

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 899**

1 On page 1 of the printed bill, line 2, after “receivership;” delete the rest
2 of the line and insert “creating new provisions; and amending ORS 60.667,
3 62.702, 65.667, 86.752, 93.915, 94.642, 100.418 and 465.255 and ORCP 80 A.”.

4 Delete lines 4 through 30 and delete page 2 and insert:

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

7 **“SECTION 2. Receivership described. Receivership is the process by
8 which a court appoints a person to take charge of property during the
9 pendency of an action or upon a judgment or order entered therein
10 and to manage or dispose of the property as the court 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,
16 of the individual or a companion of the individual;**

17 **“(C) A companion of an ancestor or descendant described in sub-
18 paragraph (B) of this paragraph;**

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

1 any of them; or

2 “(E) Any other individual occupying the residence of the individual;
3 and

4 “(b) With respect to any person:

5 “(A) Another person that directly or indirectly controls, is con-
6 trolled by or is under common control with the person;

7 “(B) An officer, director, manager, member, partner, employee or
8 trustee or other fiduciary of the person; or

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

11 “(2) ‘Companion’ means spouse or domestic partner.

12 “(3) ‘Domestic relations suit’ has the meaning given that term in
13 ORS 107.510.

14 “(4) ‘Entity’ means a person other than a natural person.

15 “(5) ‘Estate’ means the entirety of the property over which a re-
16 ceiver is appointed.

17 “(6) ‘Executory contract’ means:

18 “(a) A contract, including an unexpired lease, under which the ob-
19 ligations of both parties are so far unperformed that the failure of ei-
20 ther to complete performance would constitute a material breach
21 excusing the performance of the other; or

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

24 “(7) ‘Foreign action’ means an action in a federal or state court
25 outside of this state.

26 “(8) ‘Insolvency’ means a financial condition of a person such that:

27 “(a) The sum of the person’s debts and other obligations is greater
28 than a fair valuation of all of the person’s property, excluding:

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

1 **“(B) Any property exempt from execution under any law of this**
2 **state; or**

3 **“(b) The person is generally not paying debts as they become due.**

4 **“(9) ‘Interested person’ means any person having a claim against**
5 **the owner or a claim or interest in any estate property.**

6 **“(10) ‘Lien’ means a charge against or interest in property to secure**
7 **payment of a debt or the performance of an obligation.**

8 **“(11) ‘Owner’ means the person over whose property a receiver is**
9 **appointed.**

10 **“(12) ‘Party’ means:**

11 **“(a) When used in relation to an action, a person named in the**
12 **caption of the action; or**

13 **“(b) When used in relation to a contract, a signatory to the con-**
14 **tract.**

15 **“(13) ‘Person’ means an individual, corporation, limited liability**
16 **company, general partnership, limited partnership, limited liability**
17 **partnership, cooperative, business trust, governmental entity or other**
18 **entity, of any kind or nature.**

19 **“(14) ‘Property’ includes all right, title and interests, both legal and**
20 **equitable, in or with respect to any property with respect to which a**
21 **receiver is appointed, including any proceeds, products, offspring,**
22 **rents or profits, regardless of the manner by which the property has**
23 **been or is acquired.**

24 **“(15) ‘Receiver’ means a person appointed by the court as the**
25 **court’s agent, and subject to the court’s direction, to take possession**
26 **of, manage or dispose of property.**

27 **“(16) ‘Receivership’ means an action in which a receiver is ap-**
28 **pointed.**

29 **“(17) ‘Residential property’ means real property:**

30 **“(a) Upon which are situated four or fewer residential units, one**

1 of which is occupied as a principal residence by the owner, the owner's
2 spouse or a dependent of the owner; and

3 “(b) Where residential use is the primary activity occurring on the
4 real property.

5 “(18) ‘Security interest’ means a lien created by agreement.

6 “(19) ‘Special notice list’ means a special notice list maintained by
7 a receiver as required under section 16 of this 2017 Act.

8 “(20) ‘State agency’ has the meaning given that term in ORS 36.110.

9 “(21) ‘Utility’ means a person providing any service regulated by the
10 Public Utility Commission.

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

14 **“(a) Actions in which a state agency or officer is expressly author-
15 ized by statute to seek or obtain the appointment of a receiver; and**

16 **“(b) Actions authorized by or commenced under federal law.**

17 **“(2) In cases in which a state agency or officer is expressly au-
18 uthorized by statute to seek or obtain the appointment of a receiver,
19 the state agency or officer may elect, when seeking appointment, for
20 the receivership to be governed by the provisions of the Oregon
21 Receivership Code.**

22 **“(3) Except as otherwise provided by law, the provisions of the
23 Oregon Receivership Code control over conflicting provisions of state
24 law, including ORCP 80, with respect to receiverships governed by the
25 Oregon Receivership Code.**

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

28 **“(a) Personal property of an individual that is used primarily for
29 personal, family or household purposes.**

30 **“(b) Property of an individual exempt from execution under the**

1 laws of this state.

2 “(c) Any power or interest that a person may exercise solely for the
3 benefit of another person.

4 “(d) Property held in trust for another person.

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

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

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

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

17 “(b) After judgment, if reasonably necessary to carry the judgment
18 into effect.

19 “(c) After judgment, to dispose of property according to the judg-
20 ment, to preserve the property during the pendency of an appeal or
21 when an execution has been returned unsatisfied and the debtor re-
22 fuses to apply the property in satisfaction of the judgment.

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

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

25 “(A) The property is of a perishable nature or is otherwise in danger
26 of waste, impairment or destruction; or

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

29 “(f) After judgment, either before or after the issuance of an exe-
30 cution, to preserve, protect or prevent the transfer of property subject

1 to execution and sale thereunder.

2 “(g) When an entity has been dissolved or is insolvent or in immi-
3 nent danger of insolvency, if receivership is reasonably necessary to
4 protect the property of the entity or to conserve or protect the inter-
5 ests of the entity’s stockholders, members, partners or creditors.

6 “(h) In any situation in which the appointment of a receiver is ex-
7 pressly required or permitted by statute.

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

11 “(2) In determining whether to appoint a receiver, a court may
12 consider the existence of a contract provision providing for the ap-
13 pointment of a receiver, but the court is not bound by such a pro-
14 vision.

15 “(3) If a court in a foreign action has appointed a person as receiver
16 with respect to property in this state, whether with respect to the
17 property specifically or the owner’s property generally, a court in this
18 state shall:

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

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

27 “(4) The venue of an action described in subsection (3) of this sec-
28 tion may be any county in which the receiver appointed in the foreign
29 action resides or maintains an office, or any county in which any
30 property over which the receiver is to be appointed is located at the

1 **time the action is commenced.**

2 **“(5)(a) An order appointing a receiver must reasonably describe the**
3 **property over which the receiver is to take charge, by category, indi-**
4 **vidual items or any combination thereof, if the receiver is appointed**
5 **over less than all of a person’s property.**

6 **“(b) An order appointing a receiver may appoint the receiver over**
7 **all of a person’s property, wherever located.**

8 **“(c) An order that appoints a receiver over a person and does not**
9 **describe the property over which the receiver is to take charge is**
10 **construed to appoint the receiver over all of the person’s property,**
11 **except for property not subject to receivership under section 5 of this**
12 **2017 Act.**

13 **“(6) A court may condition the appointment of a receiver upon the**
14 **giving of security by the person seeking the receiver’s appointment,**
15 **in such amount as the court may specify, for the payment of costs**
16 **incurred or damages suffered by any person if a receivership is deter-**
17 **mined to be wrongfully obtained.**

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

21 **“(a) An entity that is not authorized to conduct business in this**
22 **state;**

23 **“(b) A person who has been convicted of a crime involving moral**
24 **turpitude, or is controlled by a person who has been convicted of a**
25 **crime involving moral turpitude; and**

26 **“(c) The sheriff of any county, except as expressly permitted by**
27 **statute.**

28 **“(2) If a court appoints an entity as a receiver, the court may re-**
29 **quire a specific individual to appear in the receivership on behalf of**
30 **the entity.**

