



258940

LEGISLATIVE ACTION

Senate

.  
. .  
. .  
. .  
. .

House

---

The Committee on Commerce and Tourism (Berman) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 237 - 636

and insert:

(4) This chapter does not displace any existing rule of procedural or judicial administration of this state governing service or notice, including, without limitation, Rule 1.070, Florida Rules of Civil Procedure, and Rule 2.525, Florida Rules of Judicial Administration, which shall remain in full force and effect.



258940

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39

714.04 Scope; exclusions.-

(1) This chapter applies to a receivership initiated in a court of this state for an interest in real property and any incidental personal property related to or used in operating the real property.

(2) This chapter does not apply to:

(a) Actions in which a state agency or officer is expressly authorized by statute to seek or obtain the appointment of a receiver;

(b) Actions authorized by or commenced under federal law;

(c) Real property improved by one or two dwelling units which includes the homestead of an individual owner or an affiliate of an individual owner;

(d) Property of an individual exempt from forced sale, execution, or seizure under the laws of this state; or

(e) Personal property of an individual which is used primarily for personal, family, or household purposes.

(3) This chapter does not limit the authority of a court to appoint a receiver under the laws of this state other than this chapter.

(4) This chapter does not limit an individual's homestead rights under the laws of this state or federal law.

(5) Unless displaced by a particular provision of this chapter, the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause, supplement this chapter.

714.05 Power of the court.-The court that appoints a



258940

40 receiver under this chapter has exclusive jurisdiction to direct  
41 the receiver and determine any controversy related to the  
42 receivership or receivership property.

43 714.06 Appointment of receiver.—

44 (1) The court may appoint a receiver:

45 (a) Before judgment, to protect a party that demonstrates  
46 an apparent right, title, or interest in real property that is  
47 the subject of the action, if the property or its revenue-  
48 producing potential:

49 1. Is being subjected to or is in danger of waste, loss,  
50 substantial diminution in value, dissipation, or impairment; or

51 2. Has been or is about to be the subject of a voidable  
52 transaction;

53 (b) After judgment:

54 1. To carry the judgment into effect; or

55 2. To preserve nonexempt real property pending appeal or  
56 when an execution has been returned unsatisfied and the owner  
57 refuses to apply the property in satisfaction of the judgment;

58 (c) In an action in which a receiver for real property may  
59 be appointed on equitable grounds, subject to the requirements  
60 of paragraphs (a) and (b); or

61 (d) During the time allowed for redemption, to preserve  
62 real property sold in an execution or foreclosure sale and  
63 secure its rents to the person entitled to the rents.

64 (2) In connection with the foreclosure or other enforcement  
65 of a mortgage, the court shall consider the following facts and  
66 circumstances, together with any other relevant facts, in  
67 deciding whether to appoint a receiver for the mortgaged  
68 property:



69       (a) Appointment is necessary to protect the property from  
70 waste, loss, substantial diminution in value, transfer,  
71 dissipation, or impairment;

72       (b) The mortgagor agreed in a signed record to the  
73 appointment of a receiver on default;

74       (c) The owner agreed, after default and in a signed record,  
75 to appointment of a receiver;

76       (d) The property and any other collateral held by the  
77 mortgagee are not sufficient to satisfy the secured obligation;

78       (e) The owner fails to turn over to the mortgagee proceeds  
79 or rents the mortgagee was entitled to collect; or

80       (f) The holder of a subordinate lien obtains appointment of  
81 a receiver for the property.

82       (3) The court may condition the appointment of a receiver  
83 without prior notice or hearing under s. 714.03 on the giving of  
84 security by the person seeking the appointment for the payment  
85 of damages, reasonable attorney fees, and costs incurred or  
86 suffered by any person if the court later concludes that the  
87 appointment was not justified. If the court later concludes that  
88 the appointment was justified and the order of appointment of  
89 the receiver becomes final and no longer subject to appeal, the  
90 court shall release the bond or other security. When any order  
91 appointing a receiver or providing for injunctive relief is  
92 issued on the pleading of a municipality or the state, or any  
93 officer, agency, or political subdivision thereof, the court may  
94 require or dispense with a bond, with or without surety, and  
95 conditioned in the same manner, having due regard for public  
96 interest.

