

A-Engrossed
Senate Bill 899

Ordered by the Senate March 29
Including Senate Amendments dated March 29

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Establishes Task Force on Receivership. Directs task force to study and recommend changes to law governing receivership in Oregon.]

[Sunsets December 31, 2018.]

[Declares emergency, effective on passage.]

Creates uniform procedures for receiverships initiated in courts of this state, with certain exceptions. Provides that Act controls over conflicting provisions of ORCP 80 with respect to receiverships governed by Act.

A BILL FOR AN ACT

1
2 Relating to receivership; creating new provisions; and amending ORS 60.667, 62.702, 65.667, 86.752,
3 93.915, 94.642, 100.418 and 465.255 and ORCP 80 A.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Short title. Sections 2 to 41 of this 2017 Act may be cited as the Oregon**
6 **Receivership Code.**

7 **SECTION 2. Receivership described. Receivership is the process by which a court ap-**
8 **points a person to take charge of property during the pendency of an action or upon a**
9 **judgment or order entered therein and to manage or dispose of the property as the court**
10 **may direct.**

11 **SECTION 3. Definitions. As used in the Oregon Receivership Code:**

12 (1) "Affiliate" means:

13 (a) With respect to an individual:

14 (A) A companion of the individual;

15 (B) A lineal ancestor or descendant, whether by blood or adoption, of the individual or a
16 companion of the individual;

17 (C) A companion of an ancestor or descendant described in subparagraph (B) of this
18 paragraph;

19 (D) A sibling, aunt, uncle, great-aunt, great-uncle, first cousin, niece, nephew, grandniece
20 or grandnephew of the individual, whether related by the whole or the half blood or adoption,
21 or a companion of any of them; or

22 (E) Any other individual occupying the residence of the individual; and

23 (b) With respect to any person:

24 (A) Another person that directly or indirectly controls, is controlled by or is under
25 common control with the person;

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 (B) An officer, director, manager, member, partner, employee or trustee or other
2 fiduciary of the person; or

3 (C) A companion of, or an individual occupying the residence of, an individual described
4 in subparagraph (A) or (B) of this paragraph.

5 (2) "Companion" means spouse or domestic partner.

6 (3) "Domestic relations suit" has the meaning given that term in ORS 107.510.

7 (4) "Entity" means a person other than a natural person.

8 (5) "Estate" means the entirety of the property over which a receiver is appointed.

9 (6) "Executory contract" means:

10 (a) A contract, including an unexpired lease, under which the obligations of both parties
11 are so far unperformed that the failure of either to complete performance would constitute
12 a material breach excusing the performance of the other; or

13 (b) A contract, including an unexpired lease, under which a party has an unexercised
14 option to require its counterparty to perform.

15 (7) "Foreign action" means an action in a federal or state court outside of this state.

16 (8) "Insolvency" means a financial condition of a person such that:

17 (a) The sum of the person's debts and other obligations is greater than a fair valuation
18 of all of the person's property, excluding:

19 (A) Property transferred, concealed or removed with intent to hinder, delay or defraud
20 any creditors of the person; and

21 (B) Any property exempt from execution under any law of this state; or

22 (b) The person is generally not paying debts as they become due.

23 (9) "Interested person" means any person having a claim against the owner or a claim
24 or interest in any estate property.

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

27 (11) "Owner" means the person over whose property a receiver is appointed.

28 (12) "Party" means:

29 (a) When used in relation to an action, a person named in the caption of the action; or

30 (b) When used in relation to a contract, a signatory to the contract.

31 (13) "Person" means an individual, corporation, limited liability company, general part-
32 nership, limited partnership, limited liability partnership, cooperative, business trust, gov-
33 ernmental entity or other entity, of any kind or nature.

34 (14) "Property" includes all right, title and interests, both legal and equitable, in or with
35 respect to any property with respect to which a receiver is appointed, including any proceeds,
36 products, offspring, rents or profits, regardless of the manner by which the property has
37 been or is acquired.

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

40 (16) "Receivership" means an action in which a receiver is appointed.

41 (17) "Residential property" means real property:

42 (a) Upon which are situated four or fewer residential units, one of which is occupied as
43 a principal residence by the owner, the owner's spouse or a dependent of the owner; and

44 (b) Where residential use is the primary activity occurring on the real property.

45 (18) "Security interest" means a lien created by agreement.

1 (19) "Special notice list" means a special notice list maintained by a receiver as required
2 under section 16 of this 2017 Act.

3 (20) "State agency" has the meaning given that term in ORS 36.110.

4 (21) "Utility" means a person providing any service regulated by the Public Utility Com-
5 mission.

6 **SECTION 4. Applicability.** (1) Except as otherwise provided by law, the Oregon
7 Receivership Code applies to all receiverships initiated in a court of this state, except for:

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

10 (b) Actions authorized by or commenced under federal law.

11 (2) In cases in which a state agency or officer is expressly authorized by statute to seek
12 or obtain the appointment of a receiver, the state agency or officer may elect, when seeking
13 appointment, for the receivership to be governed by the provisions of the Oregon
14 Receivership Code.

15 (3) Except as otherwise provided by law, the provisions of the Oregon Receivership Code
16 control over conflicting provisions of state law, including ORCP 80, with respect to
17 receiverships governed by the Oregon Receivership Code.

18 **SECTION 5. Property not subject to receivership.** (1) A court may not appoint a receiver
19 with respect to the following:

20 (a) Personal property of an individual that is used primarily for personal, family or
21 household purposes.

22 (b) Property of an individual exempt from execution under the laws of this state.

23 (c) Any power or interest that a person may exercise solely for the benefit of another
24 person.

25 (d) Property held in trust for another person.

26 (2) Notwithstanding subsection (1) of this section, a court may appoint a receiver with
27 respect to property described in subsection (1)(a) of this section in a domestic relations suit.

28 (3) A court may appoint a receiver with respect to any nonexempt interest in property
29 that is partially exempt from execution, including fee title to real property subject to a
30 homestead exemption.

31 **SECTION 6. Appointment of receiver.** (1) A court may appoint a receiver in the following
32 cases, upon motion by any person or upon its own motion:

33 (a) Before judgment, if the property that is the subject of the action, or rents or profits
34 deriving from the property, are in danger of being lost or materially injured or impaired.

35 (b) After judgment, if reasonably necessary to carry the judgment into effect.

36 (c) After judgment, to dispose of property according to the judgment, to preserve the
37 property during the pendency of an appeal or when an execution has been returned unsatis-
38 fied and the debtor refuses to apply the property in satisfaction of the judgment.

39 (d) In an action under ORS 95.200 to 95.310.

40 (e) When property is attached by a creditor, if:

41 (A) The property is of a perishable nature or is otherwise in danger of waste, impairment
42 or destruction; or

43 (B) The debtor has abandoned the property and receivership is reasonably necessary to
44 conserve, protect or dispose of the property.

45 (f) After judgment, either before or after the issuance of an execution, to preserve, pro-

1 tect or prevent the transfer of property subject to execution and sale thereunder.

2 (g) When an entity has been dissolved or is insolvent or in imminent danger of
3 insolvency, if receivership is reasonably necessary to protect the property of the entity or
4 to conserve or protect the interests of the entity's stockholders, members, partners or
5 creditors.

6 (h) In any situation in which the appointment of a receiver is expressly required or per-
7 mitted by statute.

8 (i) In any situation in which, in the discretion of the court, appointment of a receiver is
9 reasonably necessary to secure justice to the parties.

10 (2) In determining whether to appoint a receiver, a court may consider the existence of
11 a contract provision providing for the appointment of a receiver, but the court is not bound
12 by such a provision.

13 (3) If a court in a foreign action has appointed a person as receiver with respect to
14 property in this state, whether with respect to the property specifically or the owner's
15 property generally, a court in this state shall:

16 (a) Upon motion by the receiver or by any party to the foreign action, appoint the person
17 as receiver of the property in this state, if the person is eligible under section 7 of this 2017
18 Act and fulfills such other requirements as are required by statute or imposed by the court.

19 (b) Following the appointment, give effect to orders, judgments and decrees of the foreign
20 court affecting the property in this state held by the receiver, unless the court determines
21 that to do so would be manifestly unjust or inequitable.

22 (4) The venue of an action described in subsection (3) of this section may be any county
23 in which the receiver appointed in the foreign action resides or maintains an office, or any
24 county in which any property over which the receiver is to be appointed is located at the
25 time the action is commenced.

26 (5)(a) An order appointing a receiver must reasonably describe the property over which
27 the receiver is to take charge, by category, individual items or any combination thereof, if
28 the receiver is appointed over less than all of a person's property.

29 (b) An order appointing a receiver may appoint the receiver over all of a person's prop-
30 erty, wherever located.

31 (c) An order that appoints a receiver over a person and does not describe the property
32 over which the receiver is to take charge is construed to appoint the receiver over all of the
33 person's property, except for property not subject to receivership under section 5 of this 2017
34 Act.

35 (6) A court may condition the appointment of a receiver upon the giving of security by
36 the person seeking the receiver's appointment, in such amount as the court may specify, for
37 the payment of costs incurred or damages suffered by any person if a receivership is deter-
38 mined to be wrongfully obtained.

39 **SECTION 7. Eligibility to serve as receiver.** (1) Any person, whether or not a resident
40 of this state, may serve as a receiver, except for:

41 (a) An entity that is not authorized to conduct business in this state;

42 (b) A person who has been convicted of a crime involving moral turpitude, or is con-
43 trolled by a person who has been convicted of a crime involving moral turpitude; and

44 (c) The sheriff of any county, except as expressly permitted by statute.