1 **“SECTION 8. Required disclosures relating to conflicts of interest.**

2 **A court may not appoint a person as a receiver unless the person first:**

3 **“(1) Discloses whether the person:**

4 **“(a) Is an affiliate of a party to the receivership;**

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

7 **“(c) Has a material financial interest in the outcome of the action,**
8 **other than compensation 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**
11 **than a noncontrolling interest in a publicly traded company; and**

12 **“(2) Affirms under oath that the person’s disclosure under sub-**
13 **section (1) of this section is true and complete.**

14 **“SECTION 9. Receiver’s bond, alternative security or insurance. (1)**

15 **Except as otherwise provided by law, a court may, at any time before**
16 **or during the service of a receiver, require a receiver or person nomi-**
17 **nated as a receiver to post a bond that:**

18 **“(a) Is conditioned on the faithful discharge of the receiver’s duties;**

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

23 **“(c) Has one or more sureties that meet the qualifications set forth**
24 **in ORCP 82 D or that are approved by the court.**

25 **“(2) Except as otherwise provided by law, the court may require the**
26 **posting of alternative security in lieu of a bond, such as a letter of**
27 **credit or a deposit of funds with the clerk of the court, to be held to**
28 **secure the receiver’s faithful performance of the receiver’s duties until**
29 **the court authorizes the release or return of the alternative security.**

30 **The court shall remit any interest that may accrue on a deposit under**

1 **this subsection to the receiver upon the receiver’s discharge.**

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

5 **“(4) A receiver may charge the cost of a bond, alternative security**
6 **or insurance policy required by the court under this section against**
7 **the estate.**

8 **“(5) The court may authorize a receiver to act before the receiver**
9 **posts a required bond or alternative security or acquires a required**
10 **insurance policy.**

11 **“SECTION 10. Exclusive jurisdiction of appointing court. (1) The**
12 **court appointing a receiver has:**

13 **“(a) Exclusive authority over the receiver;**

14 **“(b) Exclusive jurisdiction over and right to control all real prop-**
15 **erty and all tangible and intangible personal property constituting the**
16 **estate, wherever located, to the full extent of the court’s jurisdiction;**
17 **and**

18 **“(c) Exclusive jurisdiction to determine all controversies relating**
19 **to the collection, preservation, application and distribution of the es-**
20 **tate and all claims against the receiver arising out of the exercise of**
21 **the receiver’s powers or the performance of the receiver’s duties.**

22 **“(2) Notwithstanding subsection (1) of this section, if any part of**
23 **the estate is subject to the jurisdiction of another court under ORS**
24 **107.105, the court appointing the receiver may not exercise authority**
25 **over such part of the estate unless expressly permitted by order of the**
26 **other court.**

27 **“SECTION 11. Powers of receiver. (1) The court appointing a re-**
28 **ceiver may confer upon the receiver the power to perform any of the**
29 **following actions, in any combination:**

30 **“(a) Collect, control, manage, conserve and protect estate property;**

1 **“(b) Operate a business constituting estate property, including**
2 **preservation, use, sale, lease, license, exchange, collection or disposi-**
3 **tion of property in the ordinary course of business;**

4 **“(c) In the ordinary course of business, incur unsecured debt and**
5 **pay expenses incidental to the receiver’s preservation, use, sale, lease,**
6 **license, exchange, collection or disposition of estate property;**

7 **“(d) Assert a right, claim, cause of action or defense of the owner**
8 **that relates to estate property;**

9 **“(e) Assert in the name of the receiver any claim under ORS 95.200**
10 **to 95.310 assertible by any creditor of the owner;**

11 **“(f) Seek and obtain instruction from the court concerning estate**
12 **property, exercise of the receiver’s powers and performance of the**
13 **receiver’s duties;**

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

19 **“(h) Engage and pay compensation to one or more professionals**
20 **under section 31 of this 2017 Act;**

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

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

26 **“(k) Make improvements to estate property;**

27 **“(L) Use or transfer estate property other than in the ordinary**
28 **course of business under section 25 of this 2017 Act;**

29 **“(m) Assume an executory contract of the owner under section 24**
30 **of this 2017 Act;**

1 “(n) Pay compensation to the receiver;

2 “(o) Determine whether or not to establish a claims procedure un-
3 der section 34 of this 2017 Act;

4 “(p) Allow or disallow a claim of a creditor under section 36 of this
5 2017 Act;

6 “(q) Make a distribution of estate property under section 37 of this
7 2017 Act;

8 “(r) Take any other action authorized under the Oregon
9 Receivership Code; and

10 “(s) Take any other actions that the court deems reasonably nec-
11 essary to avoid injustice.

12 “(2) The court may limit, expand or modify the powers conferred
13 by the court on the receiver at any time.

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

16 “SECTION 12. Duties of receiver. (1) A receiver shall notify all fed-
17 eral and state taxing and applicable regulatory agencies of the
18 receiver’s appointment in accordance with any applicable laws impos-
19 ing this duty, including 26 U.S.C. 6036.

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

21 “(3) If appointed with respect to any real property, a receiver shall
22 file with the recorder of the county in which the real property is lo-
23 cated a certified copy of the order of appointment, together with a le-
24 gal description of the real property if one is not included in the order.

25 “(4) The court appointing a receiver may impose additional duties
26 on the receiver at any time. The court may limit, expand or modify
27 duties imposed by the court on a receiver at any time.

28 “SECTION 13. Turnover of property. (1) Upon demand by a receiver,
29 a person shall turn over to the receiver any estate property within the
30 possession, custody or control of the person.

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

4 “(3) A receiver may not demand a turnover of residential property
5 without specific judicial approval, which the court may grant only in
6 case of waste, destruction, obstruction of marketing of the property,
7 enforcement of an order in a domestic relations suit or other good
8 cause shown.

9 “(4) If a creditor has possession or control of estate property and
10 the validity, perfection or priority of the creditor’s lien depends on the
11 creditor’s possession or control, the creditor may retain possession or
12 control of the property until the court orders adequate protection of
13 the creditor’s lien.

14 “SECTION 14. Collection by receiver of debts owed to owner. (1)
15 Upon demand by a receiver, a person that owes a debt that is estate
16 property and is matured or payable on demand shall pay the debt to
17 the receiver, except to the extent that the debt is subject to setoff or
18 recoupment.

19 “(2) A person who has notice of the appointment of a receiver and
20 owes a debt that is estate property may not satisfy the debt by pay-
21 ment to the owner.

22 “SECTION 15. Duties of owner. (1) An owner shall:

23 “(a) Assist and cooperate fully with the receiver in the adminis-
24 tration of the estate and the discharge of the receiver’s duties, and
25 comply with all orders of the court;

26 “(b) Supply to the receiver information necessary to enable the re-
27 ceiver to complete any schedules that the receiver is required to file
28 under section 19 of this 2017 Act, and otherwise assist the receiver in
29 the completion of the schedules;

30 “(c) Upon the receiver’s appointment, deliver to the receiver all of

1 the estate property in the person's possession, custody or control, in-
2 cluding accounts, books, papers, records and other documents; and

3 “(d) After the receiver's appointment, submit to examination under
4 oath by the receiver, or by any other person upon order of the court,
5 concerning the acts, conduct, property, liabilities and financial condi-
6 tion of the owner or any matter relating to the receiver's adminis-
7 tration of the estate.

8 “(2) When the owner is an entity, each officer, director, manager,
9 member, partner or other individual exercising or having the power
10 to exercise control over the affairs of the entity are subject to the re-
11 quirements of this section.

12 “SECTION 16. Mailing lists to be maintained by receiver. (1) A re-
13 ceiver shall maintain a master mailing list of the names and addresses
14 of all parties to the receivership, all known creditors of the owner and
15 interested persons who have filed notices of appearance in the
16 receivership. The receiver shall make a copy of the current master
17 mailing list available to any person on the list upon the person's re-
18 quest.

19 “(2)(a) A receiver shall maintain a special notice list of the names
20 and addresses of all parties to the receivership and any other person
21 who requests to be placed on the list. The receiver shall make a copy
22 of the current special notice list available to any person on the list
23 upon the person's request.

