

CHAPTER 143—H.F.No. 382

An act relating to civil law; amending statutes regarding receiverships, assignments for the benefit of creditors, and nonprofit corporations; changing, updating, and clarifying certain provisions of the Uniform Disclaimer of Property Interests Act; amending Minnesota Statutes 2010, sections 302A.753, subdivisions 2, 3; 302A.755; 302A.759, subdivision 1; 302A.761; 308A.945, subdivisions 2, 3; 308A.951; 308A.961, subdivision 1; 308A.965; 308B.935, subdivisions 2, 3; 308B.941; 308B.951, subdivision 1; 308B.955; 316.11; 317A.753, subdivisions 3, 4; 317A.755; 317A.759, subdivision 1; 322B.836, subdivisions 2, 3; 322B.84; 462A.05, subdivision 32; 469.012, subdivision 2i; 524.2-1103; 524.2-1104; 524.2-1106; 524.2-1107; 524.2-1114; 524.2-1115; 524.2-1116; 540.14; 559.17, subdivision 2; 576.04; 576.06; 576.08; 576.09; 576.11; 576.121; 576.123; 576.144; 576.15; 576.16; proposing coding for new law in Minnesota Statutes, chapters 576; 577; repealing Minnesota Statutes 2010, sections 302A.759, subdivision 2; 308A.961, subdivision 2; 308B.951, subdivisions 2, 3; 317A.759, subdivision 2; 576.01; 577.01; 577.02; 577.03; 577.04; 577.05; 577.06; 577.08; 577.09; 577.10.

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

ARTICLE 1

RECEIVERSHIPS

Section 1. **[576.21] DEFINITIONS.**

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

(b) "Court" means the district court in which the receivership is pending unless the context requires otherwise.

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

(d) "Executory contract" means a contract, including a lease, where the obligations of both the respondent and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract.

(e) "Foreign receiver" means a receiver appointed in any foreign jurisdiction.

(f) "Foreign jurisdiction" means any state or federal jurisdiction other than that of this state.

(g) "General receiver" means the receiver appointed in a general receivership.

(h) "General receivership" means a receivership over all or substantially all of the nonexempt property of a respondent for the purpose of liquidation and distribution to creditors and other parties in interest, including, without limitation, a receivership resulting from the appointment of a receiver pursuant to section 302A.753, 308A.945, 308B.935, 317A.753, or 322B.836.

(i) "Lien" means a charge against or interest in property to secure payment of a debt or the performance of an obligation, including any mortgage or security interest.

(j) "Limited receiver" means the receiver appointed in a limited receivership.

(k) "Limited receivership" means a receivership other than a general receivership.

(l) "Party" means a person who is a party within the meaning of the Minnesota Rules of Civil Procedure in the action in which a receiver is appointed.

(m) "Party in interest" includes the respondent, any equity security holder in the respondent, any person with an ownership interest in or lien on receivership property, and, in a general receivership, any creditor of the respondent.

(n) "Person" has the meaning given it in section 645.44 and shall include limited liability companies, limited liability partnerships, and other entities recognized under the laws of this state.

(o) "Property" means all of respondent's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of the same were or are acquired. Property includes, but is not limited to, any proceeds, products, offspring, rents, or profits of or from the property. Property does not include: (1) any power that the respondent may exercise solely for the benefit of another person, or (2) property impressed with a trust except to the extent that the respondent has a residual interest.

(p) "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, and, if authorized by this chapter or order of the court, dispose of receivership property.

(q) "Receivership" means the case in which the receiver is appointed, and, as the context requires, the proceeding in which the receiver takes possession of, manages, or disposes of the respondent's property.

(r) "Receivership property" means (1) in the case of a general receivership, all or substantially all of the nonexempt property of the respondent, or (2) in the case of a limited receivership, that property of the respondent identified in the order appointing the receiver, or in any subsequent order.

(s) "Respondent" means the person over whose property the receiver is appointed.

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

(u) "Time of appointment" means the date and time specified in the first order of appointment of a receiver or, if the date and time are not specified in the order of appointment, the date and time that the court ruled on the motion for the appointment of a receiver. Time of appointment does not mean any subsequent date or time, including the execution of a written order, the filing or docketing of a written order, or the posting of a bond.

(v) "Utility" means a person providing any service regulated by the Public Utilities Commission.

Sec. 2. **[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 302A.753, 308A.945, 308B.935, 317A.753, or 322B.836, in an action relating to the dissolution of an entity and relating to, in like cases, 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. [576.23] POWERS OF THE COURT.

The court has the exclusive authority to direct the receiver and the authority over all receivership property wherever located including, without limitation, authority to determine all controversies relating to the collection, preservation, improvement, disposition, and distribution of receivership property, and all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

Sec. 4. [576.24] TYPES OF RECEIVERSHIPS.

A receivership may be either a limited receivership or a general receivership. Any receivership which is based upon the enforcement of an assignment of rents or leases, or the foreclosure of a mortgage lien, judgment lien, mechanic's lien, or other lien pursuant to which the respondent or any holder of a lien would have a statutory right of redemption, shall be a limited receivership. If the order appointing the receiver does not specify whether the receivership is a limited receivership or a general receivership, the receivership shall be a limited receivership unless and until the court by later order designates the receivership as a general receivership, notwithstanding that pursuant to section 576.25, subdivision 8, a receiver may have control over all the property of the respondent. At any time, the court may order a general receivership to be converted to a limited receivership and a limited receivership to be converted to a general receivership.

Sec. 5. [576.25] APPOINTMENT OF RECEIVERS; RECEIVERSHIP NOT A TRUST.

Subdivision 1. **No necessity of separate action.** A receiver may be appointed under this chapter whether or not the motion for appointment of a receiver is combined with, or is ancillary to, an action seeking a money judgment.

Subd. 2. **Before judgment.** Except where judgment for failure to answer may be had without application to the court, a limited receiver may be appointed before judgment to protect any party to an action who demonstrates an apparent right to property that is the

subject of the action and is in the possession of an adverse party, and that the property or its rents and profits are in danger of loss or material impairment.

Subd. 3. **In a judgment or after judgment.** A limited or general receiver may be appointed in a judgment or after judgment to carry the judgment into effect, to preserve property pending an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment.

Subd. 4. **Entities.** In addition to those situations specifically provided for in statute, a limited or general receiver may be appointed when a corporation or other entity is dissolved, insolvent, in imminent danger of insolvency, or has forfeited its corporate rights and in like cases of the property within the state of foreign corporations and other entities.

Subd. 5. **Appointment of receiver of mortgaged property.** (a) A limited receiver shall be appointed at any time after the commencement of mortgage foreclosure proceedings under chapter 580 or 581 and before the end of the period for redemption, if the mortgage being foreclosed:

(1) secures an original principal amount of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units; and

(2) is not a lien upon property that was entirely homesteaded, residential real estate containing four or fewer dwelling units where at least one unit is homesteaded; or agricultural property.

The foreclosing mortgagee or the purchaser at foreclosure sale may at any time bring an action in the district court of the county in which the mortgaged property or any part thereof is located for the appointment of a receiver; provided, however, if the foreclosure is by action under chapter 581, a separate action need not be filed.

(b) The court shall appoint a receiver upon a showing that the mortgagor has breached a covenant contained in the mortgage relating to any of the following:

(1) application of tenant security deposits as required by section 504B.178;

(2) payment when due of prior or current real estate taxes or special assessments with respect to the mortgaged property or the periodic escrow for the payment of the taxes or special assessments;

(3) payment when due of premiums for insurance of the type required by the mortgage or the periodic escrow for the payment of the premiums; or

(4) keeping of the covenants required of a landlord or licensor pursuant to section 504B.161, subdivision 1.

(c) The receiver shall be or shall retain an experienced property manager.

(d) The receiver shall collect the rents, profits, and all other income of any kind. The receiver, after providing for payment of its reasonable fees and expenses, shall, to the extent possible and in the order determined by the receiver to preserve the value of the mortgaged property:

(1) manage the mortgaged property so as to prevent waste;

(2) execute contracts and leases within the period of the receivership, or beyond the period of the receivership if approved by the court;

(3) pay the expenses listed in paragraph (b), clauses (1) to (3);

(4) pay all expenses for normal maintenance of the mortgaged property; and

(5) perform the terms of any assignment of rents that complies with section 559.17, subdivision 2.

(e) The purchaser at a foreclosure sale shall have the right, at any time and without limitation as provided in section 582.03, to advance money to the receiver to pay any or all of the expenses that the receiver should otherwise pay if cash were available from the mortgaged property. Sums so advanced, with interest, shall be a part of the sum required to be paid to redeem from the sale. The sums shall be proved by the affidavit of the purchaser, an agent, or attorney, stating the expenses and describing the mortgaged property. The affidavit shall be furnished to the sheriff in the manner of expenses claimed under section 582.03.

(f) Any sums collected that remain in the possession of the receiver at the termination of the receivership shall, in the event the termination of the receivership is due to the reinstatement of the mortgage debt or redemption of the mortgaged property by the mortgagor, be paid to the mortgagor; and in the event termination of the receivership occurs at the end of the period of redemption without redemption by the mortgagor or any other party entitled to redeem, interest accrued upon the sale price pursuant to section 580.23 or 581.10 shall be paid to the purchaser at the foreclosure sale. Any net sum remaining shall be paid to the mortgagor, except if the receiver was enforcing an assignment of rents that complies with section 559.17, subdivision 2, in which case any net sum remaining shall be paid pursuant to the terms of the assignment.