45 (2) If a court appoints an entity as a receiver, the court may require a specific individual

1 to appear in the receivership on behalf of the entity.

2 **SECTION 8. Required disclosures relating to conflicts of interest.** A court may not ap-
3 point a person as a receiver unless the person first:

4 (1) Discloses whether the person:

5 (a) Is an affiliate of a party to the receivership;

6 (b) Has an interest materially adverse to an interest of a party to the receivership;

7 (c) Has a material financial interest in the outcome of the action, other than compen-
8 sation approved by the court;

9 (d) Has a debtor-creditor relationship with the owner; or

10 (e) Holds an equity interest in a party to the receivership, other than a noncontrolling
11 interest in a publicly traded company; and

12 (2) Affirms under oath that the person's disclosure under subsection (1) of this section
13 is true and complete.

14 **SECTION 9. Receiver's bond, alternative security or insurance.** (1) Except as otherwise
15 provided by law, a court may, at any time before or during the service of a receiver, require
16 a receiver or person nominated as a receiver to post a bond that:

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

18 (b) Is in an amount that is determined by the court to be adequate to secure payment
19 of any costs, damages and attorney fees that may be sustained or suffered by any person due
20 to a wrongful act of the receiver; and

21 (c) Has one or more sureties that meet the qualifications set forth in ORCP 82 D or that
22 are approved by the court.

23 (2) Except as otherwise provided by law, the court may require the posting of alternative
24 security in lieu of a bond, such as a letter of credit or a deposit of funds with the clerk of
25 the court, to be held to secure the receiver's faithful performance of the receiver's duties
26 until the court authorizes the release or return of the alternative security. The court shall
27 remit any interest that may accrue on a deposit under this subsection to the receiver upon
28 the receiver's discharge.

29 (3) Except as otherwise provided by law, the court may require the receiver or person
30 nominated as receiver to carry an insurance policy with coverage and limits determined by
31 the court in lieu of a bond.

32 (4) A receiver may charge the cost of a bond, alternative security or insurance policy
33 required by the court under this section against the estate.

34 (5) The court may authorize a receiver to act before the receiver posts a required bond
35 or alternative security or acquires a required insurance policy.

36 **SECTION 10. Exclusive jurisdiction of appointing court.** (1) The court appointing a re-
37 ceiver has:

38 (a) Exclusive authority over the receiver;

39 (b) Exclusive jurisdiction over and right to control all real property and all tangible and
40 intangible personal property constituting the estate, wherever located, to the full extent of
41 the court's jurisdiction; and

42 (c) Exclusive jurisdiction to determine all controversies relating to the collection, pres-
43 ervation, application and distribution of the estate and all claims against the receiver arising
44 out of the exercise of the receiver's powers or the performance of the receiver's duties.

45 (2) Notwithstanding subsection (1) of this section, if any part of the estate is subject to

1 the jurisdiction of another court under ORS 107.105, the court appointing the receiver may
2 not exercise authority over such part of the estate unless expressly permitted by order of
3 the other court.

4 **SECTION 11. Powers of receiver.** (1) The court appointing a receiver may confer upon the
5 receiver the power to perform any of the following actions, in any combination:

6 (a) Collect, control, manage, conserve and protect estate property;

7 (b) Operate a business constituting estate property, including preservation, use, sale,
8 lease, license, exchange, collection or disposition of property in the ordinary course of busi-
9 ness;

10 (c) In the ordinary course of business, incur unsecured debt and pay expenses incidental
11 to the receiver's preservation, use, sale, lease, license, exchange, collection or disposition of
12 estate property;

13 (d) Assert a right, claim, cause of action or defense of the owner that relates to estate
14 property;

15 (e) Assert in the name of the receiver any claim under ORS 95.200 to 95.310 assertible
16 by any creditor of the owner;

17 (f) Seek and obtain instruction from the court concerning estate property, exercise of the
18 receiver's powers and performance of the receiver's duties;

19 (g) On subpoena, compel a person to submit to examination under oath in the manner
20 of a deposition in a civil case, or to produce and permit inspection and copying of designated
21 records or tangible things, with respect to estate property or any other matter that may
22 affect administration of the receivership;

23 (h) Engage and pay compensation to one or more professionals under section 31 of this
24 2017 Act;

25 (i) Apply to a court of another state for appointment as ancillary receiver with respect
26 to estate property in that state under section 39 of this 2017 Act;

27 (j) Incur debt for the use or benefit of estate property other than in the ordinary course
28 of business under section 26 of this 2017 Act;

29 (k) Make improvements to estate property;

30 (L) Use or transfer estate property other than in the ordinary course of business under
31 section 25 of this 2017 Act;

32 (m) Assume an executory contract of the owner under section 24 of this 2017 Act;

33 (n) Pay compensation to the receiver;

34 (o) Determine whether or not to establish a claims procedure under section 34 of this
35 2017 Act;

36 (p) Allow or disallow a claim of a creditor under section 36 of this 2017 Act;

37 (q) Make a distribution of estate property under section 37 of this 2017 Act;

38 (r) Take any other action authorized under the Oregon Receivership Code; and

39 (s) Take any other actions that the court deems reasonably necessary to avoid injustice.

40 (2) The court may limit, expand or modify the powers conferred by the court on the re-
41 ceiver at any time.

42 (3) A receiver has powers conferred by the court under this section in addition to the
43 powers conferred on the receiver by statute.

44 **SECTION 12. Duties of receiver.** (1) A receiver shall notify all federal and state taxing
45 and applicable regulatory agencies of the receiver's appointment in accordance with any ap-

1 plicable laws imposing this duty, including 26 U.S.C. 6036.

2 (2) A receiver shall comply with applicable law.

3 (3) If appointed with respect to any real property, a receiver shall file with the recorder
4 of the county in which the real property is located a certified copy of the order of appoint-
5 ment, together with a legal description of the real property if one is not included in the or-
6 der.

7 (4) The court appointing a receiver may impose additional duties on the receiver at any
8 time. The court may limit, expand or modify duties imposed by the court on a receiver at
9 any time.

10 **SECTION 13. Turnover of property.** (1) Upon demand by a receiver, a person shall turn
11 over to the receiver any estate property within the possession, custody or control of the
12 person.

13 (2) If a bona fide dispute exists over whether property is estate property, the court in
14 which the receivership is pending shall resolve the dispute.

15 (3) A receiver may not demand a turnover of residential property without specific judicial
16 approval, which the court may grant only in case of waste, destruction, obstruction of mar-
17 keting of the property, enforcement of an order in a domestic relations suit or other good
18 cause shown.

19 (4) If a creditor has possession or control of estate property and the validity, perfection
20 or priority of the creditor's lien depends on the creditor's possession or control, the creditor
21 may retain possession or control of the property until the court orders adequate protection
22 of the creditor's lien.

23 **SECTION 14. Collection by receiver of debts owed to owner.** (1) Upon demand by a re-
24 ceiver, a person that owes a debt that is estate property and is matured or payable on de-
25 mand shall pay the debt to the receiver, except to the extent that the debt is subject to setoff
26 or recoupment.

27 (2) A person who has notice of the appointment of a receiver and owes a debt that is
28 estate property may not satisfy the debt by payment to the owner.

29 **SECTION 15. Duties of owner.** (1) An owner shall:

30 (a) Assist and cooperate fully with the receiver in the administration of the estate and
31 the discharge of the receiver's duties, and comply with all orders of the court;

32 (b) Supply to the receiver information necessary to enable the receiver to complete any
33 schedules that the receiver is required to file under section 19 of this 2017 Act, and otherwise
34 assist the receiver in the completion of the schedules;

35 (c) Upon the receiver's appointment, deliver to the receiver all of the estate property in
36 the person's possession, custody or control, including accounts, books, papers, records and
37 other documents; and

38 (d) After the receiver's appointment, submit to examination under oath by the receiver,
39 or by any other person upon order of the court, concerning the acts, conduct, property, li-
40 abilities and financial condition of the owner or any matter relating to the receiver's ad-
41 ministration of the estate.

42 (2) When the owner is an entity, each officer, director, manager, member, partner or
43 other individual exercising or having the power to exercise control over the affairs of the
44 entity are subject to the requirements of this section.

45 **SECTION 16. Mailing lists to be maintained by receiver.** (1) A receiver shall maintain a

1 master mailing list of the names and addresses of all parties to the receivership, all known
2 creditors of the owner and interested persons who have filed notices of appearance in the
3 receivership. The receiver shall make a copy of the current master mailing list available to
4 any person on the list upon the person's request.

5 (2)(a) A receiver shall maintain a special notice list of the names and addresses of all
6 parties to the receivership and any other person who requests to be placed on the list. The
7 receiver shall make a copy of the current special notice list available to any person on the
8 list upon the person's request.

9 (b) Any person on the special notice list may notify the receiver of the person's preferred
10 means of receiving notices and other communications. If the receiver is so notified, the re-
11 ceiver shall add the information to the special notice list.

12 **SECTION 17. Notices.** (1)(a) Whenever a person is required to give notice under a pro-
13 vision of the Oregon Receivership Code, the person must:

14 (A) Serve notice on all persons specified by the provision;

15 (B) Serve notice on all persons on the special notice list;

16 (C) File notice with the court; and

17 (D) File proof of service with the court.

18 (b) If the provision does not specify to whom notice must be given, the person must give
19 notice to all known persons whose property interests will or may be directly affected by the
20 proposed action, as well as comply with paragraph (a)(B) to (D) of this subsection.