24 “(b) Any person on the special notice list may notify the receiver
25 of the person's preferred means of receiving notices and other com-
26 munications. If the receiver is so notified, the receiver shall add the
27 information to the special notice list.

28 “SECTION 17. Notices. (1)(a) Whenever a person is required to give
29 notice under a provision of the Oregon Receivership Code, the person
30 must:

1 **“(A) Serve notice on all persons specified by the provision;**

2 **“(B) Serve notice on all persons on the special notice list;**

3 **“(C) File notice with the court; and**

4 **“(D) File proof of service with the court.**

5 **“(b) If the provision does not specify to whom notice must be given,**
6 **the person must give notice to all known persons whose property in-**
7 **terests will or may be directly affected by the proposed action, as well**
8 **as comply with paragraph (a)(B) to (D) of this subsection.**

9 **“(2) Whenever a person is required to give notice under a provision**
10 **of the Oregon Receivership Code, the person must give at least as**
11 **much time notice as specified by the relevant provision, or 14 days if**
12 **no time is specified.**

13 **“(3)(a) Except as otherwise provided, notice to any person not on**
14 **the special notice list must be served by first class mail or as other-**
15 **wise directed by the court.**

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

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

23 **“(A) The person gives notice that describes the action that the**
24 **person will take unless an objection is filed and describes a procedure**
25 **for objecting to the proposed action; and**

26 **“(B) No objections are filed.**

27 **“(b) If an objection is filed, the court shall hear the objection and**
28 **issue an order allowing, disallowing or allowing a modified form of the**
29 **action.**

30 **“(c) The court may, on its own motion, require a hearing on any**

1 proposed action.

2 “(d) If a person is allowed under this subsection to take an action
3 without specific authorization from the court, the person may none-
4 theless move the court for an order authorizing the action.

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

7 “(6) The court may order that notice of any proposed action be
8 given to any person, regardless of whether such notice is otherwise
9 required under the Oregon Receivership Code.

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

14 “SECTION 18. When court order required. (1) A receiver may not
15 take any of the following actions unless the receiver, after giving no-
16 tice, obtains a court order specifically authorizing the action, except
17 as provided in subsection (2) of this section:

18 “(a) Sale or other disposition of real property;

19 “(b) Use or transfer of property outside the ordinary course of
20 business;

21 “(c) Sale of a co-owner’s interest in jointly owned property;

22 “(d) Assumption of an executory contract;

23 “(e) Obtaining credit or incurring debt outside the ordinary course
24 of business;

25 “(f) Compromise or settlement of a controversy that might affect
26 the distribution to creditors from the estate;

27 “(g) Disallowance of all or part of a claim against the estate; and

28 “(h) Termination of the receivership.

29 “(2) For any action described in subsection (1)(a) to (f) of this sec-
30 tion, a court may establish conditions under which a receiver may

1 take the action without first obtaining an order specifically authoriz-
2 ing the action, if the court finds that the burden of seeking a court
3 order is likely to outweigh the materiality of the actions under those
4 conditions. The court may establish such conditions in the order ap-
5 pointing the receiver or in any other order.

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

11 **“(2) If the court concludes that the estate is unlikely to be suffi-**
12 **cient to make material distributions to unsecured creditors, the court**
13 **may order that the receiver need not file a schedule as described in**
14 **subsection (1) of this section. The court may order the receiver to file**
15 **a schedule of any appropriate subset of creditors.**

16 **“(3) Within 60 days after appointment, or within such other time**
17 **as the court may specify, a receiver shall file with the court a true**
18 **inventory of all estate property of which the receiver has taken pos-**
19 **session, custody or control, except that the inventory need not include**
20 **legal claims that are estate property.**

21 **“SECTION 20. Receiver’s periodic reports.** (1) A receiver shall file
22 with the court a monthly report of the receiver’s operations and fi-
23 nancial affairs, unless the court orders a different reporting period.
24 The receiver shall file each report no later than 30 days after the end
25 of a reporting period. The initial report under this section must be
26 filed no later than 60 days after the receiver is appointed, unless the
27 court orders a different deadline.

28 **“(2) Each periodic report must include:**

29 **“(a) A concise narrative summary of the receiver’s activities during**
30 **the period and a description of any major upcoming events;**

- 1 **“(b) Beginning and ending cash balances;**
2 **“(c) A statement of cash receipts and disbursements;**
3 **“(d) A statement of noncash receipts and payments;**
4 **“(e) A statement of receipts and dispositions of estate property**
5 **outside the ordinary course of business, including a description of the**
6 **property, the value of the property and the amounts received from any**
7 **disposition of the property;**
8 **“(f) A statement of accounts receivable;**
9 **“(g) A statement of fees and expenses of the receiver;**
10 **“(h) A tax disclosure statement listing taxes due or tax deposits**
11 **required, the name of the taxing agency, the date due and an expla-**
12 **nation for any failure to make payments or deposits; and**
13 **“(i) Any other information required by the court.**
- 14 **“SECTION 21. Claims bar date. A receiver may, after providing no-**
15 **tice to all known creditors of the owner, set a deadline for the sub-**
16 **mission of claims by creditors. The receiver, upon court order, may**
17 **disallow any claims submitted after the deadline.**
- 18 **“SECTION 22. Automatic stay of certain proceedings. (1) Except as**
19 **otherwise ordered by the court, the entry of an order appointing a**
20 **receiver operates as a stay, applicable to all persons, of:**
- 21 **“(a) The commencement or continuation, including the issuance or**
22 **employment of process, of a judicial, administrative or other action**
23 **or proceeding against the owner that was or could have been com-**
24 **menced before the entry of the order of appointment, or to recover a**
25 **claim against the owner that arose before the entry of the order of**
26 **appointment;**
- 27 **“(b) The enforcement, against the owner or any estate property, of**
28 **a judgment entered before the entry of the order of appointment;**
- 29 **“(c) Any act to obtain possession of estate property from the re-**
30 **ceiver, or to interfere with, or exercise control over, estate property;**

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

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

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

7 “(2) The stay automatically expires as to the acts specified in sub-
8 section (1)(a), (b) and (e) of this section six months after the entry of
9 the order of appointment, unless the stay is extended by court order.

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

16 “(4) Any judgment obtained against the owner or estate property
17 after entry of the order of appointment is not a lien against estate
18 property unless the receivership is terminated before a conveyance of
19 the property against which the judgment would otherwise constitute
20 a lien.

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

23 “(a) The continuation of a judicial or nonjudicial foreclosure action
24 that was initiated by the party seeking the receiver’s appointment,
25 unless otherwise ordered by the court;

26 “(b) The commencement or continuation of a criminal action
27 against the owner;

28 “(c) The commencement or continuation of an action or proceeding
29 to establish paternity, to establish or modify an order for spousal or
30 child support or to collect spousal or child support under any order

1 of a court;

2 “(d) Any act to perfect, or to maintain or continue the perfection
3 of, an interest in estate property if the interest perfected would be
4 effective against a creditor of the owner holding at the time of the
5 entry of the order of appointment either a perfected nonpurchase
6 money security interest under ORS chapter 79 against the property,
7 or a lien by attachment, levy or the like, including liens under ORS
8 chapter 87, whether or not such a creditor exists, except that if per-
9 fection of an interest would require seizure of the property involved
10 or the commencement of an action, the perfection may and must in-
11 stead be accomplished by filing and serving on the receiver notice of
12 the interest within the time fixed by law for seizure or commence-
13 ment;

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

16 “(f) The enforcement of a judgment, other than a money judgment,
17 obtained in an action or proceeding by a governmental unit to enforce
18 its police or regulatory power, or with respect to any licensure of the
19 owner; or

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

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

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

26 “(a) Award actual damages caused by the violation, reasonable at-
27 torney fees and costs; and

28 “(b) Sanction the violation as civil contempt.

