



SENATE BILL 364: North Carolina Commercial Receivership Act Revisions.

2019-2020 General Assembly

Committee:		Date:	October 12, 2020
Introduced by:		Prepared by:	Bill Patterson Staff Attorney
Analysis of:	S.L. 2020-75		

OVERVIEW: *S.L. 2020-75 enacts the North Carolina Commercial Receivership Act, repeals statutory provisions governing receiverships and assignments for the benefit of creditors, and requires any action seeking appointment of a general receiver for an entity debtor with assets worth at least \$5 million to be designated a mandatory complex business case. The act becomes effective January 1, 2021 and applies to receiverships commenced on or after that date.*

CURRENT LAW: Article 38 of Chapter 1 of the General Statutes governs the appointment and duties of receivers. A receiver is appointed by the court to take control of a debtor's property to preserve and manage it before judgment or in aid of execution after judgment, or when the debtor is a corporation that is insolvent or in imminent danger of insolvency, to liquidate the corporate assets as part of a creditor's action.

Articles 1 and 2 of Chapter 23 of the General Statutes govern the procedure by which debtors can make an assignment of their assets for the benefit of their creditors, through which the debtor's assets are assigned to a trustee charged with determining the amounts owed to each creditor and liquidating the property of the debtor to distribute to the creditors.

BILL ANALYSIS: Section 1 of the act enacts the North Carolina Receivership Act ("NCRA") governing receivers appointed for an entity or an individual business debtor.¹

The NCRA establishes two types of receiverships: limited receiverships, which are based on the enforcement of a security interest or liens; and general receiverships, which are any other type.

Under the NCRA:

- A judge of either the district court or superior court can appoint a receiver for a debtor who is an individual business debtor, but only a superior court judge can appoint a receiver for a debtor that is not a natural person.
- Any person, whether or not a resident of North Carolina, may serve as a receiver if determined by the appointing court to be qualified to serve and independent of any party in interest and the underlying dispute.
- General receiverships reach all the debtor's property, except that a general receivership for an individual business debtor does not reach the debtor's principal residence or any consumer good

¹ For purposes of the NCRA, an "individual business debtor" is an individual whose total consumer debt (i.e., debt that is incurred primarily for a personal, family, or household purpose) is less than half of the individual's total debt.

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if its value is less than the combined amount of all liens, rights of redemption, and allowed claims of exemptions to which it is subject.

- A limited receivership controls only the property identified in the court order appointing the receiver or subsequent court orders.
- All receivers have the power to take possession of, control, and protect receivership property, pay expenses incurred in exercising the receiver's powers, assert claims or defenses relating to receivership property.
- General receivers have specified additional powers, including the power to manage and operate any business constituting receivership property in the ordinary course of business.
- All receivers have the duty to avoid conflicts of interest, not accept anything of value from receivership property without approval of the court, and act in the best interests of the receivership and its property.
- Individual business debtors or entities for which a limited receiver has been appointed are not prevented from filing a case under Title 11 (Bankruptcy) of the United States Code.
- The receiver submits interim reports addressing the receiver's activities, receipts and disbursements, distributions of money and property of the receivership estate, fees and expenses, and any other information required by the court.
- The receiver submits a final report to the court upon disposition of all receivership property.

Section 2 repeals provisions of the General Statutes governing assignments for the benefit of creditors and governing receivers of corporations.

Section 3.(a) provides that an action seeking the appointment of a general receiver for an entity debtor having assets with a fair market value of at least \$5 million must be designated as a mandatory complex business case, if the party making the designation is either (i) the debtor or (ii) one or more creditors or creditors' duly authorized representative asserting a noncontingent and undisputed claim or claims totaling more than \$25,000 against the debtor.

Section 3.(b) makes conforming changes to statutory provisions governing cessation of membership in a limited liability company.

Section 3.(c) makes conforming changes to statutory provisions governing the effect of an order of discharge of a debtor.

Section 3.(d) makes the superior court division the proper division, regardless of the amount in controversy, for a receivership proceeding for a debtor that is not a natural person and for proceedings under the North Carolina Limited Liability Company Act.

Section 3.(e) makes a conforming change to a statutory cross-reference relating to the partition of real property.

EFFECTIVE DATE: The act becomes effective January 1, 2021 and applies to receiverships commenced on or after that date.