21 (2) Whenever a person is required to give notice under a provision of the Oregon
22 Receivership Code, the person must give at least as much time notice as specified by the
23 relevant provision, or 14 days if no time is specified.

24 (3)(a) Except as otherwise provided, notice to any person not on the special notice list
25 must be served by first class mail or as otherwise directed by the court.

26 (b) Notice to any person on the special notice list who has specified a preferred means
27 of receiving notice must be served by those means, except as otherwise ordered by the court.

28 (4)(a) Except as provided in section 18 of this 2017 Act, whenever a provision of the
29 Oregon Receivership Code authorizes a person to take an action after giving notice, the
30 person may take the action without specific authorization from the court if:

31 (A) The person gives notice that describes the action that the person will take unless an
32 objection is filed and describes a procedure for objecting to the proposed action; and

33 (B) No objections are filed.

34 (b) If an objection is filed, the court shall hear the objection and issue an order allowing,
35 disallowing or allowing a modified form of the action.

36 (c) The court may, on its own motion, require a hearing on any proposed action.

37 (d) If a person is allowed under this subsection to take an action without specific au-
38 thorization from the court, the person may nonetheless move the court for an order au-
39 thorizing the action.

40 (5) The court may extend or shorten any notice periods for good cause shown.

41 (6) The court may order that notice of any proposed action be given to any person, re-
42 gardless of whether such notice is otherwise required under the Oregon Receivership Code.

43 (7) In all circumstances, the court may consider motions and grant or deny relief without
44 notice or hearing, if it appears to the court that no party to the receivership or interested
45 person would be prejudiced or harmed by the relief requested.

1 **SECTION 18. When court order required.** (1) A receiver may not take any of the following
2 actions unless the receiver, after giving notice, obtains a court order specifically authorizing
3 the action, except as provided in subsection (2) of this section:

- 4 (a) Sale or other disposition of real property;
- 5 (b) Use or transfer of property outside the ordinary course of business;
- 6 (c) Sale of a co-owner's interest in jointly owned property;
- 7 (d) Assumption of an executory contract;
- 8 (e) Obtaining credit or incurring debt outside the ordinary course of business;
- 9 (f) Compromise or settlement of a controversy that might affect the distribution to
10 creditors from the estate;
- 11 (g) Disallowance of all or part of a claim against the estate; and
- 12 (h) Termination of the receivership.

13 (2) For any action described in subsection (1)(a) to (f) of this section, a court may es-
14 tablish conditions under which a receiver may take the action without first obtaining an or-
15 der specifically authorizing the action, if the court finds that the burden of seeking a court
16 order is likely to outweigh the materiality of the actions under those conditions. The court
17 may establish such conditions in the order appointing the receiver or in any other order.

18 **SECTION 19. Creditor list and inventory.** (1) Within 60 days after appointment, or within
19 such other time as the court may specify, a receiver shall file with the court a schedule of
20 all known creditors of the owner, their last known mailing addresses, the amount and nature
21 of their claims and whether their claims are disputed.

22 (2) If the court concludes that the estate is unlikely to be sufficient to make material
23 distributions to unsecured creditors, the court may order that the receiver need not file a
24 schedule as described in subsection (1) of this section. The court may order the receiver to
25 file a schedule of any appropriate subset of creditors.

26 (3) Within 60 days after appointment, or within such other time as the court may specify,
27 a receiver shall file with the court a true inventory of all estate property of which the re-
28 ceiver has taken possession, custody or control, except that the inventory need not include
29 legal claims that are estate property.

30 **SECTION 20. Receiver's periodic reports.** (1) A receiver shall file with the court a
31 monthly report of the receiver's operations and financial affairs, unless the court orders a
32 different reporting period. The receiver shall file each report no later than 30 days after the
33 end of a reporting period. The initial report under this section must be filed no later than
34 60 days after the receiver is appointed, unless the court orders a different deadline.

35 (2) Each periodic report must include:

- 36 (a) A concise narrative summary of the receiver's activities during the period and a de-
37 scription of any major upcoming events;
- 38 (b) Beginning and ending cash balances;
- 39 (c) A statement of cash receipts and disbursements;
- 40 (d) A statement of noncash receipts and payments;
- 41 (e) A statement of receipts and dispositions of estate property outside the ordinary
42 course of business, including a description of the property, the value of the property and the
43 amounts received from any disposition of the property;
- 44 (f) A statement of accounts receivable;
- 45 (g) A statement of fees and expenses of the receiver;

1 (h) A tax disclosure statement listing taxes due or tax deposits required, the name of the
2 taxing agency, the date due and an explanation for any failure to make payments or deposits;
3 and

4 (i) Any other information required by the court.

5 **SECTION 21. Claims bar date.** A receiver may, after providing notice to all known cred-
6 itors of the owner, set a deadline for the submission of claims by creditors. The receiver,
7 upon court order, may disallow any claims submitted after the deadline.

8 **SECTION 22. Automatic stay of certain proceedings.** (1) Except as otherwise ordered by
9 the court, the entry of an order appointing a receiver operates as a stay, applicable to all
10 persons, of:

11 (a) The commencement or continuation, including the issuance or employment of pro-
12 cess, of a judicial, administrative or other action or proceeding against the owner that was
13 or could have been commenced before the entry of the order of appointment, or to recover
14 a claim against the owner that arose before the entry of the order of appointment;

15 (b) The enforcement, against the owner or any estate property, of a judgment entered
16 before the entry of the order of appointment;

17 (c) Any act to obtain possession of estate property from the receiver, or to interfere
18 with, or exercise control over, estate property;

19 (d) Any act to create, perfect or enforce any lien or claim against estate property, to the
20 extent that the lien secures a claim against the owner that arose before the entry of the
21 order of appointment;

22 (e) Any act to collect, assess or recover a claim against the owner that arose before the
23 entry of the order of appointment; or

24 (f) The exercise of a right of setoff against the owner.

25 (2) The stay automatically expires as to the acts specified in subsection (1)(a), (b) and (e)
26 of this section six months after the entry of the order of appointment, unless the stay is
27 extended by court order.

28 (3) A person whose action or proceeding is stayed may move the court for relief from the
29 stay, and the court shall grant such relief for good cause shown. A motion for relief from
30 stay under this subsection is deemed granted if the court does not act on the motion within
31 60 days after the motion is filed. A person may move the court ex parte for an expedited
32 hearing on a motion for relief from stay.

33 (4) Any judgment obtained against the owner or estate property after entry of the order
34 of appointment is not a lien against estate property unless the receivership is terminated
35 before a conveyance of the property against which the judgment would otherwise constitute
36 a lien.

37 (5) The entry of an order appointing a receiver does not operate as a stay of:

38 (a) The continuation of a judicial or nonjudicial foreclosure action that was initiated by
39 the party seeking the receiver's appointment, unless otherwise ordered by the court;

40 (b) The commencement or continuation of a criminal action against the owner;

41 (c) The commencement or continuation of an action or proceeding to establish paternity,
42 to establish or modify an order for spousal or child support or to collect spousal or child
43 support under any order of a court;

44 (d) Any act to perfect, or to maintain or continue the perfection of, an interest in estate
45 property if the interest perfected would be effective against a creditor of the owner holding

1 at the time of the entry of the order of appointment either a perfected nonpurchase money
2 security interest under ORS chapter 79 against the property, or a lien by attachment, levy
3 or the like, including liens under ORS chapter 87, whether or not such a creditor exists, ex-
4 cept that if perfection of an interest would require seizure of the property involved or the
5 commencement of an action, the perfection may and must instead be accomplished by filing
6 and serving on the receiver notice of the interest within the time fixed by law for seizure
7 or commencement;

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

10 (f) The enforcement of a judgment, other than a money judgment, obtained in an action
11 or proceeding by a governmental unit to enforce its police or regulatory power, or with re-
12 spect to any licensure of the owner; or

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

14 (6) The court may void an act that violates the stay imposed by this section.

15 (7) If a person knowingly violates the stay imposed by this section, the court may:

16 (a) Award actual damages caused by the violation, reasonable attorney fees and costs;
17 and

18 (b) Sanction the violation as civil contempt.

19 (8) The stay described in this section expires upon the termination of the receivership.

20 **SECTION 23. Utility service.** (1) A utility providing service to estate property may not
21 alter, refuse or discontinue service to the property without first giving the receiver 14 days'
22 notice of any default or intention to alter, refuse or discontinue service to estate property.

23 (2) Nothing in this section precludes the court from prohibiting the alteration or cessa-
24 tion of utility service if the receiver can furnish adequate assurance of payment, in the form
25 of deposit or other security, for service to be provided after entry of the order appointing
26 the receiver.

27 **SECTION 24. Executory contracts.** (1) A receiver may, upon order of the court, assume
28 any executory contract of the owner. A receiver may, after giving notice, reject any
29 executory contract of the owner. The court may condition assumption or rejection of any
30 executory contract on terms and conditions that the court deems just and proper. A
31 receiver's performance of an executory contract does not constitute an assumption of the
32 contract or an agreement by the receiver to assume it, nor otherwise preclude the receiver
33 from rejecting it.

34 (2) If a receiver assumes an executory contract, the receiver must assume the contract
35 in its entirety.

36 (3) Any obligation or liability incurred by a receiver due to the receiver's assumption of
37 an executory contract is an expense of the receivership. A receiver's rejection of an
38 executory contract is treated as a breach of the contract occurring immediately before the
39 receiver's appointment, and the receiver's right to possess or use property pursuant to an
40 executory contract terminates upon rejection of the contract. The other party to an
41 executory contract that is rejected by a receiver may take any necessary steps to terminate
42 or cancel the contract. Any claims resulting from a receiver's rejection of an executory
43 contract must be submitted to the receiver in the manner provided for by section 35 of this
44 2017 Act within 30 days after the rejection.