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

1 **“SECTION 23. Utility service. (1) A utility providing service to es-**
2 **tate property may not alter, refuse or discontinue service to the**
3 **property without first giving the receiver 14 days’ notice of any default**
4 **or intention to alter, refuse or discontinue service to estate property.**

5 **“(2) Nothing in this section precludes the court from prohibiting the**
6 **alteration or cessation of utility service if the receiver can furnish**
7 **adequate assurance of payment, in the form of deposit or other secu-**
8 **rity, for service to be provided after entry of the order appointing the**
9 **receiver.**

10 **“SECTION 24. Executory contracts. (1) A receiver may, upon order**
11 **of the court, assume any executory contract of the owner. A receiver**
12 **may, after giving notice, reject any executory contract of the owner.**
13 **The court may condition assumption or rejection of any executory**
14 **contract on terms and conditions that the court deems just and**
15 **proper. A receiver’s performance of an executory contract does not**
16 **constitute an assumption of the contract or an agreement by the re-**
17 **ceiver to assume it, nor otherwise preclude the receiver from rejecting**
18 **it.**

19 **“(2) If a receiver assumes an executory contract, the receiver must**
20 **assume the contract in its entirety.**

21 **“(3) Any obligation or liability incurred by a receiver due to the**
22 **receiver’s assumption of an executory contract is an expense of the**
23 **receivership. A receiver’s rejection of an executory contract is treated**
24 **as a breach of the contract occurring immediately before the receiver’s**
25 **appointment, and the receiver’s right to possess or use property pur-**
26 **suant to an executory contract terminates upon rejection of the con-**
27 **tract. The other party to an executory contract that is rejected by a**
28 **receiver may take any necessary steps to terminate or cancel the**
29 **contract. Any claims resulting from a receiver’s rejection of an**
30 **executory contract must be submitted to the receiver in the manner**

1 provided for by section 35 of this 2017 Act within 30 days after the re-
2 jection.

3 “(4) A receiver’s power under this section to assume an executory
4 contract is not affected by any provision in the contract that would
5 effect or permit a forfeiture, modification or termination of the con-
6 tract on account of the receiver’s appointment, the financial condition
7 of the owner or an assignment for the benefit of creditors by the
8 owner.

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

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

15 “(b) The contract is a contract to make a loan or extend credit or
16 financial accommodations to or for the benefit of the owner, or to is-
17 sue a security of the owner; or

18 “(c) The contract expires by its own terms, or under applicable law,
19 prior to the receiver’s assumption thereof.

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

23 “(7) If the receiver rejects an executory contract for the sale of real
24 property under which the owner is the seller and the purchaser is in
25 possession of the real property, the sale of a real property timeshare
26 interest under which the owner is the seller, the license of intellectual
27 property rights under which the owner is the licensor or the lease of
28 real property under which the owner is the lessor, then:

29 “(a) The purchaser, licensee or lessee may:

30 “(A) Treat the rejection as a termination of the contract, license

1 agreement or lease; or

2 “(B) Remain in possession and continue to perform all obligations
3 arising under the contract, but offset against any payments any dam-
4 ages occurring on account of the rejection after it occurs.

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

10 “(c) A purchaser, licensee or lessee who elects to remain in pos-
11 session under the terms of this subsection has no claim or rights
12 against the receiver on account of any damages arising from the
13 receiver’s rejection except as expressly permitted by this subsection.

14 “(d) A purchaser of real property who elects to treat rejection of
15 an executory contract as a termination has a lien against the real
16 property for the portion of the purchase price that the purchaser has
17 paid.

18 “(8)(a) If a receiver does not seek authorization from the court to
19 assume an executory contract within 180 days after the receiver’s ap-
20 pointment, the receiver is deemed to have rejected the contract.

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

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

25 “SECTION 25. Use or transfer of estate property outside ordinary
26 course of business. (1) Upon court order, a receiver may use estate
27 property outside the ordinary course of business.

28 “(2) Upon court order, a receiver may transfer estate property other
29 than in the ordinary course of business by sale, lease, license, ex-
30 change or other disposition. Unless the transfer agreement provides

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

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

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

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

26 “(6) If estate property includes an interest as a co-owner of prop-
27 erty, the receiver has all rights and powers of a co-owner afforded by
28 applicable law, including any rights of partition.

29 “(7) If at the time of appointment of a receiver an owner holds an
30 undivided interest in property as a tenant in common, joint tenant or

1 tenant by the entirety, the receiver may sell both the interest that is
2 estate property and the interest of any co-owner upon court order if
3 the court determines that:

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

5 “(b) Sale of the estate’s undivided interest in the property would
6 realize significantly less for the estate than sale of the property free
7 and clear of the interests of the co-owner; and

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

10 “(8) A receiver may not sell, transfer or otherwise dispose of resi-
11 dential property, or an undivided interest therein, without specific ju-
12 dicial approval, which a court may grant only in case of waste,
13 destruction, obstruction of marketing of the property, enforcement of
14 an order in a domestic relations suit or other good cause shown.

15 “(9) As used in this section, ‘good faith’ means honesty in fact and
16 the observance of reasonable commercial standards of fair dealing.

17 **“SECTION 26. Receivership financing.** (1) If a receiver is authorized
18 to operate the business of a person or manage a person’s property, the
19 receiver may obtain credit and incur debt in the ordinary course of
20 business. Expenses related to such credit and debt are allowable under
21 section 37 of this 2017 Act as an administrative expense of the receiver.

22 “(2) Upon court order, a receiver may obtain credit or incur debt
23 other than in the ordinary course of business. The court may allow the
24 receiver to mortgage, pledge, hypothecate or otherwise encumber es-
25 tate property as security for repayment of any debt incurred under
26 this subsection. A creditor’s security interest may be in the form of a
27 receiver’s certificate.

28 **“SECTION 27. Recovery of costs related to secured property.** A re-
29 ceiver may recover from property securing a secured claim the neces-
30 sary costs and expenses of preserving, or disposing of, the property to

1 the extent of any benefit to the holder of such claim, including the
2 payment of all ad valorem property taxes with respect to the property.

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

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

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

15 **“(2) A person may not initiate or continue an action seeking to**
16 **dispossess the receiver of any estate property or to otherwise interfere**
17 **with the receiver’s management or control of any estate property un-**
18 **less permitted by the court that appointed the receiver.**

19 **“(3) Actions by or against a receiver are adjunct to the receivership.**
20 **All pleadings in adjunct actions must include the case number of the**
21 **receivership. All adjunct actions shall be referred to the judge assigned**
22 **to the receivership action, unless:**

23 **“(a) The court does not have jurisdiction over the adjunct action;**
24 **or**

25 **“(b) The assignment would not promote judicial efficiency.**

26 **“(4) If an action is filed against a receiver in a court in this state**
27 **other than the court in which the receivership is pending, the court**
28 **in which the action is filed shall transfer the action to the court in**
29 **which the receivership is pending upon the receiver’s motion if the**
30 **receiver files the motion within 30 days after service of original pro-**

1 cess upon the receiver. However, if a state agency is a party to the
2 action, the action may not be transferred under this subsection unless
3 the agency consents to the transfer.

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

8 “(6) In case of the death, removal or resignation of the receiver, an
9 action by or against a receiver continues by or against the successor
10 receiver or, if a successor receiver is not appointed, by or against the
11 owner.

12 “(7) Whenever the assets of any domestic or foreign entity that has
13 been doing business in this state have been placed in the hands of a
14 receiver, service of all process upon the entity may be made upon the
15 receiver.

16 “(8) A judgment against a receiver is not a lien on the property or
17 funds of the receivership, and no execution may issue thereon. Upon
18 entry of the judgment in the court in which the receivership is pend-
19 ing, or upon filing in the receivership of a certified copy of a judgment
20 from another jurisdiction, the judgment is treated as an allowed claim
21 in the receivership.