(g) This subdivision applies to all mortgages executed on or after August 1, 1977, and to amendments or modifications thereto, and to amendments or modifications made on or after August 1, 1977, to mortgages executed before August 1, 1977, if the amendment or modification is duly recorded and is for the principle purpose of curing a default.

Subd. 6. **Other cases.** A receiver may be appointed in other cases as are provided by law, or in accord with existing practice, except as otherwise prescribed.

Subd. 7. **Motion for appointment of receiver.** The court may appoint a receiver upon a motion with notice to the respondent, to all other parties in the action, and to parties in interest and other persons as the court may require. Notice shall also be given to any judgment creditor who is seeking the appointment of a receiver in any other action. A motion to appoint a general receiver shall be treated as a dispositive motion. The court may appoint a receiver ex parte or on shortened notice on a temporary basis if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver. In that event, the court shall set a hearing as soon as practicable and at the subsequent hearing, the burdens of proof shall be as would be applicable to a motion made on notice that is not expedited.

Subd. 8. **Description of receivership property.** The order appointing the receiver or subsequent order shall describe the receivership property with particularity appropriate to the circumstances. If the order does not so describe the receivership property, until further order of the court, the receiver shall have control over all of the respondent's nonexempt property.

Subd. 9. **Receivership not a trust.** The order appointing the receiver does not create a trust.

Sec. 6. **[576.26] ELIGIBILITY OF RECEIVER.**

Subdivision 1. **Who may serve as receiver.** Unless otherwise prohibited by law or prior order, any person, whether or not a resident of this state, may serve as a receiver, provided that the court, in its order appointing the receiver, makes written conclusions based in the record that the person proposed as receiver:

(1) is qualified to serve as receiver and as an officer of the court; and

(2) is independent as to the parties and the underlying dispute.

Subd. 2. **Considerations regarding qualifications.** (a) In determining whether a proposed receiver is qualified to serve as receiver and as an officer of the court, the court shall consider any relevant information, including, but not limited to, whether:

(1) the proposed receiver has knowledge and experience sufficient to perform the duties of receiver;

(2) the proposed receiver has the financial ability to post the bond required by section 576.07;

(3) the proposed receiver or any insider of the proposed receiver has been previously disqualified from serving as receiver and the reasons for disqualification;

(4) the proposed receiver or any insider of the proposed receiver has been convicted of a felony or other crime involving moral turpitude; and

(5) the proposed receiver or any insider of the proposed receiver has been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct.

(b) For the purposes of this subdivision, "insider" includes:

(1) if the proposed receiver is a corporation, an officer or director of the corporation, or a person in control of the proposed receiver; and

(2) if the proposed receiver is a partnership, a general or limited partner of the partnership, or a person in control of the proposed receiver.

Subd. 3. **Considerations regarding independence.** (a) In determining whether a proposed receiver is independent as to the parties and the underlying dispute, the court shall consider any relevant information, including, but not limited to:

(1) the nature and extent of any relationship that the proposed receiver has to the parties and the property proposed as receivership property including, without limitation, whether the proposed receiver is a party to the action, a family member of a party to the action, or an officer, director, member, employee, or owner of or controls a party to the action;

(2) whether the proposed receiver has any interest materially adverse to the interests of any of the parties to the action;

(3) whether the proposed receiver has any material financial or pecuniary interest, other than receiver compensation allowed by court order, in the outcome of the underlying dispute, including any proposed contingent or success fee compensation arrangement; and

(4) whether the proposed receiver is a debtor, secured or unsecured creditor, lienor of, or holder of any equity interest in, any of the parties to the action of the receivership property.

(b) In evaluating all information, the court may exercise its discretion and need not consider any single item of information to be determinative of independence. Without

limiting the generality of the preceding sentence, the proposed receiver shall not be disqualified solely because the proposed receiver was appointed receiver in other unrelated matters involving any of the parties to the matter in which the appointment is sought, or the proposed receiver has been engaged by any of the parties to the action in matters unrelated to the underlying action.

Subd. 4. **Information provided to court.** The proposed receiver, the parties, and prospective parties in interest may provide any information relevant to the qualifications, independence, and the selection of the receiver.

Sec. 7. **[576.27] BOND.**

After appointment, a receiver shall give a bond in the sum, nature, and with the conditions that the court shall order in its discretion consistent with section 574.11. Unless otherwise ordered by the court, the receiver's bond shall be conditioned on the receiver's faithful discharge of its duties in accordance with the orders of the court and the laws of this state. The receiver shall execute a bond with a surety authorized to write bonds in the state.

Sec. 8. **[576.28] IMMUNITY; DISCOVERY FROM RECEIVER.**

(a) The receiver shall be entitled to all defenses and immunities provided at common law for acts or omissions within the scope of the receiver's appointment.

(b) No person other than a successor receiver duly appointed by the court shall have a right of action against a receiver to recover receivership property or the value thereof.

(c) A party or party in interest may conduct discovery of the receiver concerning any matter relating to the receiver's administration of the receivership property after obtaining an order authorizing the discovery.

Sec. 9. **[576.29] POWERS AND DUTIES OF RECEIVERS; GENERALLY.**

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 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, or lease of property of the business or otherwise constituting receivership property, and the incurring and payment of expenses of the business or other receivership property;

(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.

Subd. 2. **Duties.** A receiver, whether general or limited, shall have the duties specifically conferred by this chapter or otherwise by statute, rule, or order of the court.

Subd. 3. **Modification of powers and duties.** Except as otherwise provided in this chapter, the court may modify the powers and duties of a receiver provided by this section.

Sec. 10. [576.30] RECEIVER AS LIEN CREDITOR; REAL ESTATE RECORDING; SUBSEQUENT SALES OF REAL ESTATE.

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 recording.** If any interest in real estate 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.** The notice of lis pendens, 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 of the receiver to sell and convey the real property described in the deed. The court may also require a

motion for an order for sale of the real property or a motion for an order confirming sale of the real property.

Sec. 11. **[576.31] DUTIES OF RESPONDENT.**

The respondent shall:

(1) assist and cooperate fully with the receiver in the administration of the receivership and the receivership property and the discharge of the receiver's duties, and comply with all orders of the court;

(2) immediately upon the receiver's appointment, deliver to the receiver all of the receivership property in the respondent's possession, custody, or control, including, but not limited to, all books and records, electronic data, passwords, access codes, statements of accounts, deeds, titles or other evidence of ownership, financial statements, and all other papers and documents related to the receivership property;

(3) supply to the receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the receiver may be required to file; and

(4) remain responsible for the filing of all tax returns, including those returns applicable to periods which include those in which the receivership is in effect.

Sec. 12. **[576.32] EMPLOYMENT AND COMPENSATION OF PROFESSIONALS.**

Subdivision 1. **Employment.** (a) To represent or assist the receiver in carrying out the receiver's duties, the receiver may employ attorneys, accountants, appraisers, auctioneers, and other professionals that do not hold or represent an interest adverse to the receivership.

(b) This section does not require prior court approval for the retention of professionals. However, any professional to be retained shall provide the receiver with a disclosure of any potential conflicts of interest, and the professional or the receiver shall file with the court a notice of the retention and of the proposed compensation. Any party in interest may bring a motion for disapproval of any retention within 21 days after the filing of the notice of retention.

(c) A person is not disqualified for employment under this section solely because of the person's employment by, representation of, or other relationship with the receiver, respondent, a creditor, or other party in interest if the court determines that the employment is appropriate.

Subd. 2. **Compensation.** (a) The receiver and any professional retained by the receiver shall be paid by the receiver from the receivership property in the same manner as other expenses of administration and without separate orders, but subject to the procedures, safeguards, and reporting that the court may order.

(b) Except to the extent fees and expenses have been approved by the court, or as to parties in interest who are deemed to have waived the right to object, any interim payments of fees and expenses to the receiver are subject to approval in connection with the receiver's final report pursuant to section 576.38.

Sec. 13. **[576.33] SCHEDULES OF PROPERTY AND CLAIMS.**

(a) The court may order the respondent or a general receiver to file under oath to the best of its actual knowledge:

(1) a schedule of all receivership property and exempt property of the respondent, describing, as of the time of appointment: (i) the location of the property and, if real property, a legal description thereof; (ii) a description of all liens to which the property is subject; and (iii) an estimated value of the property; and

(2) a schedule of all creditors and taxing authorities and regulatory authorities which supervise the respondent, their mailing addresses, the amount and nature of their claims, whether the claims are secured by liens of any kind, and whether the claims are disputed.

(b) The court may order inventories and appraisals if appropriate to the receivership.

Sec. 14. **[576.34] NOTICE.**

In a general receivership, unless the court orders otherwise, the receiver shall give notice of the receivership to all creditors and other parties in interest actually known to the receiver by mail or other means of transmission within 21 days after the time of appointment. The notice of the receivership shall include the time of appointment and the names and addresses of the respondent, the receiver, and the receiver's attorney, if any.