45 (4) A receiver's power under this section to assume an executory contract is not affected

1 by any provision in the contract that would effect or permit a forfeiture, modification or
2 termination of the contract on account of the receiver's appointment, the financial condition
3 of the owner or an assignment for the benefit of creditors by the owner.

4 (5) A receiver may not assume an executory contract of the owner without the consent
5 of the other party to the contract if:

6 (a) Applicable law would excuse the other party from accepting performance from or
7 rendering performance to anyone other than the owner even in the absence of any provisions
8 in the contract expressly restricting or prohibiting an assignment of rights or duties;

9 (b) The contract is a contract to make a loan or extend credit or financial accommo-
10 dations to or for the benefit of the owner, or to issue a security of the owner; or

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

13 (6) A receiver may not assign an executory contract lease without assuming it, unless
14 the receiver obtains consent from all other parties to the contract.

15 (7) If the receiver rejects an executory contract for the sale of real property under which
16 the owner is the seller and the purchaser is in possession of the real property, the sale of a
17 real property timeshare interest under which the owner is the seller, the license of intellec-
18 tual property rights under which the owner is the licensor or the lease of real property under
19 which the owner is the lessor, then:

20 (a) The purchaser, licensee or lessee may:

21 (A) Treat the rejection as a termination of the contract, license agreement or lease; or

22 (B) Remain in possession and continue to perform all obligations arising under the con-
23 tract, but offset against any payments any damages occurring on account of the rejection
24 after it occurs.

25 (b) A purchaser of real property is entitled to receive from the receiver any deed or any
26 other instrument of conveyance that the owner is obligated to deliver under the contract
27 when the purchaser becomes entitled to receive it, and the deed or instrument has the same
28 force and effect as if given by the owner.

29 (c) A purchaser, licensee or lessee who elects to remain in possession under the terms
30 of this subsection has no claim or rights against the receiver on account of any damages
31 arising from the receiver's rejection except as expressly permitted by this subsection.

32 (d) A purchaser of real property who elects to treat rejection of an executory contract
33 as a termination has a lien against the real property for the portion of the purchase price
34 that the purchaser has paid.

35 (8)(a) If a receiver does not seek authorization from the court to assume an executory
36 contract within 180 days after the receiver's appointment, the receiver is deemed to have
37 rejected the contract.

38 (b) The court may shorten or extend the time period described in paragraph (a) of this
39 subsection for good cause shown.

40 (9) Nothing in this section affects the enforceability of prohibitions against assignment
41 that exist under contract or applicable law.

42 **SECTION 25. Use or transfer of estate property outside ordinary course of business.** (1)
43 Upon court order, a receiver may use estate property outside the ordinary course of busi-
44 ness.

45 (2) Upon court order, a receiver may transfer estate property other than in the ordinary

1 course of business by sale, lease, license, exchange or other disposition. Unless the transfer
 2 agreement provides otherwise, a transfer under this section is free and clear of a lien of the
 3 person that obtained appointment of the receiver, any subordinate liens and any right of
 4 redemption, but is subject to any senior liens. A transfer under this section may occur by
 5 means other than a public auction sale. On motion by any party or interested person, the
 6 court may prescribe standards or procedures calculated to maximize the proceeds of the
 7 transfer.

8 (3) If a lien on estate property is extinguished by a transfer under this section, the lien
 9 attaches to the proceeds of the transfer with the same validity, perfection and priority that
 10 the extinguished lien had on the transferred property immediately before the transfer, re-
 11 gardless of whether the proceeds are sufficient to satisfy all obligations secured by the lien.

12 (4) A creditor holding a valid lien on the property to be transferred may purchase the
 13 property and offset against the purchase price all or part of the allowed amount secured by
 14 the lien, if the creditor tenders sufficient funds to satisfy the reasonable expenses of transfer
 15 and any obligation secured by any senior lien extinguished by the transfer.

16 (5) A reversal or modification of an order authorizing a transfer under this section does
 17 not affect the validity of the transfer to a person that acquired the property in good faith
 18 or revive against any person any lien extinguished by the transfer, regardless of whether the
 19 transferee knew of the request for reversal or modification before the transfer, unless the
 20 court stayed the order before the transfer.

21 (6) If estate property includes an interest as a co-owner of property, the receiver has all
 22 rights and powers of a co-owner afforded by applicable law, including any rights of partition.

23 (7) If at the time of appointment of a receiver an owner holds an undivided interest in
 24 property as a tenant in common, joint tenant or tenant by the entirety, the receiver may sell
 25 both the interest that is estate property and the interest of any co-owner upon court order
 26 if the court determines that:

27 (a) Partition in kind of the property is impracticable;

28 (b) Sale of the estate's undivided interest in the property would realize significantly less
 29 for the estate than sale of the property free and clear of the interests of the co-owner; and

30 (c) The benefit to the estate of the sale outweighs the detriment, if any, to the co-owner.

31 (8) A receiver may not sell, transfer or otherwise dispose of residential property, or an
 32 undivided interest therein, without specific judicial approval, which a court may grant only
 33 in case of waste, destruction, obstruction of marketing of the property, enforcement of an
 34 order in a domestic relations suit or other good cause shown.

35 (9) As used in this section, "good faith" means honesty in fact and the observance of
 36 reasonable commercial standards of fair dealing.

37 **SECTION 26. Receivership financing.** (1) If a receiver is authorized to operate the busi-
 38 ness of a person or manage a person's property, the receiver may obtain credit and incur
 39 debt in the ordinary course of business. Expenses related to such credit and debt are allow-
 40 able under section 37 of this 2017 Act as an administrative expense of the receiver.

41 (2) Upon court order, a receiver may obtain credit or incur debt other than in the ordi-
 42 nary course of business. The court may allow the receiver to mortgage, pledge, hypothecate
 43 or otherwise encumber estate property as security for repayment of any debt incurred under
 44 this subsection. A creditor's security interest may be in the form of a receiver's certificate.

45 **SECTION 27. Recovery of costs related to secured property.** A receiver may recover from

1 property securing a secured claim the necessary costs and expenses of preserving, or dis-
2 posing of, the property to the extent of any benefit to the holder of such claim, including the
3 payment of all ad valorem property taxes with respect to the property.

4 **SECTION 28. Abandonment of property.** (1) A receiver, after giving notice, may abandon
5 estate property that is burdensome to the receiver or is of inconsequential value or benefit.
6 Property that is abandoned no longer constitutes estate property.

7 (2) A receiver may not abandon property in contravention of a state statute or rule that
8 is reasonably designed to protect the public health or safety from identified hazards, includ-
9 ing ORS chapters 465 and 466.

10 **SECTION 29. Actions by or against the receiver or affecting estate property.** (1) A person
11 may not sue a receiver personally for an act or omission in administering estate property
12 unless permitted by the court that appointed the receiver.

13 (2) A person may not initiate or continue an action seeking to dispossess the receiver
14 of any estate property or to otherwise interfere with the receiver's management or control
15 of any estate property unless permitted by the court that appointed the receiver.

16 (3) Actions by or against a receiver are adjunct to the receivership. All pleadings in ad-
17 junct actions must include the case number of the receivership. All adjunct actions shall be
18 referred to the judge assigned to the receivership action, unless:

19 (a) The court does not have jurisdiction over the adjunct action; or

20 (b) The assignment would not promote judicial efficiency.

21 (4) If an action is filed against a receiver in a court in this state other than the court in
22 which the receivership is pending, the court in which the action is filed shall transfer the
23 action to the court in which the receivership is pending upon the receiver's motion if the
24 receiver files the motion within 30 days after service of original process upon the receiver.
25 However, if a state agency is a party to the action, the action may not be transferred under
26 this subsection unless the agency consents to the transfer.

27 (5) The receiver may be joined or substituted as a party in any action that was pending
28 at the time of the receiver's appointment and in which the owner is a party, upon motion
29 by the receiver to the court or agency in which the action is pending.

30 (6) In case of the death, removal or resignation of the receiver, an action by or against
31 a receiver continues by or against the successor receiver or, if a successor receiver is not
32 appointed, by or against the owner.

33 (7) Whenever the assets of any domestic or foreign entity that has been doing business
34 in this state have been placed in the hands of a receiver, service of all process upon the en-
35 tity may be made upon the receiver.

36 (8) A judgment against a receiver is not a lien on the property or funds of the
37 receivership, and no execution may issue thereon. Upon entry of the judgment in the court
38 in which the receivership is pending, or upon filing in the receivership of a certified copy of
39 a judgment from another jurisdiction, the judgment is treated as an allowed claim in the
40 receivership.

41 (9) No person other than a successor receiver duly appointed by the court has a right
42 of action against a former receiver to recover property or the value thereof for or on behalf
43 of the estate.

44 **SECTION 30. Personal liability of receiver.** (1) A receiver may be personally liable to the
45 owner, or a record or beneficial owner of estate property, for loss or diminution in value of

1 or damage to estate property only if the loss, diminution or damage is caused by:

2 (a) Failure of the receiver to comply with an order of the court; or

3 (b) An act or omission for which liability could not be limited under ORS 60.047 if the
4 receiver were an Oregon corporation.

5 (2) A receiver may be personally liable to a person other than the owner, or the record
6 or beneficial owner of estate property, for any loss, diminution or damage caused by the
7 receiver's performance of the receiver's duties, or the receiver's authorized operation of a
8 business, only if the loss, diminution or damage is caused by:

9 (a) Fraud by the receiver;

10 (b) An act intended by the receiver to cause loss, diminution or damage to the specific
11 claimant; or

12 (c) An act or omission for which an officer or director of an Oregon corporation would
13 be liable to the claimant under the same circumstances.