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

25 **“SECTION 30. Personal liability of receiver. (1) A receiver may be**
26 **personally liable to the owner, or a record or beneficial owner of estate**
27 **property, for loss or diminution in value of or damage to estate prop-**
28 **erty only if the loss, diminution or damage is caused by:**

29 **“(a) Failure of the receiver to comply with an order of the court;**
30 **or**

1 **“(b) An act or omission for which liability could not be limited un-**
2 **der ORS 60.047 if the receiver were an Oregon corporation.**

3 **“(2) A receiver may be personally liable to a person other than the**
4 **owner, or the record or beneficial owner of estate property, for any**
5 **loss, diminution or damage caused by the receiver’s performance of**
6 **the receiver’s duties, or the receiver’s authorized operation of a busi-**
7 **ness, only if the loss, diminution or damage is caused by:**

8 **“(a) Fraud by the receiver;**

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

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

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

17 **“(4) A receiver is entitled to all defenses and immunities provided**
18 **by law for an act or omission within the scope of the receiver’s ap-**
19 **pointment.**

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

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

28 **“(2) The notice given by the receiver before employing a profes-**
29 **sional must disclose:**

30 **“(a) The identity and qualifications of the professional;**

1 **“(b) The scope and nature of the proposed engagement;**

2 **“(c) Any potential conflict of interest; and**

3 **“(d) The proposed compensation.**

4 **“(3) If an objection is filed after the receiver provides notice of the**
5 **professional’s employment, the professional may continue to perform**
6 **the professional’s duties while the objection is pending.**

7 **“(4)(a) A receiver may not employ a professional who holds or re-**
8 **presents an interest adverse to the estate, except by order of the court.**

9 **“(b) A professional is not disqualified for employment under this**
10 **subsection solely because of the professional’s employment by, repre-**
11 **sentation of or other relationship with a creditor or other interested**
12 **person, if the relationship is disclosed in the notice of the**
13 **professional’s employment.**

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

16 **“(6) After giving notice, the receiver may make payments to pro-**
17 **fessionals for services rendered to the receiver. The notice must in-**
18 **clude an itemized billing statement indicating the time spent, billing**
19 **rates of all persons who performed work to be compensated and a de-**
20 **tailed list of expenses.**

21 **“SECTION 32. Participation of creditors and other interested per-**
22 **sons in receivership; effect of receivership on nonparties. (1) Any in-**
23 **terested person may appear in a receivership, either in person or by**
24 **an attorney. Before appearing in the receivership, an interested person**
25 **who is not party to the receivership must file with the court a written**
26 **notice of appearance, including the name and mailing address of the**
27 **interested person, and the name and address of the person’s attorney,**
28 **if any, and serve a copy of the notice upon the receiver. A creditor or**
29 **other interested person may be heard with respect to all matters af-**
30 **fecting the person, whether or not the person is joined as a party to**

1 the receivership.

2 “(2) Persons who receive notice of the pendency of a receivership,
3 whether actual or constructive, and creditors or other persons sub-
4 mitting written claims in the receivership or otherwise appearing and
5 participating in the receivership, are bound by the acts of the receiver
6 with respect to management and disposition of estate property, re-
7 gardless of whether they are formally joined as parties to the
8 receivership.

9 “(3) Any person having a claim against or interest in estate prop-
10 erty and having actual or constructive knowledge of the receivership
11 is bound by acts of the receiver or orders of the court with respect to
12 the treatment of claims and disposition of estate property, including
13 sales of property free and clear of liens, regardless of whether the
14 person receives written notice from the receiver and regardless of
15 whether the person appears in the receivership.

16 “(4) A person duly notified by the receiver of a proposed act by the
17 receiver is bound with respect to the act, regardless of whether the
18 person objected to the act or is joined formally as a party in the
19 receivership.

20 “(5) As used in this section, ‘bound’ means barred from bringing a
21 motion or proceeding to contest an act or order, either within or out-
22 side of the receivership.

23 **“SECTION 33. Initial notice to creditors and other interested per-**
24 **sons.** (1) A receiver shall, within 30 days after the receiver’s appoint-
25 ment, provide notice of the receivership to all known creditors of the
26 owner and any other known interested persons that includes:

27 “(a) The date of appointment of the receiver;

28 “(b) The name of the court and the case number of the receivership;

29 “(c) The deadline for the submission of claims by creditors, if
30 known;

1 “(d) The name and address of the owner;

2 “(e) The name and address of the receiver and receiver’s attorney,
3 if any;

4 “(f) A procedure for notifying the receiver if the recipient is re-
5 presented by an attorney;

6 “(g) A procedure for being placed on the special notice list; and

7 “(h) A statement that the person may not receive notice of all fur-
8 ther proceedings in the receivership unless the person requests to be
9 placed on the special notice list.

10 “(2) The notice required under this section must be given by first
11 class mail or by such other methods as the court may approve or re-
12 quire.

13 “(3) In addition to the methods described in subsection (2) of this
14 section, the notice required under this section must be published at
15 least once per week for two consecutive weeks in a newspaper of gen-
16 eral circulation in all counties in which estate property is known to
17 be located.

18 “SECTION 34. Claims process. (1) If a receiver determines that the
19 estate is sufficient to provide distributions to creditors, the receiver
20 shall, upon notice, establish a claims process by sending a written
21 document describing a claims process, including relevant dates and
22 deadlines, to all known creditors of the owner. The receiver may pre-
23 scribe forms or otherwise specify information required to be included
24 in a claim.

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

28 “SECTION 35. Submission of claims by creditors. (1) Claims may
29 not be submitted until a claims process is established under section
30 34 of this 2017 Act.

1 “(2) All claims that arose before the receiver’s appointment,
2 whether contingent, liquidated, unliquidated or disputed, other than
3 claims of creditors with security interests in or other liens against
4 estate property, must be submitted in accordance with this section.
5 Any claim not so submitted is barred from participating in any dis-
6 tribution to creditors.

7 “(3) Claims must be submitted by delivering the claim to the re-
8 ceiver or an agent designated by the receiver within 30 days after the
9 claims process is established, except that a claim arising from the re-
10 jection of an executory contract of the owner must be submitted
11 within 30 days after the rejection. Claims by state agencies must be
12 submitted within 180 days after the claims process is established. The
13 court may shorten or extend any time period set forth in this sub-
14 section.

15 “(4) Claims must be submitted in a form prescribed by the receiver.
16 If no form is prescribed, claims must be in written form and must:

17 “(a) Include the name and address of the claimant;

18 “(b) Set forth the nature and amount of the claim;

19 “(c) Be executed by the claimant or the claimant’s agent; and

20 “(d) Include any other information required by the receiver.

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

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

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

1 allowance.

2 “(b) At any time before the entry of an order approving the
3 receiver’s final report, any interested person may object to a claim.
4 The objector must mail a copy of the objection, together with a notice
5 of hearing, to the receiver and claimant at least 21 days before the
6 hearing. The court shall hear the objection and enter an order allow-
7 ing or disallowing the claim.

8 “(2) Upon request of a creditor, the receiver or a person objecting
9 to a creditor’s claim, or upon order of the court, an objection is sub-
10 ject to mediation before adjudication of the objection, under the rules
11 or orders adopted or issued with respect to mediations. However,
12 claims by the state are not subject to mediation unless the state con-
13 sents to mediation.

14 “(3) Upon motion of the receiver or an interested person, the fol-
15 lowing claims may be estimated for purpose of allowance under this
16 section under the rules or orders applicable to the estimation of claims
17 under this subsection:

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

21 “(b) Any right to payment arising from a right to an equitable
22 remedy for breach of performance.

23 “(4) Claims estimated under subsection (3) of this section are al-
24 lowed in the estimated amount thereof.

25 “SECTION 37. Priorities. (1) Allowed claims in a receivership re-
26 ceive distribution under the Oregon Receivership Code in the order of
27 priority set forth in this subsection.

28 “(a) The first priority is unpaid costs and expenses allowable under
29 section 27 of this 2017 Act.

30 “(b) The second priority is claims of creditors with liens on estate

1 property that are duly perfected under applicable law. Such creditors
2 receive the proceeds from the disposition of their collateral. Secured
3 claims must be paid from the proceeds in accordance with their re-
4 spective priorities under otherwise applicable law.

5 “(c) The third priority is actual, necessary costs and expenses in-
6 curred during the administration of the estate, other than those ex-
7 penses allowable under subsection (2) of this section, including allowed
8 fees and reimbursement of reasonable charges and expenses of the
9 receiver and professional persons employed by the receiver under sec-
10 tion 31 of this 2017 Act. Notwithstanding paragraph (b) of this sub-
11 section, expenses incurred during the administration of the estate
12 have priority over the secured claim of any creditor obtaining the ap-
13 pointment of the receiver.