97       (4) A party adversely affected by an order appointing a



258940

98 receiver may move to dissolve or modify the order at any time.  
99 If a party moves to dissolve or modify the order, the motion  
100 must be heard within 5 days after the movant applies for a  
101 hearing on the motion or at such time as the court determines is  
102 reasonable and appropriate under the circumstances after the  
103 movant applies for a hearing on the motion. After notice and a  
104 hearing, the court may grant relief for cause shown.

105 714.07 Disqualification from appointment as receiver;  
106 disclosure of interest.—

107 (1) The court may not appoint a person as receiver unless  
108 the person submits to the court a statement under penalty of  
109 perjury that the person is not disqualified.

110 (2) Except as otherwise provided in subsection (3), a  
111 person is disqualified from appointment as receiver if the  
112 person:

113 (a) Is an affiliate of a party;

114 (b) Has an interest materially adverse to an interest of a  
115 party;

116 (c) Has a material financial interest in the outcome of the  
117 action, other than compensation the court may allow the  
118 receiver;

119 (d) Has a debtor-creditor relationship with a party; or

120 (e) Holds an equity interest in a party, other than a  
121 noncontrolling interest in a publicly traded company.

122 (3) A person is not disqualified from appointment as  
123 receiver solely because the person:

124 (a) Was appointed receiver or is owed compensation in an  
125 unrelated matter involving a party or was engaged by a party in  
126 a matter unrelated to the receivership;



258940

127 (b) Is an individual obligated to a party on a debt that is  
128 not in default and was incurred primarily for personal, family,  
129 or household purposes; or

130 (c) Maintains with a party a deposit account, as defined in  
131 s. 679.1021.

132 (4) A person seeking appointment of a receiver may nominate  
133 a person to serve as receiver, but the court is not bound by the  
134 nomination.

135 714.08 Receiver's bond; alternative security.—

136 (1) Except as otherwise provided in subsection (2), a  
137 receiver shall post with the court a bond that:

138 (a) Is conditioned on the faithful discharge of the  
139 receiver's duties;

140 (b) Has one or more sureties approved by the court;

141 (c) Is in an amount the court specifies; and

142 (d) Is effective as of the date of the receiver's  
143 appointment.

144 (2) The court may approve the receiver posting an  
145 alternative security with the court, such as a letter of credit  
146 or deposit of funds. The receiver may not use receivership  
147 property as alternative security. Interest that accrues on  
148 deposited funds must be paid to the receiver upon the receiver's  
149 discharge.

150 (3) The court may authorize a receiver to act before the  
151 receiver posts the bond or alternative security required by this  
152 section if the action is necessary to prevent or mitigate  
153 immediate injury, loss, or damage to the party who sought the  
154 appointment of the receiver, or immediate waste, dissipation,  
155 impairment, or substantial diminution in value to the



156 receivership property.

157 (4) A claim against a receiver's bond or alternative  
158 security must be made not later than 1 year after the date the  
159 receiver is discharged.

160 714.09 Status of receiver as lien creditor.—Upon  
161 appointment of a receiver, the receiver has the status of a lien  
162 creditor under:

163 (1) Chapter 679 as to receivership property or fixtures;  
164 and

165 (2) Chapter 695 as to receivership property that is real  
166 property.

167 714.10 Security agreement covering after-acquired  
168 property.—Except as otherwise provided by law other than this  
169 chapter, property that a receiver or an owner acquires after  
170 appointment of the receiver is subject to a security agreement  
171 entered into before the appointment to the same extent as if the  
172 court had not appointed the receiver.

173 714.11 Collection and turnover of receivership property.—

174 (1) Unless the court orders otherwise, on demand by a  
175 receiver:

176 (a) A person that owes a debt that is receivership property  
177 and is matured or payable on demand or on order shall pay the  
178 debt to or on the order of the receiver, except to the extent  
179 the debt is subject to setoff or recoupment; and

180 (b) Subject to subsection (3), a person that has  
181 possession, custody, or control of receivership property shall  
182 turn the property over to the receiver.

183 (2) A person that has notice of the appointment of a  
184 receiver and owes a debt that is receivership property may not



185 satisfy the debt by payment to the owner.