14 (3) Notwithstanding subsections (1) and (2) of this section, a receiver has no personal li-
15 ability to any person for acts or omissions of the receiver permitted by any order of the
16 court.

17 (4) A receiver is entitled to all defenses and immunities provided by law for an act or
18 omission within the scope of the receiver's appointment.

19 (5) Nothing in this section may be construed to expand any obligation or liability of a
20 receiver under state law, common law or federal law for remediation of environmental
21 damages or hazards.

22 **SECTION 31. Employment and compensation of professionals.** (1) After giving notice, a
23 receiver may employ attorneys, accountants, appraisers, brokers, real estate licensees,
24 auctioneers or other professionals to represent or assist the receiver in carrying out the
25 receiver's duties.

26 (2) The notice given by the receiver before employing a professional must disclose:

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

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

29 (c) Any potential conflict of interest; and

30 (d) The proposed compensation.

31 (3) If an objection is filed after the receiver provides notice of the professional's em-
32 ployment, the professional may continue to perform the professional's duties while the ob-
33 jection is pending.

34 (4)(a) A receiver may not employ a professional who holds or represents an interest ad-
35 verse to the estate, except by order of the court.

36 (b) A professional is not disqualified for employment under this subsection solely because
37 of the professional's employment by, representation of or other relationship with a creditor
38 or other interested person, if the relationship is disclosed in the notice of the professional's
39 employment.

40 (5) Nothing in this section precludes the receiver from acting as attorney or accountant
41 if doing so is in the best interests of the estate.

42 (6) After giving notice, the receiver may make payments to professionals for services
43 rendered to the receiver. The notice must include an itemized billing statement indicating
44 the time spent, billing rates of all persons who performed work to be compensated and a
45 detailed list of expenses.

1 **SECTION 32. Participation of creditors and other interested persons in receivership; ef-**
2 **fect of receivership on nonparties.** (1) Any interested person may appear in a receivership,
3 either in person or by an attorney. Before appearing in the receivership, an interested person
4 who is not party to the receivership must file with the court a written notice of appearance,
5 including the name and mailing address of the interested person, and the name and address
6 of the person's attorney, if any, and serve a copy of the notice upon the receiver. A creditor
7 or other interested person may be heard with respect to all matters affecting the person,
8 whether or not the person is joined as a party to the receivership.

9 (2) Persons who receive notice of the pendency of a receivership, whether actual or
10 constructive, and creditors or other persons submitting written claims in the receivership
11 or otherwise appearing and participating in the receivership, are bound by the acts of the
12 receiver with respect to management and disposition of estate property, regardless of
13 whether they are formally joined as parties to the receivership.

14 (3) Any person having a claim against or interest in estate property and having actual
15 or constructive knowledge of the receivership is bound by acts of the receiver or orders of
16 the court with respect to the treatment of claims and disposition of estate property, includ-
17 ing sales of property free and clear of liens, regardless of whether the person receives writ-
18 ten notice from the receiver and regardless of whether the person appears in the
19 receivership.

20 (4) A person duly notified by the receiver of a proposed act by the receiver is bound with
21 respect to the act, regardless of whether the person objected to the act or is joined formally
22 as a party in the receivership.

23 (5) As used in this section, "bound" means barred from bringing a motion or proceeding
24 to contest an act or order, either within or outside of the receivership.

25 **SECTION 33. Initial notice to creditors and other interested persons.** (1) A receiver shall,
26 within 30 days after the receiver's appointment, provide notice of the receivership to all
27 known creditors of the owner and any other known interested persons that includes:

- 28 (a) The date of appointment of the receiver;
- 29 (b) The name of the court and the case number of the receivership;
- 30 (c) The deadline for the submission of claims by creditors, if known;
- 31 (d) The name and address of the owner;
- 32 (e) The name and address of the receiver and receiver's attorney, if any;
- 33 (f) A procedure for notifying the receiver if the recipient is represented by an attorney;
- 34 (g) A procedure for being placed on the special notice list; and
- 35 (h) A statement that the person may not receive notice of all further proceedings in the
36 receivership unless the person requests to be placed on the special notice list.

37 (2) The notice required under this section must be given by first class mail or by such
38 other methods as the court may approve or require.

39 (3) In addition to the methods described in subsection (2) of this section, the notice re-
40 quired under this section must be published at least once per week for two consecutive weeks
41 in a newspaper of general circulation in all counties in which estate property is known to
42 be located.

43 **SECTION 34. Claims process.** (1) If a receiver determines that the estate is sufficient to
44 provide distributions to creditors, the receiver shall, upon notice, establish a claims process
45 by sending a written document describing a claims process, including relevant dates and

1 deadlines, to all known creditors of the owner. The receiver may prescribe forms or other-
2 wise specify information required to be included in a claim.

3 (2) If the receiver determines that the estate is insufficient to provide distributions to
4 creditors, the receiver may give notice that no claims process will take place in the
5 receivership.

6 **SECTION 35. Submission of claims by creditors.** (1) Claims may not be submitted until
7 a claims process is established under section 34 of this 2017 Act.

8 (2) All claims that arose before the receiver's appointment, whether contingent, liqui-
9 dated, unliquidated or disputed, other than claims of creditors with security interests in or
10 other liens against estate property, must be submitted in accordance with this section. Any
11 claim not so submitted is barred from participating in any distribution to creditors.

12 (3) Claims must be submitted by delivering the claim to the receiver or an agent desig-
13 nated by the receiver within 30 days after the claims process is established, except that a
14 claim arising from the rejection of an executory contract of the owner must be submitted
15 within 30 days after the rejection. Claims by state agencies must be submitted within 180
16 days after the claims process is established. The court may shorten or extend any time pe-
17 riod set forth in this subsection.

18 (4) Claims must be submitted in a form prescribed by the receiver. If no form is pre-
19 scribed, claims must be in written form and must:

- 20 (a) Include the name and address of the claimant;
- 21 (b) Set forth the nature and amount of the claim;
- 22 (c) Be executed by the claimant or the claimant's agent; and
- 23 (d) Include any other information required by the receiver.

24 (5) Claims may not be filed with the court. If a claim is incorrectly filed with the court,
25 the court shall forward the claim to the receiver or an agent designated by the receiver.

26 (6) A claim executed and submitted in accordance with this section constitutes prima
27 facie evidence of the validity and amount of the claim.

28 **SECTION 36. Objection to and allowance of claims.** (1)(a) At any time before the entry
29 of an order approving the receiver's final report, a receiver may, upon court order and after
30 at least 21 days' notice, disallow a claim. The notice must set forth the grounds for the dis-
31 allowance.

32 (b) At any time before the entry of an order approving the receiver's final report, any
33 interested person may object to a claim. The objector must mail a copy of the objection, to-
34 gether with a notice of hearing, to the receiver and claimant at least 21 days before the
35 hearing. The court shall hear the objection and enter an order allowing or disallowing the
36 claim.

37 (2) Upon request of a creditor, the receiver or a person objecting to a creditor's claim,
38 or upon order of the court, an objection is subject to mediation before adjudication of the
39 objection, under the rules or orders adopted or issued with respect to mediations. However,
40 claims by the state are not subject to mediation unless the state consents to mediation.

41 (3) Upon motion of the receiver or an interested person, the following claims may be es-
42 timated for purpose of allowance under this section under the rules or orders applicable to
43 the estimation of claims under this subsection:

44 (a) Any contingent or unliquidated claim, the fixing or liquidation of which, as the case
45 may be, would unduly delay the administration of the receivership; or

1 **(b) Any right to payment arising from a right to an equitable remedy for breach of per-**
2 **formance.**

3 **(4) Claims estimated under subsection (3) of this section are allowed in the estimated**
4 **amount thereof.**

5 **SECTION 37. Priorities.** (1) **Allowed claims in a receivership receive distribution under**
6 **the Oregon Receivership Code in the order of priority set forth in this subsection.**

7 **(a) The first priority is unpaid costs and expenses allowable under section 27 of this 2017**
8 **Act.**

9 **(b) The second priority is claims of creditors with liens on estate property that are duly**
10 **perfected under applicable law. Such creditors receive the proceeds from the disposition of**
11 **their collateral. Secured claims must be paid from the proceeds in accordance with their**
12 **respective priorities under otherwise applicable law.**

13 **(c) The third priority is actual, necessary costs and expenses incurred during the ad-**
14 **ministration of the estate, other than those expenses allowable under subsection (2) of this**
15 **section, including allowed fees and reimbursement of reasonable charges and expenses of the**
16 **receiver and professional persons employed by the receiver under section 31 of this 2017 Act.**
17 **Notwithstanding paragraph (b) of this subsection, expenses incurred during the adminis-**
18 **tration of the estate have priority over the secured claim of any creditor obtaining the ap-**
19 **pointment of the receiver.**

20 **(d) The fourth priority is claims to which 31 U.S.C. 3713 applies.**

21 **(e) The fifth priority is claims of creditors with liens on estate property that are not re-**
22 **quired to be perfected under applicable law. Such creditors receive the proceeds of the dis-**
23 **position of their collateral.**

24 **(f) The sixth priority is claims of creditors with liens on estate property that have not**
25 **been duly perfected under applicable law. Such creditors receive the proceeds from the dis-**
26 **position of their collateral if and to the extent that unsecured claims are made subject to**
27 **those liens under applicable law.**