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

15 “(e) The fifth priority is claims of creditors with liens on estate
16 property that are not required to be perfected under applicable law.
17 Such creditors receive the proceeds of the disposition of their collat-
18 eral.

19 “(f) The sixth priority is claims of creditors with liens on estate
20 property that have not been duly perfected under applicable law. Such
21 creditors receive the proceeds from the disposition of their collateral
22 if and to the extent that unsecured claims are made subject to those
23 liens under applicable law.

24 “(g) The seventh priority is claims for wages, salaries or commis-
25 sions, including vacation, severance and sick leave pay, or contribu-
26 tions to an employee benefit plan, earned by the claimant within 180
27 days of the earlier of the date of appointment of the receiver and the
28 cessation of the estate’s business, but only to the extent of \$12,850 in
29 aggregate for each claimant.

30 “(h) The eighth priority is unsecured claims of individuals, to the

1 extent of \$2,850 for each claimant, arising from the deposit with the
2 owner before the date of appointment of the receiver of moneys in
3 connection with the purchase, lease or rental of property or the pur-
4 chase of services for personal, family or household use that were not
5 delivered or provided.

6 “(i) The ninth priority is claims for a spousal support debt or child
7 support debt, except to the extent that the debt:

8 “(A) Is assigned to another entity, voluntarily, by operation of law,
9 or otherwise; or

10 “(B) Includes a liability designated as a support obligation, unless
11 that liability is actually in the nature of a support obligation.

12 “(j) The tenth priority is unsecured claims of state governmental
13 units for taxes that accrued before the appointment of the receiver.

14 “(k) The eleventh priority is other unsecured claims.

15 “(L) The last priority is interests of the owner.

16 “(2) If the proceeds from the disposition of collateral securing an
17 allowed secured claim are less than the amount of the claim or a
18 creditor’s lien is avoided on any basis, the creditor has an unsecured
19 claim in the amount of the deficiency.

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

22 “(4) If all of the claims under subsection (1) of this section have
23 been paid in full, the receiver shall pay any residue to the owner.

24 **SECTION 38. Secured claims against after-acquired property.**

25 Property acquired by the estate or by the owner after the date of ap-
26 pointment of the receiver is subject to an allowed secured claim to the
27 same extent as would be the case in the absence of a receivership.

28 **SECTION 39. Ancillary receiverships.** (1) A receiver appointed in
29 any action pending in the courts of this state may, upon court order,
30 apply to any court outside of this state for appointment as receiver

1 with respect to any estate property that is located in any other juris-
2 diction, if the appointment is necessary to the receiver's possession,
3 control, management or disposition of property in accordance with
4 orders of the court. The receiver may move the court ex parte for an
5 expedited hearing on a motion for leave to apply for an ancillary
6 receivership.

7 “(2) A receiver appointed in a foreign action, or any party to the
8 foreign action, may move a court of this state for appointment of that
9 same receiver with respect to any property of the foreign receivership
10 that is located in this state. The court shall act on the motion as
11 provided in section 6 (3) of this 2017 Act. A receiver appointed in an
12 ancillary receivership in this state is subject to the requirements im-
13 posed on receivers by statutes of this state, except as expressly ex-
14 empted by the court.

15 “SECTION 40. Removal of receiver. (1) On motion of the owner, the
16 receiver or any creditor, or on the court's own motion, the court shall
17 remove a receiver if the receiver resigns or refuses or fails to serve for
18 any reason, or for other good cause.

19 “(2) Upon removal of the receiver, the court shall appoint a suc-
20 cessor receiver if the court determines that further administration of
21 the estate is required. Upon appointment, the successor receiver im-
22 mediately takes possession of the estate and assumes the duties of
23 receiver.

24 “(3) If the court is satisfied that a replaced receiver has fully ac-
25 counted for and turned over to the successor receiver all of the prop-
26 erty of the estate and has filed a report of all receipts and
27 disbursements during the person's tenure as receiver, the court shall,
28 after notice to all persons on the special notice list and hearing, enter
29 an order discharging the replaced receiver from all further duties and
30 responsibilities as receiver.

1 **“SECTION 41. Termination of receivership. (1) Upon distribution or**
2 **disposition of all property of the estate or the completion of the**
3 **receiver’s duties with respect to estate property, or for other good**
4 **cause, the receiver shall move the court for an order discharging the**
5 **receiver.**

6 **“(2) The receiver shall attach to the motion for discharge a final**
7 **report and accounting setting forth:**

8 **“(a) A list of estate property received during the receivership;**

9 **“(b) A list of disbursements, including payments to professionals**
10 **engaged by the receiver;**

11 **“(c) A list of dispositions of estate property;**

12 **“(d) A list of distributions made or proposed to be made from the**
13 **estate for creditor claims;**

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

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

17 **“(3) If the court approves the final report and accounting, the court**
18 **shall discharge the receiver. The court may issue an order exonerating**
19 **the receiver’s bond or alternative security.**

20 **“(4) The receiver’s discharge:**

21 **“(a) Releases the receiver from any further duties and responsibil-**
22 **ities under the Oregon Receivership Code; and**

23 **“(b) Releases the receiver and any persons acting on behalf of the**
24 **receiver from all further liability in connection with the adminis-**
25 **tration of estate property or the receivership.**

26 **“(5) Upon motion of any interested person, or upon the court’s own**
27 **motion, the court may discharge the receiver and terminate the**
28 **court’s administration of the property over which the receiver was**
29 **appointed.**

30 **“(6) Upon termination of the receivership under any circumstances,**

1 **if the court determines that the appointment of the receiver was**
2 **wrongfully procured or procured in bad faith, the court may assess**
3 **against the person who procured the receiver’s appointment all of the**
4 **receiver’s fees and other costs of the receivership, and any other**
5 **sanctions the court deems appropriate.**

6 **“SECTION 42. Applicability. Sections 2 to 41 of this 2017 Act apply**
7 **to receiverships in which the receiver is appointed on or after the ef-**
8 **fective date of this 2017 Act.**

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

10 **“A Receiver defined and applicability.**

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

15 **“A(2) The provisions of the Oregon Receivership Code control over**
16 **conflicting provisions of this rule with respect to receiverships gov-**
17 **erned by the Oregon Receivership Code.**

18 **“SECTION 44. ORS 465.255 is amended to read:**

19 **“465.255. (1) The following persons shall be strictly liable for those re-**
20 **medial action costs incurred by the state or any other person that are at-**
21 **tributable to or associated with a facility and for damages for injury to or**
22 **destruction of any natural resources caused by a release:**

23 **“(a) Any owner or operator at or during the time of the acts or omissions**
24 **that resulted in the release.**

25 **“(b) Any owner or operator who became the owner or operator after the**
26 **time of the acts or omissions that resulted in the release, and who knew or**
27 **reasonably should have known of the release when the person first became**
28 **the owner or operator.**

29 **“(c) Any owner or operator who obtained actual knowledge of the release**
30 **at the facility during the time the person was the owner or operator of the**

1 facility and then subsequently transferred ownership or operation of the fa-
2 cility to another person without disclosing such knowledge.

3 “(d) Any person who, by any acts or omissions, caused, contributed to or
4 exacerbated the release, unless the acts or omissions were in material com-
5 pliance with applicable laws, standards, regulations, licenses or permits.

6 “(e) Any person who unlawfully hinders or delays entry to, investigation
7 of or removal or remedial action at a facility.

8 “(2) Except as provided in subsection (1)(c) to (e) of this section and
9 subsection (4) of this section, the following persons shall not be liable for
10 remedial action costs incurred by the state or any other person that are at-
11 tributable to or associated with a facility, or for damages for injury to or
12 destruction of any natural resources caused by a release:

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

17 “(b) Any owner or operator if the release at the facility was caused solely
18 by one or a combination of the following:

19 “(A) An act of God. ‘Act of God’ means an unanticipated grave natural
20 disaster or other natural phenomenon of an exceptional, inevitable and irre-
21 sistible character, the effects of which could not have been prevented or
22 avoided by the exercise of due care or foresight.