Sec. 15. **[576.35] NOTICES, MOTIONS, AND ORDERS.**

Subdivision 1. **Notice of appearance.** Any party in interest may make an appearance in a receivership by filing a written notice of appearance, including the name, mailing address, fax number, e-mail address, if any, and telephone number of the party in interest and its attorney, if any, and by serving a copy on the receiver and the receiver's attorney, if any. It is not necessary for a party in interest to be joined as a party to be heard in the receivership. A proof of claim does not constitute a written notice of appearance.

Subd. 2. **Master service list.** From time to time the receiver shall file an updated master service list consisting of the names, mailing addresses, and, where available, fax numbers and e-mail addresses of the respondent, the receiver, all persons joined as parties in the receivership, all persons known by the receiver to have asserted any ownership or lien in receivership property, all persons who have filed a notice of appearance in accordance with this section, and their attorneys, if any.

Subd. 3. **Motions.** Except as otherwise provided in this chapter, an order shall be sought by a motion brought in compliance with the Minnesota Rules of Civil Procedure and the General Rules of Practice for the District Courts.

Subd. 4. **Persons served.** Except as otherwise provided in this chapter, a motion shall be served as provided in the Minnesota Rules of Civil Procedure, unless the court orders otherwise, on all persons on the master service list, all persons who have asserted an ownership interest or lien in receivership property that is the subject of the motion, all persons who are identified in the motion as directly affected by the relief requested, and other persons as the court may direct.

Subd. 5. **Service on state agency.** Any request for relief against a state agency shall be served as provided in the Minnesota Rules of Civil Procedure, unless the court orders otherwise, on the specific state agency and on the Office of the Attorney General.

Subd. 6. **Order without hearing.** Where a provision in this chapter, an order issued in the receivership, or a court rule requires an objection or other response to a motion or

application within a specific time, and no objection or other response is interposed, the court may grant the relief requested without a hearing.

Subd. 7. **Order upon application.** Where a provision of this chapter permits, as to administrative matters, or where it otherwise appears that no party in interest would be materially prejudiced, the court may issue an order ex parte or based on an application without a motion, notice, or hearing.

Subd. 8. **Persons bound by orders of the court.** Except as to persons entitled to be served pursuant to subdivision 4 and who were not served, an order of the court binds parties in interest and all persons who file notices of appearance, submit proofs of claim, receive written notice of the receivership, receive notice of any motion in the receivership, or who have actual knowledge of the receivership whether they are joined as parties or received notice of the specific motion or order.

Sec. 16. [576.36] RECORDS; INTERIM REPORTS.

Subdivision 1. **Preparation and retention of records.** The receiver shall prepare and retain appropriate business records, including records of all cash receipts and disbursements and of all receipts and distributions or other dispositions of receivership property. After due consideration of issues of confidentiality, the records may be provided by the receiver to parties in interest or shall be provided as ordered by the court.

Subd. 2. **Interim reports.** (a) The court may order the receiver to prepare and file interim reports addressing:

(1) the activities of the receiver since the last report;

(2) cash receipts and disbursements, including payments made to professionals retained by the receiver;

(3) receipts and dispositions of receivership property; and

(4) other matters.

(b) The order may provide for the delivery of the receiver's interim reports to persons on the master service list and to other persons and may provide a procedure for objection to the interim reports, and may also provide that the failure to object constitutes a waiver of objection to matters addressed in the interim reports.

Sec. 17. [576.37] REMOVAL OF RECEIVERS.

Subdivision 1. **Removal of receiver.** The court may remove the receiver if: (1) the receiver fails to execute and file the bond required by section 576.27; (2) the receiver resigns, refuses, or fails to serve for any reason; or (3) for other good cause.

Subd. 2. **Successor receiver.** Upon removal of the receiver, if the court determines that further administration of the receivership is required, the court shall appoint a successor receiver. Upon executing and filing a bond under section 576.27, the successor receiver shall immediately succeed the receiver so removed and shall assume the duties of receiver.

Subd. 3. **Report and discharge of removed receiver.** Within 14 days after removal, the receiver so removed shall file with the court and serve a report pursuant to section 576.38, subdivision 3, for matters up to the date of the removal. Upon approval

of the report, the court may enter an order pursuant to section 576.38 discharging the removed receiver.

Sec. 18. **[576.38] TERMINATION OF RECEIVERSHIPS; FINAL REPORT.**

Subdivision 1. **Termination of receivership.** The court may discharge a receiver and terminate the receivership. If the court determines that the appointment of the receiver was procured in bad faith, the court may assess against the person who procured the receiver's appointment:

- (1) all of the receiver's fees and expenses and other costs of the receivership; and
- (2) any other sanctions the court deems appropriate.

Subd. 2. **Request for discharge.** Upon distribution or disposition of all receivership property, or the completion of the receiver's duties, the receiver shall file a final report and shall request that the court approve the final report and discharge the receiver.

Subd. 3. **Contents of final report.** The final report, which may incorporate by reference interim reports, shall include, in addition to any matters required by the court in the case:

- (1) a description of the activities of the receiver in the conduct of the receivership;
- (2) a schedule of all receivership property at the commencement of the receivership and any receivership property added thereafter;
- (3) a list of expenditures, including all payments to professionals retained by the receiver;
- (4) a list of any unpaid expenses incurred during the receivership;
- (5) a list of all dispositions of receivership property;
- (6) a list of all distributions made or proposed to be made; and
- (7) if not done separately, a motion or application for approval of the payment of fees and expenses of the receiver.

Subd. 4. **Notice of final report.** The receiver shall give notice of the filing of the final report and request for discharge to all persons who have filed notices of appearance. If there is no objection within 21 days, the court may enter an order approving the final report and discharging the receiver without the necessity of a hearing.

Subd. 5. **Effect of discharge.** A discharge removes all authority of the receiver, excuses the receiver from further performance of any duties, and discharges any lis pendens recorded by the receiver.

Sec. 19. **[576.39] ACTIONS BY OR AGAINST RECEIVER OR RELATING TO RECEIVERSHIP PROPERTY.**

Subdivision 1. **Actions by or against receiver.** The receiver may sue in the receiver's capacity and, subject to other sections of this chapter and all immunities provided at common law, may be sued in that capacity.

Subd. 2. **Venue.** Unless applicable law requires otherwise or the court orders otherwise, an action by or against the receiver or relating to the receivership or

receivership property shall be commenced in the court and assigned to the judge before whom the receivership is pending.

Subd. 3. **Joinder.** Subject to section 576.42, a limited or general receiver may be joined or substituted as a party in any action or other proceeding that relates to receivership property that was pending at the time of appointment. Subject to other sections of this chapter, a general receiver may be joined or substituted as a party in any action or other proceeding that was pending at the time of appointment in which the respondent is a party. Pending actions may be transferred to the court upon the receiver's motion for change of venue made in the court in which the action is pending.

Subd. 4. **Effect of judgments.** A judgment entered subsequent to the time of appointment against a receiver or the respondent shall not constitute a lien on receivership property, nor shall any execution issue thereon. Upon submission of a certified copy of the judgment in accordance with section 576.49, the amount of the judgment shall be treated as an allowed claim in a general receivership. A judgment against a limited receiver shall have the same effect as a judgment against the respondent, except that the judgment shall be enforceable against receivership property only to the extent ordered by the court.

Sec. 20. [576.40] **TURNOVER OF PROPERTY.**

Subdivision 1. **Demand by receiver.** Except as expressly provided in this section, and unless otherwise ordered by the court, upon demand by a receiver, any person shall turn over any receivership property that is within the possession or control of that person. Unless ordered by the court, a person in possession of receivership property pursuant to a valid lien perfected prior to the time of appointment is not required to turn over receivership property.

Subd. 2. **Motion by receiver.** A receiver may seek to compel turnover of receivership property by motion in the receivership. If there exists a bona fide dispute with respect to the existence or nature of the receiver's or the respondent's interest in the property, turnover shall be sought by means of an action under section 576.39. In the absence of a bona fide dispute with respect to the receiver's or the respondent's right to possession of receivership property, the failure to relinquish possession and control to the receiver may be punishable as contempt of the court.

Sec. 21. [576.41] **ANCILLARY RECEIVERSHIPS.**

Subdivision 1. **Ancillary receiverships in foreign jurisdictions.** A receiver appointed by a court of this state may, without first seeking approval of the court, apply in any foreign jurisdiction for appointment as receiver with respect to any receivership property which is located within the foreign jurisdiction.

Subd. 2. **Ancillary receiverships in the courts of this state.** (a) A foreign receiver may obtain appointment by a court of this state as a receiver in an ancillary receivership with respect to any property located in or subject to the jurisdiction of the court if (1) the foreign receiver would be eligible to serve as receiver under section 576.26, and (2) the appointment is in furtherance of the foreign receiver's possession, control, or disposition of property subject to the foreign receivership and in accordance with orders of the foreign jurisdiction.

(b) The courts of this state may enter any order necessary to effectuate orders entered by the foreign jurisdiction's receivership proceeding. Unless the court orders otherwise,

a receiver appointed in an ancillary receivership in this state shall have the powers and duties of a limited receiver as set forth in this chapter and shall otherwise comply with the provisions of this chapter applicable to limited receivers.

Sec. 22. **[576.42] STAYS.**

Subdivision 1. **Control of property.** All receivership property is under the control and supervision of the court appointing the receiver.