186 (3) If a creditor has possession, custody, or control of  
187 receivership property and the validity, perfection, or priority  
188 of the creditor's lien on the property depends on the creditor's  
189 possession, custody, or control, the creditor may retain  
190 possession, custody, or control until the court orders adequate  
191 protection of the creditor's lien.

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

196 714.12 Powers and duties of receiver.-

197 (1) Except as limited by court order or the laws of this  
198 state other than this chapter, a receiver may:

199 (a) Collect, control, manage, conserve, and protect  
200 receivership property;

201 (b) Operate a business constituting receivership property,  
202 including preservation, use, sale, lease, license, exchange,  
203 collection, or disposition of the property in the ordinary  
204 course of business;

205 (c) In the ordinary course of business, incur unsecured  
206 debt and pay expenses incidental to the receiver's preservation,  
207 use, sale, lease, license, exchange, collection, or disposition  
208 of receivership property;

209 (d) Assert a right, claim, cause of action, or defense of  
210 the owner which relates to receivership property;

211 (e) Seek and obtain instruction from the court concerning  
212 receivership property, exercise of the receiver's powers, and  
213 performance of the receiver's duties;





258940

214 (f) Upon subpoena, compel a person to submit to examination  
215 under oath, or to produce and permit inspection and copying of  
216 designated records or tangible things, with respect to  
217 receivership property or any other matter that may affect  
218 administration of the receivership;

219 (g) Engage a professional pursuant to s. 714.15;

220 (h) Apply to a court of another state for appointment as  
221 ancillary receiver with respect to receivership property located  
222 in that state; and

223 (i) Exercise any power conferred by court order, this  
224 chapter, or the laws of this state other than this chapter.

225 (2) With court approval, a receiver may:

226 (a) Incur debt for the use or benefit of receivership  
227 property other than in the ordinary course of business;

228 (b) Make improvements to receivership property;

229 (c) Use or transfer receivership property other than in the  
230 ordinary course of business pursuant to s. 714.16;

231 (d) Adopt or reject an executory contract of the owner  
232 pursuant to s. 714.17;

233 (e) Pay compensation to the receiver pursuant to s. 714.21,  
234 and to each professional engaged by the receiver under s.  
235 714.15;

236 (f) Recommend allowance or disallowance of a claim of a  
237 creditor pursuant to s. 714.20; and

238 (g) Make a distribution of receivership property pursuant  
239 to s. 714.20.

240 (3) A receiver shall:

241 (a) Prepare and retain appropriate business records,  
242 including a record of each receipt, disbursement, and



258940

243 disposition of receivership property;

244 (b) Account for receivership property, including the  
245 proceeds of a sale, lease, license, exchange, collection, or  
246 other disposition of the property;

247 (c) File with the recording office of the county in which  
248 the real property is located a copy of the order appointing the  
249 receiver and, if a legal description of the real property is not  
250 included in the order, the legal description;

251 (d) Disclose to the court any fact arising during the  
252 receivership which would disqualify the receiver under s.  
253 714.07; and

254 (e) Perform any duty imposed by court order, this chapter,  
255 or the laws of this state other than this chapter.

256 (4) The powers and duties of a receiver may be expanded,  
257 modified, or limited by court order.

258 714.13 Duties of owner.—

259 (1) An owner shall:

260 (a) Assist and cooperate with the receiver in the  
261 administration of the receivership and the discharge of the  
262 receiver's duties;

263 (b) Preserve and turn over to the receiver all receivership  
264 property in the owner's possession, custody, or control;

265 (c) Identify all records and other information relating to  
266 the receivership property, including a password, authorization,  
267 or other information needed to obtain or maintain access to or  
268 control of the receivership property, and make available to the  
269 receiver the records and information in the owner's possession,  
270 custody, or control;

271 (d) Upon subpoena, submit to examination under oath by the



258940

272 receiver concerning the acts, conduct, property, liabilities,  
273 and financial condition of the owner or any matter relating to  
274 the receivership property or the receivership; and

275 (e) Perform any duty imposed by court order, this chapter,  
276 or the laws of this state other than this chapter.

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

281 (3) If a person knowingly fails to perform a duty imposed  
282 by this section, the court may:

283 (a) Award the receiver actual damages caused by the  
284 person's failure, reasonable attorney fees, and costs; and

285 (b) Sanction the failure as civil contempt.