23 “(B) An act of war.

24 “(C) Acts or omissions of a third party, other than an employee or agent
25 of the person asserting this defense, or other than a person whose acts or
26 omissions occur in connection with a contractual relationship, existing di-
27 rectly or indirectly, with the person asserting this defense. As used in this
28 subparagraph, ‘contractual relationship’ includes but is not limited to land
29 contracts, deeds or other instruments transferring title or possession.

30 “(3) Except as provided in subsection (1)(c) to (e) of this section or sub-

1 section (4) of this section, the following persons shall not be liable for re-
2 medial action costs incurred by the state or any other person that are
3 attributable to or associated with a facility, or for damages for injury to or
4 destruction of any natural resources caused by a release:

5 “(a) A unit of state or local government that acquired ownership or con-
6 trol of a facility in the following ways:

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

9 “(B) Through the exercise of eminent domain authority by purchase or
10 condemnation.

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

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

14 “(d) An authority that becomes the owner or operator of the facility as
15 authorized in ORS 465.609.

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

17 “(4) Notwithstanding the exclusions from liability provided for specified
18 persons in subsections (2) and (3) of this section such persons shall be liable
19 for remedial action costs incurred by the state or any other person that are
20 attributable to or associated with a facility, and for damages for injury to
21 or destruction of any natural resources caused by a release, to the extent
22 that the person’s acts or omissions contribute to such costs or damages, if
23 the person:

24 “(a) Obtained actual knowledge of the release and then failed to promptly
25 notify the Department of Environmental Quality and exercise due care with
26 respect to the hazardous substance concerned, taking into consideration the
27 characteristics of the hazardous substance in light of all relevant facts and
28 circumstances; or

29 “(b) Failed to take reasonable precautions against the reasonably fore-
30 seeable acts or omissions of a third party and the reasonably foreseeable

1 consequences of such acts or omissions.

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

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

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

14 “(d) Nothing in this section shall restrict any right that the state or any
15 person might have under federal statute, common law or other state statute
16 to recover remedial action costs or to seek any other relief related to a re-
17 lease.

18 “(6) To establish, for purposes of subsection (1)(b) of this section or sub-
19 section (2)(a) of this section, that the person did or did not have reason to
20 know, the person must have undertaken, at the time of acquisition, all ap-
21 propriate inquiry into the previous ownership and uses of the property con-
22 sistent with good commercial or customary practice in an effort to minimize
23 liability.

24 “(7)(a) Except as provided in paragraph (b) of this subsection, no person
25 shall be liable under ORS 465.200 to 465.545 and 465.900 for costs or damages
26 as a result of actions taken or omitted in the course of rendering care, as-
27 sistance or advice in accordance with rules adopted under ORS 465.400 or
28 at the direction of the department or its authorized representative, with re-
29 spect to an incident creating a danger to public health, safety, welfare or the
30 environment as a result of any release of a hazardous substance. This para-

1 graph shall not preclude liability for costs or damages as the result of
2 negligence on the part of such person.

3 “(b) No state or local government shall be liable under ORS 465.200 to
4 465.545 and 465.900 for costs or damages as a result of actions taken in re-
5 sponse to an emergency created by the release of a hazardous substance
6 generated by or from a facility owned by another person. This paragraph
7 shall not preclude liability for costs or damages as a result of gross
8 negligence or intentional misconduct by the state or local government. For
9 the purpose of this paragraph, reckless, willful or wanton misconduct shall
10 constitute gross negligence.

11 “(c) This subsection shall not alter the liability of any person covered by
12 subsection (1) of this section.

13 **“SECTION 45.** ORS 60.667 is amended to read:

14 “60.667. (1) A court in a judicial proceeding brought to dissolve a corpo-
15 ration, or in a judicial proceeding for shareholder remedies described in ORS
16 60.952, may appoint one or more receivers to wind up and liquidate the
17 business and affairs of the corporation or one or more custodians to manage
18 the business and affairs of the corporation. The court shall hold a hearing,
19 after notifying all parties to the proceeding and any interested persons des-
20 ignated by the court, before appointing a receiver or custodian. The court
21 appointing a receiver or custodian has exclusive jurisdiction over the cor-
22 poration and all its property wherever located.

23 “(2) The court may appoint an individual or a domestic or foreign corpo-
24 ration, authorized to transact business in this state, as a receiver or custo-
25 dian. The court may require the receiver or custodian to post bond, with or
26 without sureties, in an amount the court directs.

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

30 “(a) The receiver may dispose of all or any part of the assets of the cor-

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

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

8 “(4) The court during a receivership may redesignate the receiver a
9 custodian, and during a custodianship may redesignate the custodian a re-
10 ceiver, if doing so is in the best interests of the corporation, its shareholders
11 and creditors.

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

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

18 **“SECTION 46.** ORS 62.702 is amended to read:

19 “62.702. (1) A court in a judicial proceeding brought to dissolve a coop-
20 erative may appoint one or more receivers to wind up and liquidate the
21 business and affairs of the cooperative or one or more custodians to manage
22 the business and affairs of the cooperative. The court shall hold a hearing,
23 after notifying all parties to the proceeding and any interested persons des-
24 ignated by the court, before appointing a receiver or custodian. The court
25 appointing a receiver or custodian has exclusive jurisdiction over the coop-
26 erative and all its property wherever located.

27 “(2) The court may appoint an individual or a domestic or foreign corpo-
28 ration, authorized to transact business in this state, as a receiver or custo-
29 dian. The court may require the receiver or custodian to post bond, with or
30 without sureties, in an amount the court directs.

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

4 “(a) The receiver may dispose of all or any part of the assets of the co-
5 operative wherever located, at a public or private sale, if authorized by the
6 court and may sue and defend in the receiver’s own name as receiver of the
7 cooperative in all courts of this state.

8 “(b) The custodian may exercise all of the powers of the cooperative,
9 through or in place of its board of directors or, creditors and any holders
10 of other equity interest in the cooperative officers, to the extent necessary
11 to manage the affairs of the cooperative in the best interests of its members,
12 shareholders, creditors and any holders of other equity interest in the coop-
13 erative.

14 “(4) The court during a receivership may redesignate the receiver a
15 custodian, and during a custodianship may redesignate the custodian a re-
16 ceiver, if doing so is in the best interests of the cooperative, its members,
17 shareholders, creditors and any holders of other equity interest in the coop-
18 erative.

19 “(5) The court periodically during the receivership or custodianship may
20 order compensation paid and expense disbursements or reimbursements made
21 to the receiver or custodian and the receiver’s or custodian’s counsel from
22 the assets of the cooperative or proceeds from the sale of the assets.

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

25 **“SECTION 47.** ORS 65.667 is amended to read:

26 “65.667. (1) A court in a judicial proceeding brought to dissolve a public
27 benefit or mutual benefit corporation may appoint one or more receivers to
28 wind up and liquidate the affairs of the corporation, or one or more custo-
29 dians to manage the affairs of the corporation. The court shall hold a hear-
30 ing, after notifying all parties to the proceeding and any interested persons

1 designated by the court, before appointing a receiver or custodian. The court
2 appointing a receiver or custodian has exclusive jurisdiction over the cor-
3 poration and all its property wherever located.

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

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

11 “(a) The receiver:

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

17 “(B) May sue and defend in the receiver’s own name as receiver of the
18 corporation in all courts of this state.

19 “(b) The custodian may exercise all of the powers of the corporation,
20 through or in place of its board of directors or officers, to the extent neces-
21 sary to manage the affairs of the corporation in the best interests of its
22 members and creditors.

23 “(4) The court during a receivership may redesignate the receiver a
24 custodian, and during a custodianship may redesignate the custodian a re-
25 ceiver, if doing so is in the best interest of the corporation, its members and
26 creditors.

27 “(5) The court periodically during the receivership or custodianship may
28 order compensation paid and expense disbursements or reimbursements made
29 to the receiver or custodian and the receiver’s or custodian’s attorney from
30 the assets of the corporation or proceeds from the sale of the assets.