Subd. 2. **Stay by court order.** In addition to any stay provided in this section, the court may order a stay or stays to protect receivership property and to facilitate the administration of the receivership.

Subd. 3. **Stay in all receiverships.** Except as otherwise ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of:

(1) any act to obtain possession of receivership property, or to interfere with or exercise control over receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property; and

(2) any act to create or perfect any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

Subd. 4. **Limited additional stay in general receiverships.** (a) Except as otherwise ordered by the court, in addition to the stay provided in subdivision 3, the entry of an order appointing a general receiver shall operate as a stay, applicable to all persons, of:

(1) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, against the respondent or the receiver that was or could have been commenced before the time of appointment, or to recover a claim against the respondent that arose before the time of appointment;

(2) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property.

(b) As to the acts specified in this subdivision, the stay shall expire 30 days after the time of appointment unless, before the expiration of the 30-day period, the receiver or other party in interest files a motion seeking an order of the court extending the stay and before the expiration of an additional 30 days following the 30-day period, the court orders the stay extended.

Subd. 5. **Modification of stay.** The court may modify any stay provided in this section upon the motion of any party in interest affected by the stay.

Subd. 6. **Inapplicability of stay.** The entry of an order appointing a receiver does not operate as a stay of:

(1) the commencement or continuation of a criminal proceeding against the respondent;

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

(3) 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 respondent;

(4) the establishment by a governmental unit of any tax liability and any appeal thereof;

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

(6) the exercise of a right of setoff;

(7) any act to maintain or continue the perfection of a lien on, or otherwise preserve or protect rights in, receivership property, but only to the extent that the act was necessary to preserve or protect the lien or other rights as they existed as of the time of the appointment. If the act would require seizure of receivership property or commencement of an action prohibited by a stay, the continued perfection shall instead be accomplished by filing a notice in the court before which the receivership is pending and by serving the notice upon the receiver and receiver's attorney, if any, within the time fixed by law for seizure or commencement of the action;

(8) the commencement of a bankruptcy case under federal bankruptcy laws; or

(9) any other exception as provided in United States Code, title 11, section 326(b), as to the automatic stay in federal bankruptcy cases to the extent not inconsistent with any provision in this section.

Sec. 23. **[576.43] UTILITY SERVICE.**

A utility providing service to receivership property that has received written notice from the receiver of the appointment of the receiver may not alter, refuse, or discontinue service to the receivership property without first giving the receiver written notice of any receivership default in compliance with the utility's approved tariffs. After written notice to the utility and a hearing satisfactory to the court, the court may prohibit the alteration, refusal, or discontinuance of utility service if the receiver furnishes adequate assurance of payment for service to be provided after the time of appointment.

Sec. 24. **[576.44] RECEIVERSHIP FINANCING.**

(a) Without necessity of a court order, the receiver may obtain unsecured credit and incur unsecured debt on behalf of the receivership, and the amounts shall be allowable as expenses of the receivership under section 576.51, subdivision 1, clause (2).

(b) Without necessity of a court order, the receiver may obtain secured financing on behalf of the receivership from any secured party under a financing facility existing at the time of the appointment.

(c) The court may authorize the receiver to obtain credit or incur indebtedness, and the court may authorize the receiver to mortgage, pledge, hypothecate, or otherwise encumber receivership property as security for repayment of any indebtedness.

Sec. 25. **[576.45] EXECUTORY CONTRACTS.**

Subdivision 1. **Performance by receiver.** Unless a court orders otherwise, a receiver succeeds to all of the rights and duties of the respondent under any executory

contract. The court may condition the continued performance by the receiver on terms that are appropriate under the circumstances. Performance of an executory contract shall create a claim against the receivership to the extent of the value of the performance received by the receivership after the time of appointment. The claim shall not constitute a personal obligation of the receiver.

Subd. 2. **Assignment and delegation by receiver.** For good cause, the court may authorize a receiver to assign and delegate an executory contract to a third party under the same circumstances and under the same conditions as the respondent was permitted to do so pursuant to the terms of the executory contract and applicable law immediately before the time of appointment.

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

Sec. 26. **[576.46] SALES FREE AND CLEAR OF LIEN IN GENERAL RECEIVERSHIPS.**

Subdivision 1. **Sales free and clear of liens.** (a) The court may order that a general receiver's sale of receivership property is free and clear of all liens, except any lien for unpaid real estate taxes or assessments and liens arising under federal law, and may be free of the rights of redemption of the respondent if the rights of redemption are receivership property and the rights of redemption of the holders of any liens, regardless of whether the sale will generate proceeds sufficient to fully satisfy all liens on the property, unless either:

(1) the property is (i) real property classified as agricultural land under section 273.13, subdivision 23, or the property is a homestead under section 510.01; and (ii) each of the owners of the property has not consented to the sale following the time of appointment; or

(2) any owner of the property or holder of a lien on the property serves and files a timely objection, and the court determines that the amount likely to be realized from the sale by the objecting person is less than the objecting person would realize within a reasonable time in the absence of this sale.

(b) The receiver shall have the burden of proof to establish that the amount likely to be realized by the objecting person from the sale is equal to or more than the objecting person would realize within a reasonable time in the absence of the sale.

(c) Upon any sale free and clear of liens authorized by this section, all liens encumbering the property conveyed shall transfer and attach to the proceeds of the sale, net of reasonable expenses approved by the court 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 sale. The court may authorize the receiver to satisfy,

in whole or in part, any ownership interest or lien out of the proceeds of the sale if the ownership interest or lien of any party in interest would not thereby be impaired.

Subd. 2. **Co-owned property.** If any receivership property includes an interest as a co-owner of property, the receiver shall have the rights and powers afforded by applicable state or federal law of the respondent, including but not limited to any rights of partition, but may not sell the property free and clear of the co-owner's interest in the property.

Subd. 3. **Right to credit bid.** A creditor with a claim secured by a valid and perfected lien against the property to be sold may bid on the property at a sale and may offset against the purchase price part or all of the amount secured by its lien, provided that the creditor tenders cash sufficient to satisfy in full the reasonable expenses, approved by the court, incurred in the disposition of the property and all liens payable out of the proceeds of sale having priority over the lien of that creditor.

Subd. 4. **Effect of appeal.** The reversal or modification on appeal of an authorization to sell property under this section does not affect the validity of a sale to a person that purchased the property in good faith, whether or not the person knew of the pendency of the appeal, unless the authorization and sale is stayed pending the appeal.

Sec. 27. [576.47] ABANDONMENT OF PROPERTY.

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

Sec. 28. [576.48] LIENS AGAINST AFTER-ACQUIRED PROPERTY.

Except as otherwise provided for by statute, property that becomes receivership property after the time of appointment is subject to a lien to the same extent as it would have been in the absence of the receivership.

Sec. 29. [576.49] CLAIMS PROCESS.

Subdivision 1. **Recommendation of receiver.** In a general receivership, and in a limited receivership if the circumstances require, the receiver shall submit to the court a recommendation concerning a claims process appropriate to the particular receivership.

Subd. 2. **Order establishing process.** In a general receivership and, if the court orders, in a limited receivership, the court shall establish the claims process to be followed in the receivership addressing whether proofs of claim must be submitted, the form of any proofs of claim, the place where the proofs of claim must be submitted, the deadline or deadlines for submitting the proofs of claim, and other matters bearing on the claims process.

Subd. 3. **Alternative procedures.** The court may authorize proofs of claim to be filed with the receiver rather than the court. The court may authorize the receiver to treat claims as allowed claims based on the amounts established in the books and records of the respondent or the schedule of claims filed pursuant to section 576.33, without necessity of formal proofs of claim.

Sec. 30. [576.50] OBJECTION TO AND ALLOWANCE OF CLAIMS.

Subdivision 1. **Objections and allowance.** The receiver or any party in interest may file a motion objecting to a claim and stating the grounds for the objection. The court may

order that a copy of the objection be served on the persons on the master service list at least 30 days prior to the hearing. Claims allowed by court order, and claims properly submitted and not disallowed by the court shall be allowed claims and shall be entitled to share in distributions of receivership property in accordance with the priorities provided by this chapter or otherwise by law.

Subd. 2. Examination of claims. If the claims process does not require proofs of claim to be filed with the court, at any time after expiration of the claim-filing period and upon 14 days' written notice to the receiver, any party in interest shall have the right to examine:

(1) all claims filed with the receiver; and

(2) all books and records in the receiver's possession that provided the receiver the basis for concluding that creditors identified therein are entitled to participate in any distributions of receivership property without having to file claims.

Subd. 3. Estimation of claims. For the purpose of allowance of claims, the court may estimate:

(1) any contingent or unliquidated claim, the fixing or liquidation of which would unduly delay the administration of the receivership; or

(2) any right to payment arising from a right to an equitable remedy.

Sec. 31. [576.51] PRIORITY OF CLAIMS.