28 **(g) The seventh priority is claims for wages, salaries or commissions, including vacation,**
29 **severance and sick leave pay, or contributions to an employee benefit plan, earned by the**
30 **claimant within 180 days of the earlier of the date of appointment of the receiver and the**
31 **cessation of the estate's business, but only to the extent of \$12,850 in aggregate for each**
32 **claimant.**

33 **(h) The eighth priority is unsecured claims of individuals, to the extent of \$2,850 for each**
34 **claimant, arising from the deposit with the owner before the date of appointment of the re-**
35 **ceiver of moneys in connection with the purchase, lease or rental of property or the pur-**
36 **chase of services for personal, family or household use that were not delivered or provided.**

37 **(i) The ninth priority is claims for a spousal support debt or child support debt, except**
38 **to the extent that the debt:**

39 **(A) Is assigned to another entity, voluntarily, by operation of law, or otherwise; or**

40 **(B) Includes a liability designated as a support obligation, unless that liability is actually**
41 **in the nature of a support obligation.**

42 **(j) The tenth priority is unsecured claims of state governmental units for taxes that ac-**
43 **crued before the appointment of the receiver.**

44 **(k) The eleventh priority is other unsecured claims.**

45 **(L) The last priority is interests of the owner.**

1 (2) If the proceeds from the disposition of collateral securing an allowed secured claim
2 are less than the amount of the claim or a creditor's lien is avoided on any basis, the creditor
3 has an unsecured claim in the amount of the deficiency.

4 (3) Except for claimants described in subsection (1)(b) and (d) of this section, claimants
5 receive distributions on a pro rata basis.

6 (4) If all of the claims under subsection (1) of this section have been paid in full, the re-
7 ceiver shall pay any residue to the owner.

8 **SECTION 38. Secured claims against after-acquired property.** Property acquired by the
9 estate or by the owner after the date of appointment of the receiver is subject to an allowed
10 secured claim to the same extent as would be the case in the absence of a receivership.

11 **SECTION 39. Ancillary receiverships.** (1) A receiver appointed in any action pending in
12 the courts of this state may, upon court order, apply to any court outside of this state for
13 appointment as receiver with respect to any estate property that is located in any other ju-
14 risdiction, if the appointment is necessary to the receiver's possession, control, management
15 or disposition of property in accordance with orders of the court. The receiver may move the
16 court ex parte for an expedited hearing on a motion for leave to apply for an ancillary
17 receivership.

18 (2) A receiver appointed in a foreign action, or any party to the foreign action, may move
19 a court of this state for appointment of that same receiver with respect to any property of
20 the foreign receivership that is located in this state. The court shall act on the motion as
21 provided in section 6 (3) of this 2017 Act. A receiver appointed in an ancillary receivership
22 in this state is subject to the requirements imposed on receivers by statutes of this state,
23 except as expressly exempted by the court.

24 **SECTION 40. Removal of receiver.** (1) On motion of the owner, the receiver or any
25 creditor, or on the court's own motion, the court shall remove a receiver if the receiver re-
26 signs or refuses or fails to serve for any reason, or for other good cause.

27 (2) Upon removal of the receiver, the court shall appoint a successor receiver if the court
28 determines that further administration of the estate is required. Upon appointment, the
29 successor receiver immediately takes possession of the estate and assumes the duties of re-
30 ceiver.

31 (3) If the court is satisfied that a replaced receiver has fully accounted for and turned
32 over to the successor receiver all of the property of the estate and has filed a report of all
33 receipts and disbursements during the person's tenure as receiver, the court shall, after
34 notice to all persons on the special notice list and hearing, enter an order discharging the
35 replaced receiver from all further duties and responsibilities as receiver.

36 **SECTION 41. Termination of receivership.** (1) Upon distribution or disposition of all
37 property of the estate or the completion of the receiver's duties with respect to estate
38 property, or for other good cause, the receiver shall move the court for an order discharging
39 the receiver.

40 (2) The receiver shall attach to the motion for discharge a final report and accounting
41 setting forth:

- 42 (a) A list of estate property received during the receivership;
- 43 (b) A list of disbursements, including payments to professionals engaged by the receiver;
- 44 (c) A list of dispositions of estate property;
- 45 (d) A list of distributions made or proposed to be made from the estate for creditor

1 **claims;**

2 (e) **If not filed separately, a request for approval of the payment of fees and expenses of**
3 **the receiver; and**

4 (f) **Any other information required by the court.**

5 (3) **If the court approves the final report and accounting, the court shall discharge the**
6 **receiver. The court may issue an order exonerating the receiver's bond or alternative secu-**
7 **rity.**

8 (4) **The receiver's discharge:**

9 (a) **Releases the receiver from any further duties and responsibilities under the Oregon**
10 **Receivership Code; and**

11 (b) **Releases the receiver and any persons acting on behalf of the receiver from all fur-**
12 **ther liability in connection with the administration of estate property or the receivership.**

13 (5) **Upon motion of any interested person, or upon the court's own motion, the court may**
14 **discharge the receiver and terminate the court's administration of the property over which**
15 **the receiver was appointed.**

16 (6) **Upon termination of the receivership under any circumstances, if the court deter-**
17 **mines that the appointment of the receiver was wrongfully procured or procured in bad faith,**
18 **the court may assess against the person who procured the receiver's appointment all of the**
19 **receiver's fees and other costs of the receivership, and any other sanctions the court deems**
20 **appropriate.**

21 **SECTION 42. Applicability. Sections 2 to 41 of this 2017 Act apply to receiverships in**
22 **which the receiver is appointed on or after the effective date of this 2017 Act.**

23 **SECTION 43. ORCP 80 A is amended to read:**

24 **A Receiver defined; applicability.**

25 **A(1)** A receiver is a person appointed by a circuit court, or judge thereof, to take charge of
26 property during the pendency of a civil action or upon a judgment or order therein, and to manage
27 and dispose of it as the court may direct.

28 **A(2) The provisions of the Oregon Receivership Code control over conflicting provisions**
29 **of this rule with respect to receiverships governed by the Oregon Receivership Code.**

30 **SECTION 44. ORS 465.255 is amended to read:**

31 465.255. (1) The following persons shall be strictly liable for those remedial action costs incurred
32 by the state or any other person that are attributable to or associated with a facility and for dam-
33 ages for injury to or destruction of any natural resources caused by a release:

34 (a) Any owner or operator at or during the time of the acts or omissions that resulted in the
35 release.

36 (b) Any owner or operator who became the owner or operator after the time of the acts or
37 omissions that resulted in the release, and who knew or reasonably should have known of the re-
38 lease when the person first became the owner or operator.

39 (c) Any owner or operator who obtained actual knowledge of the release at the facility during
40 the time the person was the owner or operator of the facility and then subsequently transferred
41 ownership or operation of the facility to another person without disclosing such knowledge.

42 (d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the release,
43 unless the acts or omissions were in material compliance with applicable laws, standards, regu-
44 lations, licenses or permits.

45 (e) Any person who unlawfully hinders or delays entry to, investigation of or removal or reme-

1 dial action at a facility.

2 (2) Except as provided in subsection (1)(c) to (e) of this section and subsection (4) of this section,
3 the following persons shall not be liable for remedial action costs incurred by the state or any other
4 person that are attributable to or associated with a facility, or for damages for injury to or de-
5 struction of any natural resources caused by a release:

6 (a) Any owner or operator who became the owner or operator after the time of the acts or
7 omissions that resulted in a release, and who did not know and reasonably should not have known
8 of the release when the person first became the owner or operator.

9 (b) Any owner or operator if the release at the facility was caused solely by one or a combina-
10 tion of the following:

11 (A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural
12 phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not
13 have been prevented or avoided by the exercise of due care or foresight.

14 (B) An act of war.

15 (C) Acts or omissions of a third party, other than an employee or agent of the person asserting
16 this defense, or other than a person whose acts or omissions occur in connection with a contractual
17 relationship, existing directly or indirectly, with the person asserting this defense. As used in this
18 subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other
19 instruments transferring title or possession.

20 (3) Except as provided in subsection (1)(c) to (e) of this section or subsection (4) of this section,
21 the following persons shall not be liable for remedial action costs incurred by the state or any other
22 person that are attributable to or associated with a facility, or for damages for injury to or de-
23 struction of any natural resources caused by a release:

24 (a) A unit of state or local government that acquired ownership or control of a facility in the
25 following ways:

26 (A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat,
27 bankruptcy, tax delinquency or abandonment; or

28 (B) Through the exercise of eminent domain authority by purchase or condemnation.

29 (b) A person who acquired a facility by inheritance or bequest.

30 (c) Any fiduciary exempted from liability in accordance with rules adopted by the Environmental
31 Quality Commission under ORS 465.440.

32 (d) An authority that becomes the owner or operator of the facility as authorized in ORS
33 465.609.

34 (e) **A receiver appointed under sections 2 to 41 of this 2017 Act.**

35 (4) Notwithstanding the exclusions from liability provided for specified persons in subsections
36 (2) and (3) of this section such persons shall be liable for remedial action costs incurred by the state
37 or any other person that are attributable to or associated with a facility, and for damages for injury
38 to or destruction of any natural resources caused by a release, to the extent that the person's acts
39 or omissions contribute to such costs or damages, if the person:

40 (a) Obtained actual knowledge of the release and then failed to promptly notify the Department
41 of Environmental Quality and exercise due care with respect to the hazardous substance concerned,
42 taking into consideration the characteristics of the hazardous substance in light of all relevant facts
43 and circumstances; or

44 (b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions
45 of a third party and the reasonably foreseeable consequences of such acts or omissions.