286 714.14 Stay; injunction.-

287 (1) Except as otherwise provided in subsection (5), after  
288 notice and opportunity for a hearing, the court may enter an  
289 order providing for a stay, applicable to all persons, of any  
290 act, action, or proceeding:

291 (a) To obtain possession of, exercise control over, or  
292 enforce a judgment against all or a portion of the receivership  
293 property as defined in the order creating the stay; and

294 (b) To enforce a lien against all or a portion of the  
295 receivership property to the extent the lien secures a claim  
296 against the owner which arose before entry of the order.

297  
298 The court shall include in its order a specific description of  
299 the receivership property subject to the stay, and shall include  
300 the following language in the title of the order: "Order Staying



301 Certain Actions to Enforce Claims against Receivership  
302 Property.”

303 (2) Except as otherwise provided in subsection (5), the  
304 court may enjoin an act, action, or proceeding against or  
305 relating to receivership property if the injunction is necessary  
306 to protect against misappropriation of, or waste relating  
307 directly to, the receivership property.

308 (3) If the court grants injunctive relief, the injunction  
309 must specify the reasons for entry and must describe in  
310 reasonable detail the act or acts restrained without reference  
311 to a pleading or other document. The injunction is binding on  
312 the parties to the action; on the parties' officers, agents,  
313 servants, employees, and attorneys; and on any person who  
314 receives actual notice of the injunction and is in active  
315 concert or participation with the parties.

316 (4) A person whose act, action, or proceeding is stayed or  
317 enjoined under this section, or who is otherwise adversely  
318 affected by such stay or injunction, may apply to the court for  
319 relief from the stay or injunction. If a person moves for such  
320 relief, the motion must be heard within 5 days after the movant  
321 applies for a hearing on the motion or at such time as the court  
322 determines is reasonable and appropriate under the circumstances  
323 after the movant applies for a hearing on the motion. After  
324 notice and a hearing, the court may grant relief for cause  
325 shown.

326 (5) An order under subsection (1) or subsection (2) does  
327 not operate as a stay or injunction of:

328 (a) Any act, action, or proceeding to foreclose or  
329 otherwise enforce a mortgage by the person seeking appointment



258940

330 of the receiver;

331 (b) Any act, action, or proceeding to perfect, or maintain  
332 or continue the perfection of, an interest in receivership  
333 property;

334 (c) Commencement or continuation of a criminal proceeding;

335 (d) Commencement or continuation of an action or  
336 proceeding, or enforcement of a judgment other than a money  
337 judgment, in an action or proceeding by a governmental unit to  
338 enforce its police or regulatory power; or

339 (e) Establishment by a governmental unit of a tax liability  
340 against the receivership property or the owner of such  
341 receivership property, or an appeal of any such liability.

342 (6) The court may void an act that violates a stay or  
343 injunction under this section.

344 (7) The scope of the receivership property subject to the  
345 stay under subsection (1) may be modified upon request of the  
346 receiver or other person, after notice and an opportunity for a  
347 hearing.

348 (8) In connection with the entry of an order under  
349 subsection (1) or subsection (2), the court shall determine  
350 whether an additional bond or alternative security will be  
351 required as a condition to entry of the stay or injunction and,  
352 if required, direct the party requesting the stay or injunction  
353 to post a bond or alternative security as a condition for the  
354 stay or injunction to become effective.

355 714.15 Engagement and compensation of professional.—

356 (1) With court approval, a receiver may engage an attorney,  
357 an accountant, an appraiser, an auctioneer, a broker, or another  
358 professional to assist the receiver in performing a duty or



258940

359 exercising a power of the receiver. The receiver shall disclose  
360 to the court:

361 (a) The identity and qualifications of the professional;

362 (b) The scope and nature of the proposed engagement;

363 (c) Any potential conflict of interest; and

364 (d) The proposed compensation.

365 (2) A person is not disqualified from engagement under this  
366 section solely because of the person's engagement by,  
367 representation of, or other relationship with the receiver, a  
368 creditor, or a party. This chapter does not prevent the receiver  
369 from serving in the receivership as an attorney, an accountant,  
370 an auctioneer, or a broker when authorized by law.