Subdivision 1. Priorities. Allowed claims shall receive distribution under this chapter in the following order of priority and, except as set forth in clause (1), on a pro rata basis:

(1) claims secured by liens on receivership property, which liens are valid and perfected before the time of appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law, subject first to reimbursing the receiver for the reasonable and necessary expenses of preserving, protecting, or disposing of the collateral, including allowed fees and reimbursement of reasonable expenses of the receiver and professionals;

(2) actual, necessary costs and expenses incurred during the receivership, other than those expenses allowable under clause (1), including allowed fees and reimbursement of reasonable expenses of the receiver and professionals employed by the receiver under section 576.32;

(3) claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within the 90 days before the time of appointment or the cessation of the respondent's business, whichever occurs first, but only to the extent of the dollar amount in effect in United States Code, title 11, section 507(4);

(4) allowed unsecured claims, to the extent of the dollar amount in effect in United States Code, title 11, section 507(7) for each individual, arising from the deposit with the respondent, before the time of appointment of the receiver, of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use by individuals that were not delivered or provided;

(5) claims for arrears in amounts owing pursuant to a support order as defined in section 518A.26, subdivision 3;

(6) unsecured claims of governmental units for taxes that accrued before the time of appointment of the receiver;

(7) all other unsecured claims due as of the time of appointment, including the balance due the holders of secured claims to the extent not satisfied under clause (1); and

(8) interest pursuant to section 576.52.

Subd. 2. **Payments to respondent.** If all of the amounts payable under subdivision 1 have been paid in full, any remaining receivership property shall be returned to the respondent.

Sec. 32. **[576.52] INTEREST ON UNSECURED CLAIMS.**

To the extent that funds are available to pay holders of allowed unsecured claims in full or the amounts due as of the time of appointment, each holder shall also be entitled to receive interest, calculated from the time of appointment, at the rate set forth in the agreement evidencing the claim, or if no rate is provided, at the judgment rate that would be payable as of the time of appointment; provided however, that no holder shall be entitled to interest on that portion, if any, of its unsecured claim that is itself interest calculated from the time of appointment. If there are not sufficient funds in the receivership to pay in full the interest owed to all the holders, then the interest shall be paid pro rata.

Sec. 33. **[576.53] DISTRIBUTIONS.**

Subdivision 1. **Proposed distributions.** Before any interim or final distribution is made, the receiver shall file a distribution schedule listing the proposed distributions. The distribution schedule may be filed at any time during the case or may be included in the final report.

Subd. 2. **Notice.** The receiver shall give notice of the filing of the distribution schedule to all persons on the master mailing list or that have filed proofs of claim. If there is no objection within 21 days after the notice, the court may enter an order authorizing the receiver to make the distributions described in the distribution schedule without the necessity of a hearing.

Subd. 3. **Other distributions.** In the order appointing the receiver or in subsequent orders, the court may authorize distribution of receivership property to persons with ownership interests or liens.

ARTICLE 2

ASSIGNMENTS FOR THE BENEFITS OF CREDITORS

Section 1. **[577.11] DEFINITIONS.**

(a) The definitions in this section and in section 576.21 apply throughout this chapter unless the context requires otherwise.

(b) "Assignee" means the person to whom the assignment property is assigned.

(c) "Assignment property" means the property assigned pursuant to the provisions of this chapter.

(d) "Assignor" means the person who assigns the assignment property.

(e) "Time of assignment" means the date and time endorsed by the court administrator pursuant to section 577.14.

Sec. 2. [577.12] REQUISITES.

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

Sec. 3. [577.13] FORM OF ASSIGNMENT.

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

ASSIGNMENT

THIS ASSIGNMENT is made this day of,, by and between, with a principal place of business at (hereinafter "assignor"), and, whose address is (hereinafter "assignee").

WHEREAS, the assignor has been engaged in the business of

WHEREAS, the assignor is indebted to creditors and 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 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 assigns to the assignee, and the assignee's successors and assigns, the assignor's property, except the property as is exempt by law from levy and sale under an execution (and then only to the extent of the 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 the property may be located (hereinafter collectively the "assignment property"), which property is set forth on Schedule A attached hereto.

A list of the creditors of the assignor is set forth in 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 assignment property in accordance with Minnesota Statutes, chapters 576 and 577.

The assignee shall take possession of and administer the assignment property and shall liquidate the assignment property with reasonable dispatch, 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 the liquidations and collections in accordance with Minnesota Statutes, chapters 576 and 577.

The assignee shall then pay and discharge in full, to the extent that funds are available from the assignment property after payment of expenses, costs, and disbursements, all of the debts and liabilities now due from the assignor, including interest on the debts and liabilities in full, in accordance with Minnesota Statutes, chapters 576 and 577.

In the event that all debts and liabilities are paid in full, the remainder of the assignment property 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 the acts and things might be done by the assignor in the absence of this assignment, including, but not limited to, the power to demand and recover from all persons all assignment property; to sue for the recovery of assignment 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 assignment property 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 Minnesota, that the attached schedules of the property or the assignor and creditors are true and complete to the best of the assignor's knowledge.

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

.....

Assignor

Dated:

.....

Assignee

Dated:

Sec. 4. [577.14] DUTY OF COURT ADMINISTRATOR.

The court administrator shall endorse the day, hour, and minute of the filing of the assignment. The assignment shall be entered in the court administrator's register, and all papers filed and orders made in the matter of the assignment shall be noted therein as in the case of a civil action.

Sec. 5. [577.15] ASSIGNEE AS LIEN CREDITOR; REAL ESTATE 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 recording. If any interest in real estate 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. The assignment executed by the assignor and certified by the court administrator 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.

Sec. 6. [577.16] NOTICE.

The assignee shall give notice of the assignment to all creditors and other parties in interest actually known to the assignee by mail or other means of transmission within 21 days after the time of assignment. The notice of the assignment shall include the time of assignment and the names and addresses of the assignor, the assignee, and the assignee's attorney, if any.

Sec. 7. [577.17] REMOVAL OF ASSIGNEE.

The court may remove the assignee and appoint another assignee by application of the standards and procedures under section 576.37. The order of removal and appointment shall transfer all of the assignment property to the new assignee, and with respect to real property may be recorded in the same manner as the initial assignment.

Sec. 8. [577.18] APPLICATION OF CHAPTER GOVERNING RECEIVERSHIPS.

Except as otherwise provided in this chapter, an assignee shall be treated as a general receiver, the assignment property shall be treated as receivership property, and all proceedings following the filing of the assignment shall be governed by sections 576.21 to 576.53.

Sec. 9. REPEALER.

Minnesota Statutes 2010, sections 577.01; 577.02; 577.03; 577.04; 577.05; 577.06; 577.08; 577.09; and 577.10, are repealed.

ARTICLE 3

CONFORMING AMENDMENTS

Section 1. Minnesota Statutes 2010, section 302A.753, subdivision 2, is amended to read:

Subd. 2. **Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

Sec. 2. Minnesota Statutes 2010, section 302A.753, subdivision 3, is amended to read:

Subd. 3. **Discharge of obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the ~~following order of priority to the payment and discharge or:~~

~~(a) the costs and expenses of the proceedings, including attorneys' fees and disbursements;~~

~~(b) debts, taxes and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;~~

~~(c) claims duly proved and allowed to employees under the provisions of the Workers' Compensation Act, provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;~~

~~(d) claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and~~

~~(e) other claims duly proved and allowed set forth in section 576.51.~~

Sec. 3. Minnesota Statutes 2010, section 302A.755, is amended to read:

302A.755 QUALIFICATIONS OF RECEIVERS; POWERS.

Subdivision 1. **Qualifications.** ~~A receiver shall be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. Any person qualified under section 576.26 may be appointed as receiver. A receiver shall give bond as directed by the court with the sureties required by the court required by section 576.27.~~

Subd. 2. **Powers.** A receiver may sue and defend ~~in all courts~~ actions as receiver of the corporation. ~~The court appointing the receiver has exclusive jurisdiction of over the corporation and its property, the receiver, and all receivership property pursuant to section 576.23.~~

Sec. 4. Minnesota Statutes 2010, section 302A.759, subdivision 1, is amended to read:

Subdivision 1. **Manner and form.** In proceedings referred to in section 302A.751 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims ~~under oath with the court administrator or with the receiver in a form prescribed by the court pursuant to section 576.49.~~ The receiver or any party in interest may object to any claim pursuant to section 576.50.

Sec. 5. Minnesota Statutes 2010, section 302A.761, is amended to read:

302A.761 DISCONTINUANCE OF DISSOLUTION PROCEEDINGS.

The involuntary or supervised voluntary dissolution of a corporation shall be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets and to file a final report pursuant to section 576.38, subdivision 3.

Sec. 6. Minnesota Statutes 2010, section 308A.945, subdivision 2, is amended to read:

Subd. 2. **Action after hearing.** After a hearing is completed, on notice the court directs to be given to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

Sec. 7. Minnesota Statutes 2010, section 308A.945, subdivision 3, is amended to read:

Subd. 3. **Discharge of obligations.** The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the ~~following~~ order of priority ~~or~~:

~~(1) the costs and expenses of the proceedings, including attorneys' fees and disbursements;~~

~~(2) debts, taxes and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;~~

~~(3) claims duly proved and allowed to employees under the provisions of the Workers' Compensation Act except that claims under this clause may not be allowed if the cooperative has carried workers' compensation insurance, as provided by law, at the time the injury was sustained;~~

~~(4) claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any, and~~

~~(5) other claims proved and allowed set forth in section 576.51.~~

Sec. 8. Minnesota Statutes 2010, section 308A.951, is amended to read:

308A.951 RECEIVER QUALIFICATIONS AND POWERS.