1 (5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be effective
2 to transfer from any person who may be liable under this section, to any other person, the liability
3 imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless
4 or indemnify a party to such agreement for any liability under this section.

5 (b) A person who is liable under this section shall not be barred from seeking contribution from
6 any other person for liability under ORS 465.200 to 465.545 and 465.900.

7 (c) Nothing in ORS 465.200 to 465.545 and 465.900 shall bar a cause of action that a person liable
8 under this section or a guarantor has or would have by reason of subrogation or otherwise against
9 any person.

10 (d) Nothing in this section shall restrict any right that the state or any person might have under
11 federal statute, common law or other state statute to recover remedial action costs or to seek any
12 other relief related to a release.

13 (6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this sec-
14 tion, that the person did or did not have reason to know, the person must have undertaken, at the
15 time of acquisition, all appropriate inquiry into the previous ownership and uses of the property
16 consistent with good commercial or customary practice in an effort to minimize liability.

17 (7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS
18 465.200 to 465.545 and 465.900 for costs or damages as a result of actions taken or omitted in the
19 course of rendering care, assistance or advice in accordance with rules adopted under ORS 465.400
20 or at the direction of the department or its authorized representative, with respect to an incident
21 creating a danger to public health, safety, welfare or the environment as a result of any release of
22 a hazardous substance. This paragraph shall not preclude liability for costs or damages as the result
23 of negligence on the part of such person.

24 (b) No state or local government shall be liable under ORS 465.200 to 465.545 and 465.900 for
25 costs or damages as a result of actions taken in response to an emergency created by the release
26 of a hazardous substance generated by or from a facility owned by another person. This paragraph
27 shall not preclude liability for costs or damages as a result of gross negligence or intentional mis-
28 conduct by the state or local government. For the purpose of this paragraph, reckless, willful or
29 wanton misconduct shall constitute gross negligence.

30 (c) This subsection shall not alter the liability of any person covered by subsection (1) of this
31 section.

32 **SECTION 45.** ORS 60.667 is amended to read:

33 60.667. (1) A court in a judicial proceeding brought to dissolve a corporation, or in a judicial
34 proceeding for shareholder remedies described in ORS 60.952, may appoint one or more receivers to
35 wind up and liquidate the business and affairs of the corporation or one or more custodians to
36 manage the business and affairs of the corporation. The court shall hold a hearing, after notifying
37 all parties to the proceeding and any interested persons designated by the court, before appointing
38 a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over
39 the corporation and all its property wherever located.

40 (2) The court may appoint an individual or a domestic or foreign corporation, authorized to
41 transact business in this state, as a receiver or custodian. The court may require the receiver or
42 custodian to post bond, with or without sureties, in an amount the court directs.

43 (3) The court shall describe the powers and duties of the receiver or custodian in its appointing
44 order, which may be amended periodically. Among other powers:

45 (a) The receiver may dispose of all or any part of the assets of the corporation wherever located,

1 at a public or private sale, if authorized by the court and may sue and defend in the receiver's own
2 name as receiver of the corporation in all courts of this state.

3 (b) The custodian may exercise all of the powers of the corporation, through or in place of its
4 board of directors or officers, to the extent necessary to manage the affairs of the corporation in
5 the best interests of its shareholders and creditors.

6 (4) The court during a receivership may redesignate the receiver a custodian, and during a
7 custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the
8 corporation, its shareholders and creditors.

9 (5) The court periodically during the receivership or custodianship may order compensation paid
10 and expense disbursements or reimbursements made to the receiver or custodian and the receiver's
11 or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

12 **(6) If applicable under section 4 of this 2017 Act, the Oregon Receivership Code controls**
13 **over conflicting provisions of this section.**

14 **SECTION 46.** ORS 62.702 is amended to read:

15 62.702. (1) A court in a judicial proceeding brought to dissolve a cooperative may appoint one
16 or more receivers to wind up and liquidate the business and affairs of the cooperative or one or
17 more custodians to manage the business and affairs of the cooperative. The court shall hold a
18 hearing, after notifying all parties to the proceeding and any interested persons designated by the
19 court, before appointing a receiver or custodian. The court appointing a receiver or custodian has
20 exclusive jurisdiction over the cooperative and all its property wherever located.

21 (2) The court may appoint an individual or a domestic or foreign corporation, authorized to
22 transact business in this state, as a receiver or custodian. The court may require the receiver or
23 custodian to post bond, with or without sureties, in an amount the court directs.

24 (3) The court shall describe the powers and duties of the receiver or custodian in its appointing
25 order, which may be amended periodically. Among other powers:

26 (a) The receiver may dispose of all or any part of the assets of the cooperative wherever located,
27 at a public or private sale, if authorized by the court and may sue and defend in the receiver's own
28 name as receiver of the cooperative in all courts of this state.

29 (b) The custodian may exercise all of the powers of the cooperative, through or in place of its
30 board of directors or, creditors and any holders of other equity interest in the cooperative officers,
31 to the extent necessary to manage the affairs of the cooperative in the best interests of its members,
32 shareholders, creditors and any holders of other equity interest in the cooperative.

33 (4) The court during a receivership may redesignate the receiver a custodian, and during a
34 custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the
35 cooperative, its members, shareholders, creditors and any holders of other equity interest in the
36 cooperative.

37 (5) The court periodically during the receivership or custodianship may order compensation paid
38 and expense disbursements or reimbursements made to the receiver or custodian and the receiver's
39 or custodian's counsel from the assets of the cooperative or proceeds from the sale of the assets.

40 **(6) If applicable under section 4 of this 2017 Act, the Oregon Receivership Code controls**
41 **over conflicting provisions of this section.**

42 **SECTION 47.** ORS 65.667 is amended to read:

43 65.667. (1) A court in a judicial proceeding brought to dissolve a public benefit or mutual benefit
44 corporation may appoint one or more receivers to wind up and liquidate the affairs of the corpo-
45 ration, or one or more custodians to manage the affairs of the corporation. The court shall hold a

1 hearing, after notifying all parties to the proceeding and any interested persons designated by the
2 court, before appointing a receiver or custodian. The court appointing a receiver or custodian has
3 exclusive jurisdiction over the corporation and all its property wherever located.

4 (2) The court may appoint an individual or a domestic or foreign business or nonprofit corpo-
5 ration, authorized to transact business in this state, as a receiver or custodian. The court may re-
6 quire the receiver or custodian to post bond, with or without sureties, in an amount the court
7 directs.

8 (3) The court shall describe the powers and duties of the receiver or custodian in its appointing
9 order, which may be amended periodically. Among other powers:

10 (a) The receiver:

11 (A) May dispose of all or any part of the assets of the corporation wherever located, at a public
12 or private sale, if authorized by the court, provided, however, that the receiver's power to dispose
13 of the assets of the corporation is subject to any trust and other restrictions that would be appli-
14 cable to the corporation; and

15 (B) May sue and defend in the receiver's own name as receiver of the corporation in all courts
16 of this state.

17 (b) The custodian may exercise all of the powers of the corporation, through or in place of its
18 board of directors or officers, to the extent necessary to manage the affairs of the corporation in
19 the best interests of its members and creditors.

20 (4) The court during a receivership may redesignate the receiver a custodian, and during a
21 custodianship may redesignate the custodian a receiver, if doing so is in the best interest of the
22 corporation, its members and creditors.

23 (5) The court periodically during the receivership or custodianship may order compensation paid
24 and expense disbursements or reimbursements made to the receiver or custodian and the receiver's
25 or custodian's attorney from the assets of the corporation or proceeds from the sale of the assets.

26 **(6) If applicable under section 4 of this 2017 Act, the Oregon Receivership Code controls**
27 **over conflicting provisions of this section.**

28 **SECTION 48.** ORS 86.752 is amended to read:

29 86.752. A trustee may not foreclose a trust deed by advertisement and sale in the manner pro-
30 vided in ORS 86.764 to 86.782 unless:

31 (1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any
32 appointment of a successor trustee are recorded in the mortgage records in the counties in which
33 the property described in the deed is situated;

34 (2) There is a default by the grantor or other person that owes an obligation, the performance
35 of which is secured by the trust deed, or by the grantor's or other person's successors in interest
36 with respect to a provision in the deed that authorizes sale in the event of default of the provision;

37 (3) The trustee or beneficiary has filed for record in the county clerk's office in each county
38 where the trust property, or some part of the trust property, is situated, a notice of default con-
39 taining the information required by ORS 86.771 and containing the trustee's or beneficiary's election
40 to sell the property to satisfy the obligation;

41 (4) The beneficiary has filed for recording in the official records of the county or counties in
42 which the property that is subject to the residential trust deed is located:

43 (a) A certificate of compliance that a service provider issued to the beneficiary under ORS
44 86.736 that is valid and unexpired at the time the notice of default is recorded; or

45 (b) A copy of the affidavit with which the beneficiary claimed, under ORS 86.726 (1)(b), an ex-

1 emption that has not expired;

2 (5) The beneficiary has complied with the provisions of ORS 86.748;

3 (6) The grantor has not complied with the terms of any foreclosure avoidance measure upon
4 which the beneficiary and the grantor have agreed; and

5 (7) An action has not been commenced to recover the debt or any part of the debt then re-
6 maining secured by the trust deed, or, if an action has been commenced, the action has been dis-
7 missed, except that:

8 (a) Subject to ORS 86.010 and the procedural requirements of ORCP 79 and 80 **and the Oregon**
9 **Receivership Code, as applicable**, an action may be commenced to appoint a receiver or to obtain
10 a temporary restraining order during foreclosure of a trust deed by advertisement and sale, except
11 that a receiver may not be appointed with respect to a single-family residence that the grantor, the
12 grantor's spouse or the grantor's minor or dependent child occupies as a principal residence.