371 (3) A receiver or professional engaged under subsection (1)  
372 shall file with the court an itemized statement of the time  
373 spent, work performed, and billing rate of each person that  
374 performed the work and an itemized list of expenses. The  
375 receiver shall pay the amount approved by the court.

376 714.16 Use or transfer of receivership property not in  
377 ordinary course of business.-

378 (1) For the purposes of this section, the term "good faith"  
379 means honesty in fact and the observance of reasonable  
380 commercial standards of fair dealing.

381 (2) Before judgment is entered with respect to the  
382 receivership property in the action in which the receiver is  
383 appointed, with court approval after notice to all parties with  
384 an interest in the property, including all lienholders, and a  
385 hearing, a receiver may use or transfer by sale, lease, license,  
386 exchange, or other disposition receivership property other than  
387 in the ordinary course of business only if the owner of the



388 property:

389 (a) After the commencement of the action in which the  
390 receiver is appointed, expressly consents in writing to the  
391 receiver's proposed use or transfer of the receivership  
392 property, and the receiver notes the property owner's express  
393 consent in the motion to approve the proposed use or transfer;  
394 or

395 (b) Before or at the hearing on the receiver's motion to  
396 approve the use or transfer of the receivership property, fails  
397 to object thereto after the receiver in good faith has provided  
398 reasonable advance written notice to the property owner of the  
399 proposed use or transfer, and the receiver demonstrates in the  
400 motion that the proposed use or transfer is necessary to prevent  
401 waste, loss, substantial diminution in value, dissipation, or  
402 impairment of the property or its revenue-producing potential or  
403 to prevent a voidable transaction involving the property.

404  
405 Service of notice to lienholders who are not parties to the  
406 action must be made as provided in chapter 48 for service of  
407 original process or, in the case of a financial institution  
408 lienholder, as provided in s. 655.0201. If service cannot be  
409 effectuated in such manner, upon authorization by court order,  
410 the receiver may effect service of notice on the nonparty  
411 lienholder pursuant to chapter 49 or as otherwise ordered by the  
412 court.

413 (3) After judgment is entered against the property owner  
414 and with court approval in the action in which the receiver is  
415 appointed, a receiver may use or transfer

416



258940

417 ===== T I T L E A M E N D M E N T =====

418 And the title is amended as follows:

419 Delete lines 8 - 47

420 and insert:

421 for certain court orders; providing construction and  
422 applicability; specifying that a court has exclusive  
423 jurisdiction to direct receivers and determine  
424 controversies under certain circumstances; providing  
425 requirements and authorizations relating to the  
426 appointment of a receiver; authorizing certain parties  
427 to move to dissolve or modify certain orders;  
428 requiring that such motions be heard within a  
429 specified timeframe; specifying when a person is or is  
430 not disqualified from appointment as a receiver;  
431 authorizing certain persons to nominate someone to  
432 serve as a receiver; specifying that the court is not  
433 bound by such nomination; requiring a receiver to post  
434 a bond with the court which meets certain  
435 requirements; providing an exception; prohibiting a  
436 claim against a receiver's bond or alternative  
437 security from being made after a certain time;  
438 providing that an appointed receiver has certain  
439 statuses of a lien creditor; providing that certain  
440 property is subject to specified security agreements;  
441 providing requirements relating to the collection and  
442 turnover of receivership property; providing for  
443 powers and duties of a receiver; authorizing the court  
444 to expand, modify, or limit such powers and duties;  
445 providing for duties of an owner; authorizing a court





258940

446 to take certain actions if a person knowingly fails to  
447 perform a duty; authorizing a court to take certain  
448 actions relating to stays and injunctions; authorizing  
449 certain persons to apply for relief from a stay or  
450 injunction; requiring that certain motions be heard  
451 within a specified timeframe; specifying when an order  
452 does not operate as a stay or injunction; authorizing  
453 receivers to engage and compensate certain  
454 professionals under certain circumstances; requiring  
455 certain persons to file an itemized statement with the  
456 court; requiring a receiver to pay an amount approved  
457 by the court; defining the term "good faith";  
458 authorizing a receiver to use or transfer receivership  
459 property other than in the ordinary course of business  
460 under certain circumstances; providing for the service  
461 of notice to lienholders who are not parties to the  
462 action;