Subdivision 1. **Qualifications.** ~~A receiver must be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. Any person qualified under section 576.26 may be appointed as a receiver. A receiver must give a bond as directed by the court with the sureties required by the court required by section 576.27.~~

Subd. 2. **Powers.** A receiver may sue and defend ~~in all courts~~ actions as receiver of the cooperative. The court appointing the receiver has exclusive jurisdiction ~~of~~ over

the cooperative and its property, the receiver, and all receivership property pursuant to section 576.23.

Sec. 9. Minnesota Statutes 2010, section 308A.961, subdivision 1, is amended to read:

Subdivision 1. **Filing under oath.** In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims ~~under oath with the court administrator or with the receiver in a form prescribed by the court pursuant to section 576.49.~~ The receiver or any party in interest may object to any claims pursuant to section 576.50.

Sec. 10. Minnesota Statutes 2010, section 308A.965, is amended to read:

308A.965 DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION PROCEEDINGS.

The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets and to file a final report pursuant to section 576.38, subdivision 3.

Sec. 11. Minnesota Statutes 2010, section 308B.935, subdivision 2, is amended to read:

Subd. 2. **Action after hearing.** After a hearing is completed, upon notice to parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the cooperative's assets, including amounts owing to the cooperative by subscribers on account of an unpaid portion of the consideration for the issuance of shares. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the cooperative and to sell, lease, transfer, or otherwise dispose of the property and assets of the cooperative either at public or private sale.

Sec. 12. Minnesota Statutes 2010, section 308B.935, subdivision 3, is amended to read:

Subd. 3. **Discharge of obligations.** The assets of the cooperative or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the ~~following~~ order of priority:

~~(1) the costs and expense of the proceedings, including attorney fees and disbursements;~~

~~(2) debts, taxes, and assessments due the United States, this state, and other states in that order;~~

~~(3) claims duly proved and allowed to employees under the provisions of the Workers' Compensation Act except that claims under this clause may not be allowed if the cooperative carried workers' compensation insurance, as provided by law, at the time the injury was sustained;~~

~~(4) claims, including the value of all compensation paid in a medium other than money, proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any, and~~

~~(5) other claims proved and allowed set forth in section 576.51.~~

Sec. 13. Minnesota Statutes 2010, section 308B.941, is amended to read:

308B.941 RECEIVER QUALIFICATIONS AND POWERS.

Subdivision 1. **Qualifications.** ~~A receiver shall be a natural person or a domestic business entity or a foreign business entity authorized to transact business in this state. Any person qualified under section 576.26 may be appointed as a receiver. A receiver shall give a bond as directed by the court with the sureties required by the court required by section 576.27.~~

Subd. 2. **Powers.** A receiver may sue and defend ~~in all courts actions~~ as receiver of the cooperative. ~~The court appointing the receiver has exclusive jurisdiction of over the cooperative and its property, the receiver, and all receivership property pursuant to section 576.23.~~

Sec. 14. Minnesota Statutes 2010, section 308B.951, subdivision 1, is amended to read:

Subdivision 1. **Filing under oath.** In proceedings to dissolve a cooperative, the court may require all creditors and claimants of the cooperative to file their claims ~~under oath with the court administrator or with the receiver in a form prescribed by the court pursuant to section 576.49. The receiver or any party in interest may object to any claim pursuant to section 576.50.~~

Sec. 15. Minnesota Statutes 2010, section 308B.955, is amended to read:

308B.955 DISCONTINUANCE OF COURT-SUPERVISED DISSOLUTION PROCEEDINGS.

The involuntary or supervised voluntary dissolution of a cooperative may be discontinued at any time during the dissolution proceedings if it is established that cause for dissolution does not exist. The court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the cooperative its remaining property and assets and to file a final report pursuant to section 576.38, subdivision 3.

Sec. 16. Minnesota Statutes 2010, section 316.11, is amended to read:

316.11 RECEIVER, APPOINTMENT, DUTIES.

In any action or proceeding to dissolve a corporation, the court, at any time before judgment, or within three years after judgment, of dissolution, may appoint a receiver to take charge of its estate and effects and to collect the debts and property due and belonging to it, with, in addition to the powers set forth in chapter 576, power to prosecute and defend actions in its name or otherwise, to appoint agents, and do all other acts necessary to the final settlement of the unfinished business of the corporation which it might do if in being. The power of such receiver shall continue so long as the court deems necessary for such purposes. The receiver shall pay all debts due from the corporation, if the funds in hand are sufficient therefor; and, if not, shall distribute the same ratably among the creditors who prove their debts, in the manner directed by the court, and, if there be any balance after the payment of the debts, the receiver shall distribute and pay the same to and among those who are justly entitled thereto, as having been stockholders or members. Every receiver appointed under the provisions of this section shall give bond in such amount as the court shall require, with sureties approved by it the assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the order of priority set forth in section 576.51. After payment of the expenses of

the receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4. Every receiver appointed under the provisions of this section shall give bond as required by section 576.27 in such amount as the court shall require, with sureties approved by it.

Sec. 17. Minnesota Statutes 2010, section 317A.753, subdivision 3, is amended to read:

Subd. 3. **Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to the parties to the proceedings and to other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the assets of the corporation at a public or private sale.

Sec. 18. Minnesota Statutes 2010, section 317A.753, subdivision 4, is amended to read:

Subd. 4. **Discharge of obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the ~~following order of priority to the payment and discharge of:~~

~~(1) the costs and expenses of the dissolution proceedings, including attorneys fees and disbursements;~~

~~(2) debts, taxes, and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;~~

~~(3) claims duly proved and allowed to employees under the Workers' Compensation Act, provided that claims under this clause are not allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;~~

~~(4) claims, including the value of compensation paid in a medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and~~

~~(5) other claims duly proved and allowed set forth in section 576.51.~~

Sec. 19. Minnesota Statutes 2010, section 317A.755, is amended to read:

317A.755 QUALIFICATIONS OF RECEIVERS; POWERS.

Subdivision 1. **Qualifications.** ~~A receiver must be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. Any person qualified under section 576.26 may be appointed as a receiver. A receiver shall give bond as directed by the court with the sureties required by the court required by section 576.27.~~

Subd. 2. **Powers.** A receiver may sue and defend ~~in courts~~ all actions as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction ~~of~~ over the corporation ~~and its property,~~ the receiver, and all receivership property pursuant to section 576.23.

Sec. 20. Minnesota Statutes 2010, section 317A.759, subdivision 1, is amended to read:

Subdivision 1. **Filing may be required.** In a proceeding under section 317A.751 to dissolve a corporation, the court may require creditors and claimants of the corporation to file their claims ~~under oath with the court administrator or with the receiver in a form~~

~~prescribed by the court pursuant to section 576.49. The receiver or any party in interest may object to any claim pursuant to section 576.50.~~

Sec. 21. Minnesota Statutes 2010, section 322B.836, subdivision 2, is amended to read:

Subd. 2. **Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the limited liability company assets, including all amounts owing to the limited liability company by persons who have made contribution agreements and by persons who have made contributions by means of enforceable promises of future performance. In addition to the powers set forth in chapter 576, a receiver has authority, subject to the order of the court, to continue the business of the limited liability company and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the limited liability company either at public or private sale.

Sec. 22. Minnesota Statutes 2010, section 322B.836, subdivision 3, is amended to read:

Subd. 3. **Discharge of obligations upon liquidation.** If the court determines that the limited liability company is to be dissolved with winding up to be accomplished by liquidation, then the assets of the limited liability company or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the ~~following~~ order of priority to the payment and discharge or:

~~(1) the costs and expenses of the proceedings, including attorneys' fees and disbursements;~~

~~(2) debts, taxes, and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;~~

~~(3) claims duly proved and allowed to employees under the provisions of chapter 176, provided, that claims under this clause shall not be allowed if the limited liability company carried workers' compensation insurance, as provided by law, at the time the injury was sustained;~~

~~(4) claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any, and~~

~~(5) other claims duly proved and allowed set forth in section 576.51.~~

Sec. 23. Minnesota Statutes 2010, section 322B.84, is amended to read:

322B.84 QUALIFICATIONS OF RECEIVERS AND POWERS.

Subdivision 1. **Qualifications.** ~~A receiver shall be a natural person or a domestic or foreign organization authorized to transact business in this state.~~ Any person qualified under section 576.26 may be appointed as a receiver. A receiver shall give bond as directed by the court with the sureties required by the court required by section 576.27.

Subd. 2. **Powers.** A receiver may sue and defend ~~in~~ all courts actions as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction ~~of~~ over the limited liability company ~~and its property, the receiver, and all receivership property pursuant to section 576.23.~~

Sec. 24. Minnesota Statutes 2010, section 462A.05, subdivision 32, is amended to read:

Subd. 32. **Appointment of receivers.** The agency may obtain the appointment of receivers or assignments of rents and profits under sections 559.17 and ~~576.01~~ 576.25, subdivision 5, except that the limitation relating to the minimum amounts of the original principal balances of mortgages contained in sections ~~576.01, subdivision 2~~ 576.25, subdivision 5, paragraph (a), clause (i), and 559.17, subdivision 2, clause (2), shall be inapplicable to it.