13 (b) An action may be commenced to foreclose, judicially or nonjudicially, the same trust deed
14 as to any other property covered by the trust deed, or any other trust deeds, mortgages, security
15 agreements or other consensual or nonconsensual security interests or liens that secure repayment
16 of the debt.

17 **SECTION 49.** ORS 93.915 is amended to read:

18 93.915. (1) In the event of a default under a contract for conveyance of real property, a seller
19 who wishes to enforce a forfeiture remedy must give written notice of default by service pursuant
20 to ORCP 7 D(2) and 7 D(3), or by both first class and certified mail with return receipt requested,
21 to the last-known address of the following persons or their legal representatives, if any:

22 (a) The purchaser.

23 (b) An occupant of the property.

24 (c) Any person who has caused to be filed for record in the county clerk's office of a county in
25 which any part or parcel of the real property is situated, a duly acknowledged request for a copy
26 of any notice of default served upon or mailed to the purchaser. The request shall contain the name
27 and address of the person requesting copies of the notice and shall identify the contract by stating
28 the names of the parties to the contract, the date of recordation of the contract and the book and
29 page where the contract is recorded. The county clerk shall immediately make a cross-reference of
30 the request to the contract, either on the margin of the page where the contract is recorded or in
31 some other suitable place. No request, statement or notation placed on the record pursuant to this
32 section shall affect title to the property or be deemed notice to any person that any person so re-
33 cording the request has any right, title, interest in, lien or charge upon the property referred to in
34 the contract.

35 (2) Notices served by mail are effective when mailed.

36 (3) The notice shall specify the nature of the default, the amount of the default if the default is
37 in the payment terms, the date after which the contract will be forfeited if the purchaser does not
38 cure the default and the name and address of the seller or the attorney for the seller. The period
39 specified in the notice after which the contract will be forfeited may not be less than:

40 (a) Sixty days, when the purchaser has reduced the unpaid balance to an amount greater than
41 75 percent of the purchase price;

42 (b) Ninety days, when the purchaser has reduced the unpaid balance to an amount which is more
43 than 50 percent but less than 75 percent of the purchase price; or

44 (c) One hundred twenty days, when the purchaser has reduced the unpaid balance to an amount
45 which is 50 percent or less of the purchase price.

1 (4) The seller shall cause to be recorded in the real property records of each county in which
2 any part of the property is located a copy of the notice, together with an affidavit of service or
3 mailing of the notice of default, reciting the date the notice was served or mailed and the name and
4 address of each person to whom it was given. From the date of recording, the notice and affidavit
5 shall constitute constructive notice to third persons of the pending forfeiture. If, not later than one
6 year after the time for cure stated in a recorded notice and affidavit or any recorded extension
7 thereof, no declaration of forfeiture based upon the recorded notice and affidavit has been recorded
8 and no extension of time for cure executed by the seller has been recorded, the notice and affidavit
9 shall not be effective for any purpose nor shall it impart any constructive or other notice to third
10 persons acquiring an interest in the purchaser's interest in the contract or the property or any
11 portion of either. Any extension of time for cure executed by the seller shall be recorded in the same
12 manner as the original notice and affidavit.

13 (5) The statement contained in the notice as to the time after which the contract will be for-
14 feited if the default is not cured shall conclusively be presumed to be correct, and the notice ade-
15 quate, unless one or more recipients of such notice notifies the seller or the attorney for the seller,
16 by registered or certified mail, that such recipient claims the right to a longer period of time in
17 which to cure the default.

18 (6) Subject to the procedural requirements of the Oregon Rules of Civil Procedure **and the**
19 **Oregon Receivership Code, as applicable**, an action may be instituted to appoint a receiver or to
20 obtain a temporary restraining order during forfeiture under a land sale contract, except that a re-
21 ceiver shall not be appointed with respect to a single-family residence which is occupied at the time
22 the notice of default is given, as the principal residence of the purchaser, the purchaser's spouse
23 or the purchaser's minor dependent children.

24 **SECTION 50.** ORS 94.642 is amended to read:

25 94.642. (1) Subject to subsection (2) of this section, if a homeowners association fails to fill va-
26 cancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws,
27 an owner or a first mortgagee may request the circuit court of the county in which the planned
28 community is located to appoint a receiver [*under ORCP 80*] to manage the affairs of the associ-
29 ation.

30 (2) At least 45 days before an owner or first mortgagee requests the circuit court to appoint a
31 receiver under subsection (1) of this section, the owner or first mortgagee shall mail, by certified
32 or registered mail, a notice to the association and shall post a copy of the notice at a conspicuous
33 place or places on the property or provide notice by a method otherwise reasonably calculated to
34 inform owners of the proposed action.

35 (3) The notice shall be signed by the owner or first mortgagee and include:

36 (a) A description of the intended action.

37 (b) A statement that the intended action is pursuant to this section.

38 (c) The date, not less than 30 days after mailing of the notice, by which the association must fill
39 vacancies on the board sufficient to constitute a quorum.

40 (d) A statement that if the association fails to fill vacancies on the board by the specified date,
41 the owner or first mortgagee may file a petition with the court under subsection (1) of this section.

42 (e) A statement that if a receiver is appointed, all expenses of the receivership will be common
43 expenses of the association as provided in subsection (4) of this section.

44 (4) If a receiver is appointed, the salary of the receiver, court costs, attorney fees and all other
45 expenses of the receivership shall be common expenses of the association.

1 (5) A receiver appointed under this section has all of the powers and duties of a duly constituted
2 board of directors and shall serve until a sufficient number of vacancies on the board are filled to
3 constitute a quorum.

4 (6) If at a turnover meeting held in accordance with ORS 94.616 the owners fail to elect the
5 number of directors sufficient to constitute a quorum of the board of directors, in addition to the
6 notice requirements specified in subsections (2) and (3) of this section, an owner shall give the notice
7 to all other owners as provided in the bylaws.

8 (7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court
9 may waive the notice requirements of subsections (2) and (3) of this section.

10 **SECTION 51.** ORS 100.418 is amended to read:

11 100.418. (1) Subject to subsection (2) of this section, if an association of unit owners fails to fill
12 vacancies on the board of directors sufficient to constitute a quorum in accordance with the bylaws,
13 a unit owner or a first mortgagee of a unit may request the circuit court of the county in which the
14 condominium is located to appoint a receiver [*under ORCP 80*] to manage the affairs of the associ-
15 ation.

16 (2) At least 45 days before a unit owner or first mortgagee of a unit requests the circuit court
17 to appoint a receiver under subsection (1) of this section, the unit owner or first mortgagee shall
18 mail, by certified or registered mail, a notice to the association and shall post a copy of the notice
19 at a conspicuous place or places on the property or provide notice by a method otherwise reason-
20 ably calculated to inform unit owners of the proposed action.

21 (3) The notice shall be signed by the unit owner or first mortgagee of the unit and include:

22 (a) A description of the intended action.

23 (b) A statement that the intended action is pursuant to this section.

24 (c) The date, not less than 30 days after mailing of the notice, by which the association must fill
25 vacancies on the board sufficient to constitute a quorum.

26 (d) A statement that if the association fails to fill vacancies on the board by the specified date,
27 the unit owner or first mortgagee may file a petition with the court under subsection (1) of this
28 section.

29 (e) A statement that if a receiver is appointed, all expenses of the receivership will be common
30 expenses of the association as provided in subsection (4) of this section.

31 (4) If a receiver is appointed, the salary of the receiver, court costs, attorney fees and all other
32 expenses of the receivership shall be common expenses of the association.

33 (5) A receiver appointed under this section has all of the powers and duties of a duly constituted
34 board of directors and shall serve until a sufficient number of vacancies on the board are filled to
35 constitute a quorum.

36 (6) If at a turnover meeting held in accordance with ORS 100.210 the unit owners fail to elect
37 the number of directors sufficient to constitute a quorum of the board of directors, in addition to
38 the notice requirements specified in subsections (2) and (3) of this section, a unit owner shall give
39 the notice to all other unit owners as provided in the bylaws.

40 (7) Notwithstanding subsections (2) and (3) of this section, in the case of an emergency, the court
41 may waive the notice requirements of subsections (2) and (3) of this section.

42 **SECTION 52.** Section 53 of this 2017 Act is added to and made a part of ORS 105.420 to
43 105.455.

44 **SECTION 53.** If applicable under section 4 of this 2017 Act, the Oregon Receivership Code
45 applies to receiverships commenced under ORS 105.420 to 105.455, except that the provisions

1 of ORS 105.420 to 105.455 control over conflicting provisions of the Oregon Receivership Code.

2 SECTION 54. Section 55 of this 2017 Act is added to and made a part of ORS 652.510 to
3 652.570.

4 SECTION 55. If applicable under section 4 of this 2017 Act, the Oregon Receivership Code
5 controls over conflicting provisions of ORS 652.510 to 652.570.

6 SECTION 56. Section 57 of this 2017 Act is added to and made a part of ORS chapter 734.

7 SECTION 57. Notwithstanding section 4 of this 2017 Act, the Oregon Receivership Code
8 does not apply to delinquency proceedings under this chapter.

9 SECTION 58. The section captions used in sections 1 to 42 of this 2017 Act are provided
10 only for the convenience of the reader and do not become part of the statutory law of this
11 state or express any legislative intent in the enactment of this 2017 Act.
12