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

3 **“SECTION 48.** ORS 86.752 is amended to read:

4 “86.752. A trustee may not foreclose a trust deed by advertisement and
5 sale in the manner provided in ORS 86.764 to 86.782 unless:

6 “(1) The trust deed, any assignments of the trust deed by the trustee or
7 the beneficiary and any appointment of a successor trustee are recorded in
8 the mortgage records in the counties in which the property described in the
9 deed is situated;

10 “(2) There is a default by the grantor or other person that owes an obli-
11 gation, the performance of which is secured by the trust deed, or by the
12 grantor’s or other person’s successors in interest with respect to a provision
13 in the deed that authorizes sale in the event of default of the provision;

14 “(3) The trustee or beneficiary has filed for record in the county clerk’s
15 office in each county where the trust property, or some part of the trust
16 property, is situated, a notice of default containing the information required
17 by ORS 86.771 and containing the trustee’s or beneficiary’s election to sell
18 the property to satisfy the obligation;

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

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

25 “(b) A copy of the affidavit with which the beneficiary claimed, under
26 ORS 86.726 (1)(b), an exemption that has not expired;

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

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

30 and

1 “(7) An action has not been commenced to recover the debt or any part
2 of the debt then remaining secured by the trust deed, or, if an action has
3 been commenced, the action has been dismissed, except that:

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

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

16 **“SECTION 49.** ORS 93.915 is amended to read:

17 “93.915. (1) In the event of a default under a contract for conveyance of
18 real property, a seller who wishes to enforce a forfeiture remedy must give
19 written notice of default by service pursuant to ORCP 7 D(2) and 7 D(3), or
20 by both first class and certified mail with return receipt requested, to the
21 last-known address of the following persons or their legal representatives, if
22 any:

23 “(a) The purchaser.

24 “(b) An occupant of the property.

25 “(c) Any person who has caused to be filed for record in the county
26 clerk’s office of a county in which any part or parcel of the real property is
27 situated, a duly acknowledged request for a copy of any notice of default
28 served upon or mailed to the purchaser. The request shall contain the name
29 and address of the person requesting copies of the notice and shall identify
30 the contract by stating the names of the parties to the contract, the date of

1 recordation of the contract and the book and page where the contract is re-
2 corded. The county clerk shall immediately make a cross-reference of the
3 request to the contract, either on the margin of the page where the contract
4 is recorded or in some other suitable place. No request, statement or nota-
5 tion placed on the record pursuant to this section shall affect title to the
6 property or be deemed notice to any person that any person so recording the
7 request has any right, title, interest in, lien or charge upon the property
8 referred to in the contract.

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

10 “(3) The notice shall specify the nature of the default, the amount of the
11 default if the default is in the payment terms, the date after which the con-
12 tract will be forfeited if the purchaser does not cure the default and the
13 name and address of the seller or the attorney for the seller. The period
14 specified in the notice after which the contract will be forfeited may not be
15 less than:

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

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

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

23 “(4) The seller shall cause to be recorded in the real property records of
24 each county in which any part of the property is located a copy of the notice,
25 together with an affidavit of service or mailing of the notice of default, re-
26 citing the date the notice was served or mailed and the name and address
27 of each person to whom it was given. From the date of recording, the notice
28 and affidavit shall constitute constructive notice to third persons of the
29 pending forfeiture. If, not later than one year after the time for cure stated
30 in a recorded notice and affidavit or any recorded extension thereof, no

1 declaration of forfeiture based upon the recorded notice and affidavit has
2 been recorded and no extension of time for cure executed by the seller has
3 been recorded, the notice and affidavit shall not be effective for any purpose
4 nor shall it impart any constructive or other notice to third persons acquir-
5 ing an interest in the purchaser's interest in the contract or the property
6 or any portion of either. Any extension of time for cure executed by the
7 seller shall be recorded in the same manner as the original notice and affi-
8 davit.

9 “(5) The statement contained in the notice as to the time after which the
10 contract will be forfeited if the default is not cured shall conclusively be
11 presumed to be correct, and the notice adequate, unless one or more recipi-
12 ents of such notice notifies the seller or the attorney for the seller, by reg-
13 istered or certified mail, that such recipient claims the right to a longer
14 period of time in which to cure the default.

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

23 **“SECTION 50.** ORS 94.642 is amended to read:

24 “94.642. (1) Subject to subsection (2) of this section, if a homeowners as-
25 sociation fails to fill vacancies on the board of directors sufficient to con-
26 stitute a quorum in accordance with the bylaws, an owner or a first
27 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
29 affairs of the association.

30 “(2) At least 45 days before an owner or first mortgagee requests the

1 circuit court to appoint a receiver under subsection (1) of this section, the
2 owner or first mortgagee shall mail, by certified or registered mail, a notice
3 to the association and shall post a copy of the notice at a conspicuous place
4 or places on the property or provide notice by a method otherwise reasonably
5 calculated to inform owners of the proposed action.

6 “(3) The notice shall be signed by the owner or first mortgagee and in-
7 clude:

8 “(a) A description of the intended action.

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

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

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

16 “(e) A statement that if a receiver is appointed, all expenses of the
17 receivership will be common expenses of the association as provided in sub-
18 section (4) of this section.

19 “(4) If a receiver is appointed, the salary of the receiver, court costs, at-
20 torney fees and all other expenses of the receivership shall be common ex-
21 penses of the association.

22 “(5) A receiver appointed under this section has all of the powers and
23 duties of a duly constituted board of directors and shall serve until a suffi-
24 cient number of vacancies on the board are filled to constitute a quorum.

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

30 “(7) Notwithstanding subsections (2) and (3) of this section, in the case

1 of an emergency, the court may waive the notice requirements of subsections
2 (2) and (3) of this section.

3 **“SECTION 51.** ORS 100.418 is amended to read:

4 100.418. (1) Subject to subsection (2) of this section, if an association of
5 unit owners fails to fill vacancies on the board of directors sufficient to
6 constitute a quorum in accordance with the bylaws, a unit owner or a first
7 mortgagee of a unit may request the circuit court of the county in which the
8 condominium is located to appoint a receiver [*under ORCP 80*] to manage
9 the affairs of the association.

10 “(2) At least 45 days before a unit owner or first mortgagee of a unit re-
11 quests the circuit court to appoint a receiver under subsection (1) of this
12 section, the unit owner or first mortgagee shall mail, by certified or regis-
13 tered mail, a notice to the association and shall post a copy of the notice
14 at a conspicuous place or places on the property or provide notice by a
15 method otherwise reasonably calculated to inform unit owners of the pro-
16 posed action.

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

19 “(a) A description of the intended action.

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

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

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

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

30 “(4) If a receiver is appointed, the salary of the receiver, court costs, at-

1 torney fees and all other expenses of the receivership shall be common ex-
2 penses of the association.

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

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

11 “(7) Notwithstanding subsections (2) and (3) of this section, in the case
12 of an emergency, the court may waive the notice requirements of subsections
13 (2) and (3) of this section.

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

16 **“SECTION 53. If applicable under section 4 of this 2017 Act, the
17 Oregon Receivership Code applies to receiverships commenced under
18 ORS 105.420 to 105.455, except that the provisions of ORS 105.420 to
19 105.455 control over conflicting provisions of the Oregon Receivership
20 Code.**

21 **“SECTION 54. Section 55 of this 2017 Act is added to and made a
22 part of ORS 652.510 to 652.570.**

23 **“SECTION 55. If applicable under section 4 of this 2017 Act, the
24 Oregon Receivership Code controls over conflicting provisions of ORS
25 652.510 to 652.570.**

26 **“SECTION 56. Section 57 of this 2017 Act is added to and made a
27 part of ORS chapter 734.**

28 **“SECTION 57. Notwithstanding section 4 of this 2017 Act, the
29 Oregon Receivership Code does not apply to delinquency proceedings
30 under this chapter.**

1 **“SECTION 58. The section captions used in this 2017 Act are pro-**
2 **vided only for the convenience of the reader and do not become part**
3 **of the statutory law of this state or express any legislative intent in**
4 **the enactment of this 2017 Act.”.**

5