Sec. 25. Minnesota Statutes 2010, section 469.012, subdivision 2i, is amended to read:

Subd. 2i. **Receivers, assignment of rent as security.** An authority may secure a mortgage or loan for a rental housing project by obtaining the appointment of receivers or assignments of rents and profits under sections 559.17 and ~~576.01~~ 576.25, subdivision 5, except that the limitation relating to the minimum amounts of the original principal balances of mortgages specified in sections 559.17, subdivision 2, clause (2); and ~~576.01, subdivision 2~~ 576.25, subdivision 5, paragraph (a), clause (1), does not apply.

Sec. 26. Minnesota Statutes 2010, section 540.14, is amended to read:

540.14 ACTIONS AGAINST RECEIVERS; TRIAL; JUDGMENT, HOW SATISFIED.

Except as limited in chapters 576 and 577, any receiver, assignee, or other person appointed by a court to hold or manage property under its direction, may be sued on account of any acts or transactions in carrying on the business connected with such property without prior leave of court.

Such action may be brought in any county in which it could have been brought against the person or corporation represented by such receiver or other person, shall be tried in the same manner and subject to the same rules of procedure, and any judgment recovered therein against such receiver or other person shall be paid by the receiver or other person as a part of the expenses of managing such property.

Sec. 27. Minnesota Statutes 2010, section 559.17, subdivision 2, is amended to read:

Subd. 2. **Assignment; conditions.** A mortgagor may assign, as additional security for the debt secured by the mortgage, the rents and profits from the mortgaged real property, if the mortgage:

- (1) was executed, modified or amended subsequent to August 1, 1977;
- (2) secured an original principal amount of \$100,000 or more or is a lien upon residential real estate containing more than four dwelling units; and
- (3) is not a lien upon property which was:
 - (i) entirely homesteaded as agricultural property; or
 - (ii) residential real estate containing four or fewer dwelling units where at least one of the units is homesteaded. The assignment may be enforced, but only against the nonhomestead portion of the mortgaged property, as follows:

(a) if, by the terms of an assignment, a receiver is to be appointed upon the occurrence of some specified event, and a showing is made that the event has occurred, the court shall, without regard to waste, adequacy of the security, or solvency of the

mortgagor, appoint a receiver who shall, with respect to the excess cash remaining after application as provided in section ~~576.01, subdivision 2~~ 576.25, subdivision 5, apply it as prescribed by the 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 ~~576.01, subdivision 2~~ 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 ~~576.01, subdivision 2~~ 576.25, subdivision 5, 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. 28. Minnesota Statutes 2010, section 576.04, is amended to read:

576.04 ABSENTEES; POSSESSION, MANAGEMENT, AND DISPOSITION OF PROPERTY.

If a person entitled to or having an interest in property within or without the jurisdiction of the state has disappeared or absconded from the place within or without the state where last known to be, and has no agent in the state, and it is not known where the person is, or if such person, having a spouse or minor child or children dependent to any extent upon the person for support, has thus disappeared, or absconded without making sufficient provision for such support, and it is not known where the person is, or, if it is known that the person is without the state, any one who would under the law of the state be entitled to administer upon the estate of such absentee if deceased, or if no one is known to be so entitled, some person deemed suitable by the court, or such spouse, or some one in such spouse's or minors' behalf, may file a petition, under oath, in the court for the county where any such property is situated or found, stating the name, age, occupation, and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, whether or not such absentee is a citizen of the United States, and if not, of what country the

absentee is a citizen or native, and containing a schedule of the property, real and personal, so far as known, and its location within or without the state, and a schedule of contractual or property rights contingent upon the absentee's death, and praying that real and personal property may be taken possession of and a receiver thereof appointed under ~~this~~ chapter 576. No proceedings shall be commenced under the provisions of ~~sections 576.04 to 576.16~~ this chapter, except upon good cause shown until at least three months after the date on which it is alleged in such petition that such person so disappeared or absconded.

Sec. 29. Minnesota Statutes 2010, section 576.06, is amended to read:

576.06 NOTICE OF SEIZURE; APPOINTMENT OF RECEIVER; DISPOSITION OF PROPERTY.

Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, warrant, and officer's return, which shall be addressed to such absentee and to all persons who claim an interest in such property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the officer's schedule should not be appointed and the property held and disposed of under ~~sections 576.04 to 576.16~~ this chapter.

Sec. 30. Minnesota Statutes 2010, section 576.08, is amended to read:

576.08 HEARING BY COURT; DISMISSAL OF PROCEEDING; APPOINTMENT AND BOND OF RECEIVER.

The absentee, or any person who claims an interest in any of the property, may appear and show cause why the prayer of the petition should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the officer to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the officer and named in the schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee; and the receiver shall give a bond ~~to the state in the sum and with the conditions the court orders, to be approved by the court~~ pursuant to section 576.27. In the appointment of the receiver the court shall give preference to the spouse of the absentee, if the spouse is ~~competent and suitable~~ eligible to serve as receiver under section 576.26.

Sec. 31. Minnesota Statutes 2010, section 576.09, is amended to read:

576.09 ~~POSSESSION TRANSFER OF PROPERTY BY~~ TO RECEIVER.

After the ~~approval of the~~ receiver gives its bond the court may order the sheriff or a deputy to transfer and deliver to such receiver the possession of the property under the warrant, and the receiver shall file in the office of the court administrator a schedule of the property received.

Sec. 32. Minnesota Statutes 2010, section 576.11, is amended to read:

576.11 WHERE NO CORPOREAL PROPERTY; RECEIVER; BOND.

If the absentee has left no corporeal property within or without the state, but there are debts and obligations due or owing to the absentee from persons within or without the state, a petition may be filed, as provided in section ~~576.04~~ 578.02, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice, as above provided,

without issuing a warrant, and may, upon the return of the notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct the receiver to demand and collect the debts and obligations specified in the petition. The receiver shall give bond, as provided in section ~~576.08~~ 576.27, and hold the proceeds of such debts and obligations and all property received, and distribute the same as provided in ~~sections 576.12 to 576.16~~ chapter 576. The receiver may be further authorized and directed as provided in section ~~576.10~~ 578.08.

Sec. 33. Minnesota Statutes 2010, section 576.121, is amended to read:

576.121 ADVANCE LIFE INSURANCE PAYMENTS TO ABSENTEE'S BENEFICIARY.

If the beneficiary under an insurance policy on the life of an absentee is the absentee's spouse, child, or other person dependent upon the absentee for support and advance payments under the policy are necessary to support and maintain the beneficiary, the beneficiary shall be entitled to advance payments as the court determines under section ~~576.122~~ 578.12. "Beneficiary" under this section includes an heir at law of the person whose life is insured if the policy is payable to the insured's estate.

Sec. 34. Minnesota Statutes 2010, section 576.123, is amended to read:

576.123 REAPPEARANCE OF ABSENTEE.

Subdivision 1. **Insurance payments; reduction.** If an absentee is declared dead after advance insurance payments have been made pursuant to section ~~576.122~~ 578.12, the amount payable under the policy shall be reduced by the total amount of payments made under section ~~576.122~~ 578.12.

Subd. 2. **Reimbursement of insurer.** If an absentee is found to be living after advance insurance payments have been made to a beneficiary pursuant to section ~~576.122~~ 578.12, the absentee and beneficiary shall reimburse the insurer the amount of the payments made.

If the insurer is unable to obtain full reimbursement, the amount payable under the policy shall be reduced to the extent necessary to allow full reimbursement. Failure of the absentee and beneficiary to reimburse the insurer upon demand for payment sent by the insurer by certified mail to the last known address of the absentee and beneficiary shall be sufficient to show the insurer's inability to obtain reimbursement.

Sec. 35. Minnesota Statutes 2010, section 576.144, is amended to read:

576.144 DISSOLUTION OF MARRIAGE.

If the court finds the absentee dead in accordance with section ~~576.142~~ 578.17, the absentee's marriage is dissolved. The court shall enter the conclusion of law dissolving the marriage on the order which establishes the death of the absentee as a matter of law.

Sec. 36. Minnesota Statutes 2010, section 576.15, is amended to read:

576.15 COMPENSATION OF RECEIVER; TITLE OF ABSENTEE LOST AFTER FOUR YEARS.

The receiver shall be allowed ~~such~~ compensation and disbursements as ~~the court orders, to be paid out of the property or proceeds~~ provided in chapter 576. If, within

four years after the date of the disappearance or absconding, as found and recorded by the court, the absentee appears, and has not been declared dead under section ~~576.142~~ 578.17, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver, and pay over to the absentee the remainder of the property. If the absentee does not appear and claim the property within four years, all the absentee's right, title, and interest in the property, real or personal, or the proceeds thereof, shall cease, and no action shall be brought by the absentee on account thereof.

If the absentee is declared dead pursuant to section ~~576.142~~ 578.17 and appears before the expiration of four years, the absentee shall have no right, title and interest in the property, real or personal, or the proceeds thereof.

Sec. 37. Minnesota Statutes 2010, section 576.16, is amended to read:

576.16 PROPERTY DISTRIBUTION; TIME LIMITATION.

If the receiver is not appointed within three years after the date found by the court under section ~~576.08~~ 578.06, the time limited for accounting for, or fixed for distributing, the property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the four years provided in sections ~~576.14~~ 578.15 and ~~576.15~~ 578.20.

