's name or in the name of the respondent any action to enforce any right, claim, cause of action, or defense; and (iii) intervene in actions in which the respondent is a party for the purpose of exercising the powers under this clause or requesting transfer of venue of the action to the court;

(2) to pursue any claim or remedy that may be asserted by a creditor of the respondent under sections 513.41 to 513.51;

(3) to compel any person, including the respondent, and any party, by subpoena pursuant to Rule 45 of the Minnesota Rules of Civil Procedure, to give testimony or to produce and permit inspection and copying of designated books, documents, electronically

stored information, or tangible things with respect to receivership property or any other matter that may affect the administration of the receivership;

(4) to operate any business constituting receivership property in the ordinary course of the business, including ~~the use, sale, using, selling, or lease of~~ leasing property of the business or otherwise constituting receivership property, ~~and the~~; incurring and payment of expenses of the business or other receivership property; and hiring employees and appointing officers to act on behalf of the business;

(5) if authorized by an order of the court following notice and a hearing, to use, improve, sell, or lease receivership property other than in the ordinary course of business; and

(6) if appointed pursuant to section 302A.753, 308A.945, 308B.935, 317A.753, or 322B.836, to exercise all of the powers and authority provided by the section or order of the court.

Sec. 4. Minnesota Statutes 2014, section 576.30, is amended to read:

**576.30 RECEIVER AS LIEN CREDITOR; REAL ESTATE PROPERTY
RECORDING; SUBSEQUENT SALES OF REAL ESTATE PROPERTY.**

Subdivision 1. **Receiver as lien creditor.** As of the time of appointment, the receiver shall have the powers and priority as if it were a creditor that obtained a judicial lien at the time of appointment pursuant to sections 548.09 and 550.10 on all of the receivership property, subject to satisfying the recording requirements as to real property described in subdivision 2.

Subd. 2. **Real estate property recording.** If any interest in real estate property is included in the receivership property, a notice of lis pendens shall be recorded as soon as practicable with the county recorder or registrar of titles, as appropriate, of the county in which the real property is located. The priority of the receiver as lien creditor against real property shall be from the time of recording of the notice of lis pendens, except as to persons with actual or implied knowledge of the appointment under section 507.34.

Subd. 3. **Subsequent sales of real estate property.** The following documents are prima facie evidence of the authority to sell and convey the real property:

(1) the notice of lis pendens;

(2) a court order authorizing the receiver to sell real property certified by the court administrator, and a deed executed by the receiver recorded with the county recorder or registrar of titles, as appropriate, of the county in which the real property is located, and upon execution of the deed by the receiver shall be prima facie evidence of the authority

6.1 ~~of authorizing the receiver to sell and convey, or cause the respondent to sell, real property~~
6.2 ~~described in the deed; and~~

6.3 (3) a deed executed by the receiver, or by the respondent if authorized by the court.

6.4 The court may also require a motion for an order for sale of the real property or a
6.5 motion for an order confirming sale of the real property.

6.6 Sec. 5. Minnesota Statutes 2014, section 576.45, subdivision 3, is amended to read:

6.7 Subd. 3. **Termination by receiver.** For good cause, the court may authorize the
6.8 receiver to terminate an executory contract. The receiver's right to possess or use property
6.9 or receive services pursuant to the executory contract shall terminate at the termination of
6.10 the executory contract. Except as to the claim against the receivership under subdivision 1,
6.11 if a termination of an executory contract constitutes a breach of the executory contract, the
6.12 termination shall create a claim equal to the damages, if any, for a breach of the contract as
6.13 if the breach of contract had occurred immediately before the time of appointment. Any
6.14 claim arising under this section for termination of an executory contract shall be presented
6.15 or filed in the same manner as other claims in the receivership no later than the later of:
6.16 (1) the time set for filing of claims in the receivership; or (2) 28 days after the notice by
6.17 the receiver of the termination of the executory contract.

6.18 Sec. 6. Minnesota Statutes 2014, section 576.47, is amended to read:

6.19 **576.47 ABANDONMENT OF PROPERTY.**

6.20 The court may authorize the receiver to abandon to the respondent any receivership
6.21 property that is burdensome or is not of material value to the receivership. ~~Property that is~~
6.22 ~~abandoned is no longer receivership property.~~

6.23 Sec. 7. Minnesota Statutes 2014, section 577.12, is amended to read:

6.24 **577.12 REQUISITES.**

6.25 A person may execute a written assignment of property to one or more assignees for
6.26 the benefit of creditors in conformity with the provisions of this chapter. Every assignment
6.27 for the benefit of creditors subject to this chapter made by an assignor of the whole or any
6.28 part of the assignor's property, real or personal, for the benefit of creditors, shall be: (1) to
6.29 a resident of the state person eligible to be a receiver under section 576.26, in writing,
6.30 subscribed and acknowledged by the assignor, and (2) filed by the assignor or the assignee
6.31 with the court administrator of the district court of the county in which the assignor, or
6.32 one of the assignors if there is more than one, resides, or in which the principal place
6.33 of business of an assignor engaged in business is located. The district court shall have

supervision over the assignment property and of all proceedings under this chapter. The assignee shall be deemed to have submitted to the jurisdiction of the district court.

Sec. 8. Minnesota Statutes 2014, section 577.15, is amended to read:

577.15 ASSIGNEE AS LIEN CREDITOR; REAL ESTATE PROPERTY RECORDING.

Subdivision 1. **Assignee as lien creditor.** As of the filing of the assignment, the assignee shall have the powers and priority of a creditor that obtained a judicial lien at the time of assignment pursuant to sections 548.09 and 550.10 on all of the assignment property subject to satisfying the recording requirements as to real property described in subdivision 2.

Subd. 2. **Real estate property recording.** If any interest in real estate property is included in the assignment property, the assignment shall be effective as a deed, ~~and~~. A notice of a lis pendens shall be recorded as soon as practicable with the county recorder or registrar of titles, as appropriate, of the county in which the real property is located. The priority of the assignee as lien creditor against real property shall be from the time of recording of the notice of lis pendens, except as to persons with actual or implied knowledge of the assignment under section 507.34. A short form of the assignment executed acknowledged by the assignor and certified by the court administrator assignee and a deed executed by the assignee shall be recorded with the county recorder or registrar of titles, as appropriate, of the county in which the real property is located, and upon execution of the deed by the assignee shall be prima facie evidence of the authority of the assignee to convey the real property described in the assignment. The short form of the assignment shall contain the following information:

(1) the identity of the assignor and assignee;

(2) the legal description of the real property;

(3) the date of the assignment; and

(4) a statement that the assignor has made an assignment under this chapter, and that the assignment has been accepted by the assignee.