The provisions of ~~sections 576.04 to 576.16~~ this chapter shall not be construed as exclusive, but as providing additional and cumulative remedies.

Sec. 38. **REVISOR'S INSTRUCTION.**

The Revisor of Statutes shall renumber each section of Minnesota Statutes listed in Column A with the number in Column B. The Revisor shall correct any incorrect cross-references resulting from this renumbering.

<u>Column A</u>	<u>Column B</u>
<u>576.011</u>	<u>578.01</u>
<u>576.04</u>	<u>578.02</u>
<u>576.05</u>	<u>578.03</u>
<u>576.06</u>	<u>578.04</u>
<u>576.07</u>	<u>578.05</u>
<u>576.08</u>	<u>578.06</u>
<u>576.09</u>	<u>578.07</u>
<u>576.10</u>	<u>578.08</u>
<u>576.11</u>	<u>578.09</u>
<u>576.12</u>	<u>578.10</u>
<u>571.121</u>	<u>578.11</u>
<u>576.122</u>	<u>578.12</u>
<u>576.123</u>	<u>578.13</u>
<u>576.13</u>	<u>578.14</u>

<u>576.14</u>	<u>578.15</u>
<u>576.141</u>	<u>578.16</u>
<u>576.142</u>	<u>578.17</u>
<u>576.143</u>	<u>578.18</u>
<u>576.144</u>	<u>578.19</u>
<u>576.15</u>	<u>578.20</u>
<u>576.16</u>	<u>578.21</u>

Sec. 39. **REPEALER.**

Minnesota Statutes 2010, sections 302A.759, subdivision 2; 308A.961, subdivision 2; 308B.951, subdivisions 2 and 3; 317A.759, subdivision 2; and 576.01, are repealed.

ARTICLE 4

UNIFORM DISCLAIMER OF PROPERTY INTERESTS

Section 1. Minnesota Statutes 2010, section 524.2-1103, is amended to read:

524.2-1103 SCOPE.

~~Sections 524.2-1101 to 524.2-1116 apply to disclaimers of any interest in or power over property, whenever created. Except as provided in section 524.2-1116, sections 524.2-1101 to 524.2-1116 are the exclusive means by which a disclaimer may be made under Minnesota law regardless of whether it is qualified under section 2518 of the Internal Revenue Code of 1986 in effect on January 1, 2010, as defined in section 291.005, subdivision 1, clause (3).~~

Sec. 2. Minnesota Statutes 2010, section 524.2-1104, is amended to read:

524.2-1104 TAX-QUALIFIED DISCLAIMER.

Notwithstanding any other provision of this chapter, other than section 524.2-1106, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated pursuant to the provisions of section 2518 of the Internal Revenue Code of 1986, ~~as in effect on January 1, 2010~~ defined in section 291.005, subdivision 1, clause (3), as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under sections 524.2-1101 to 524.2-1116.

Sec. 3. Minnesota Statutes 2010, section 524.2-1106, is amended to read:

524.2-1106 WHEN DISCLAIMER IS BARRED OR LIMITED.

- (a) A disclaimer is barred by a written waiver of the right to disclaim.
- (b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:
- (1) the disclaimant accepts the portion of the interest sought to be disclaimed;
 - (2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the portion of the interest sought to be disclaimed or contracts to do so;

(3) the portion of the interest sought to be disclaimed is sold pursuant to a judicial sale; or

(4) the disclaimant is insolvent when the disclaimer becomes irrevocable.

(c) Acceptance of a distribution from a trust shall constitute acceptance of only that portion of the beneficial interest in that trust that has been distributed, and shall not constitute acceptance or bar disclaimer of that portion of the beneficial interest in the trust that has not yet been distributed.

(d) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

~~(d)~~ (e) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

~~(e)~~ (f) A disclaimer of an interest in, or a power over, property which is barred by this section is ineffective.

Sec. 4. Minnesota Statutes 2010, section 524.2-1107, is amended to read:

524.2-1107 POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE.

(a) A person may disclaim, in whole or in part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) With court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment when acting in a representative capacity. Without court approval, a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship explicitly grants the fiduciary the right to disclaim. With court approval, a custodial parent may disclaim on behalf of a minor child for whom no conservator has been appointed, in whole or in part, any interest in or power over property, including a power of appointment, which the minor child is to receive.

(c) To be effective, a disclaimer must be in writing, declare the writing as a disclaimer, describe the interest or power disclaimed, and be signed by the person or fiduciary making the disclaimer and acknowledged in the manner provided for deeds of real estate to be recorded in this state. In addition, for a disclaimer to be effective, an original of the disclaimer must be delivered or filed in the manner provided in section 524.2-1114.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, specific property, term of years, portion of a beneficial interest in or right to distributions from a trust, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when the disclaimer is delivered or filed pursuant to section 524.2-1114 or it becomes effective as provided in sections 524.2-1108 to 524.2-1113, whichever occurs later.

(f) A disclaimer made under sections 524.2-1101 to 524.2-1116 is not a transfer, assignment, or release.

Sec. 5. Minnesota Statutes 2010, section 524.2-1114, is amended to read:

524.2-1114 DELIVERY OR FILING.

(a) Subject to paragraphs (b) to (l), delivery of a disclaimer may be effective by personal delivery, first-class mail, or any other method that results in its receipt. A disclaimer sent by first-class mail is deemed to have been delivered on the date it is postmarked. Delivery by any other method is effective upon receipt by the person to whom the disclaimer is to be delivered under this section.

(b) In the case of a disclaimer of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) the disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration would be proper.

(c) In the case of a disclaimer of an interest in a testamentary trust:

(1) the disclaimer must be delivered to the trustee serving when the disclaimer is delivered or, if no trustee is then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is serving when the disclaimer is sought to be delivered, the disclaimer must be filed with the clerk of the court in any county where venue of administration of the decedent's estate would be proper.

(d) In the case of a disclaimer of an interest in an inter vivos trust:

(1) the disclaimer must be delivered to the trustee serving when the disclaimer is delivered;

(2) if no trustee is then serving, it must be filed with the clerk of the court in any county where the filing of a notice of trust would be proper; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the person with the power to revoke the revocable trust or the transferor of the interest or to such person's legal representative.

(e) In the case of a disclaimer of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation or to such person's legal representative.

(f) In the case of a disclaimer of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, the disclaimer must be delivered to the person obligated to distribute the interest.

(g) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes or, if such person cannot reasonably be located by the disclaimant, the disclaimer must be delivered as provided in paragraph (b).

(h) In the case of a disclaimer by an object, or taker in default of exercise, of a power of appointment at any time after the power was created, the disclaimer must be delivered to:

(1) the holder of the power; or

(2) the fiduciary acting under the instrument that created the power or, if no fiduciary is serving when the disclaimer is sought to be delivered, filed with a court having authority to appoint the fiduciary.

(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, the disclaimer must be delivered to:

(1) the holder of the power or the personal representative of the holder's estate; or

(2) the fiduciary under the instrument that created the power or, if no fiduciary is serving when the disclaimer is sought to be delivered, filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in paragraph (b), (c), or (d) as if the power disclaimed were an interest in property.

(k) In the case of a disclaimer of a power exercisable by an agent, other than a power exercisable by a fiduciary over a trust or estate, the disclaimer must be delivered to the principal or the principal's representative.

(l) Notwithstanding paragraph (a), delivery of a disclaimer of an interest in or relating to real estate shall be presumed upon the recording of the disclaimer in the office of the ~~clerk of the court~~ county recorder or registrar of titles of the county or counties where the real estate is located.

(m) A fiduciary or other person having custody of the disclaimed interest is not liable for any otherwise proper distribution or other disposition made without actual notice of the disclaimer or, if the disclaimer is barred under section 524.2-1106, for any otherwise proper distribution or other disposition made in reliance on the disclaimer, if the distribution or disposition is made without actual knowledge of the facts constituting the bar of the right to disclaim.

Sec. 6. Minnesota Statutes 2010, section 524.2-1115, is amended to read:

524.2-1115 RECORDING OF DISCLAIMER RELATING TO REAL ESTATE.

(a) A disclaimer of an interest in or relating to real estate does not provide constructive notice to all persons unless the disclaimer contains a legal description of the real estate to which the disclaimer relates and unless the disclaimer is ~~filed for recording~~ recorded in the office of the county recorder or registrar of titles in the county or counties where the real estate is located.

(b) An effective disclaimer meeting the requirements of paragraph (a) constitutes constructive notice to all persons from the time of ~~filing recording~~. Failure to record the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Sec. 7. Minnesota Statutes 2010, section 524.2-1116, is amended to read:

524.2-1116 APPLICATION TO EXISTING RELATIONSHIPS.

~~Except as otherwise provided in section 524.2-1106, an Sections 524.2-1101 to 524.2-1116 apply to disclaimers of any interest in or power over property existing on January 1, 2010, as to which the time for delivering or filing a disclaimer under laws superseded by sections 524.2-1101 to 524.2-1116 has not expired, may be disclaimed after January 1, 2010 whenever created.~~

Presented to the governor March 29, 2012

Signed by the governor March 30, 2012, 11:41 a.m.