

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set
4 Date: December 20, 2024
5 Time: 1:00 p.m.
6 Judge/Calendar: The Honorable Brandon Mack

7
8 STATE OF WASHINGTON
9 JEFFERSON COUNTY SUPERIOR COURT

10 KITSAP BANK,

11 Petitioner,

12 v.

13 FORT WORDEN LIFELONG
14 LEARNING CENTER PUBLIC
15 DEVELOPMENT AUTHORITY
16 WASHINGTON, a Washington Public
17 Corporation,

18 Defendant.

NO. 24-2-00199-16

WASHINGTON STATE PARKS AND
RECREATION COMMISSION'S CR
59(a) AND CR 60(b) MOTION TO
VACATE ORDER GRANTING *EX*
PARTE MOTION TO EXTEND
DEADLINE TO ASSUME OR
REJECT LEASE

AND

CR 59(a) MOTION FOR
RECONSIDERATION

19 **I. INTRODUCTION**

20 The State of Washington, acting by and through the Washington State Parks and
21 Recreation Commission, a state agency (hereinafter the "State"), as creditor, party-in-interest,
22 as well as owner and landlord of the demised premises comprising a large portion of Fort
23 Worden State Park currently occupied by the above-captioned Defendant under Court-
24 appointed receivership, objects in the strongest terms to the means by which the Court-
25 appointed receiver Elliot Bay Asset Solutions, LLC (hereinafter "Receiver") sought and
26 obtained via *ex parte* proceedings an order dated December 2, 2024, against the State without
any notice or opportunity for the State or other parties-in-interest to be heard. The State was
not even aware of the entry of the order until a third party brought it to the State's attention, as

1 Receiver made no effort to serve the order or even inform the State of its existence. The State
2 hereby moves under CR 59(a) and CR 60(b) for vacatur of that *ex parte* order entered on
3 December 2, 2024 (hereinafter “*Ex Parte* Order”), as improperly moved for and obtained. This
4 Motion is supported by the Declaration of Mike Sternback (hereinafter “Sternback
5 Declaration”), the Declaration of Andy Woo (“Woo Declaration”), filed contemporaneously
6 herewith, and any other files and records on file with the Court.

7 II. STATEMENT OF FACTS

8 A. Background

9 The Washington State Parks and Recreation Commission is a state agency governed by a
10 seven-member commission, RCW 79A.05.015, in whom the statutory authorities and
11 responsibilities set forth in its enabling statutes, Chapter 79A.05 RCW, are vested, including the
12 authority to “[g]rant . . . leases in state parks and parkways upon such rentals, fees, or percentage
13 of income or profits and for such terms, in no event longer than eighty years . . . and upon such
14 conditions as shall be approved by the commission.” RCW 79A.05.030. Consistent with its
15 enabling statutes, the Commission “cares for Washington’s most treasured lands, waters, and
16 historic places”¹ and owns Fort Worden State Park in fee. Sternback Decl. ¶ 4.

17 On November 8, 2013, following unanimous approval in an open public meeting of a
18 quorum of the seven-member commission as required by law, the State leased to Fort Worden
19 Lifelong Learning Center Public Development Authority, a public corporation created by the
20 City of Port Townsend pursuant to RCW 35.21.730-.759 (hereinafter the “PDA”), a large
21 portion of Fort Worden State Park (hereinafter “demised premises”) under a master lease
22 (hereinafter “State Lease”). Sternback Decl. ¶ 5.

23 On June 20, 2024, the State entered into a contract with the PDA to provide
24 reimbursement for work performed by the PDA’s landscaping contractors at Fort Worden State
25

26 ¹ Agency Mission & Vision, available at: <https://parks.wa.gov/about/agency/mission-vision>.

1 Park. Sternback Decl. ¶ 17. Pursuant to this contract, the State disbursed \$17,724.88 in state
2 funds to the PDA for approved reimbursement intended for the contractors who completed
3 landscaping/groundskeeping services at the state park. *Id.* Due to the receivership, these funds
4 have yet to be disbursed for the intended purpose. *Id.*

5 **B. Appointment of Receiver**

6 On or about August 1, 2024, the PDA’s Board of Directors voted to dissolve the PDA
7 due to its imminent insolvency, and formally requested dissolution from Port Townsend’s City
8 Council on August 5, 2024. Sternback Decl. ¶ 6. This request was originally set for a hearing
9 before the City Council on October 7, 2024. *Id.*

10 On October 4, 2024, this Court, pursuant authorities provided under Chapter 7.60 RCW
11 [hereinafter “Receivership Act”], entered an order [hereinafter “Appointment Order”]
12 appointing Elliot Bay Asset Solutions, a limited liability company, as general receiver to
13 administer the business and property and/or wind up affairs of the PDA.

14 On November 6, 2024, immediately upon receiving from Receiver a copy of the notice
15 of receivership and Appointment Order, the State filed its notice of appearance and deposited
16 the same in the mail for service upon the receiver pursuant to RCW 7.60.190(2).
17 Woo Decl. ¶ 4.

18 Throughout the duration of Receiver’s appointment and up to the date of this Motion,
19 representatives of the State had regularly been in contact with representatives from Receiver.
20 Sternback Decl. ¶ 7-8. The main persons of contact for the State have been Mike Sternback,
21 Deputy Director for the agency, Heather Saunders, Director of Park Development, and Anna
22 Gill, Regional Superintendent, among others [collectively “Parks staff”]. Sternback Decl. ¶ 3.
23 Despite ongoing, regular meetings, at no point did any representative of Receiver ever reach
24 out to confer with Parks staff about extending the deadline set forth in RCW 7.60.130(7), or
25 expressed any desire to extend it, despite the topic of the deadline having come up in a meeting
26 on November 21, 2024. Sternback Decl. ¶ 11-13.

1 **C. Legal Proceedings by Receiver and *Ex Parte* Order**

2 As of the date of this Motion, the Court has not granted approval for Receiver to
3 employ attorneys as required under RCW 7.60.180(1). Nevertheless, on November 25, 2024,
4 the week of Thanksgiving and Native American Heritage Day, attorney David Neu reached out
5 by phone and left a voice message identifying himself and his firm, Miller Nash, as
6 representing Receiver in this matter and stating that Receiver intends to file a motion relating
7 to a stipulation on use of cash collateral. Woo Decl. ¶ 5-6. Andy Woo, representing the State,
8 returned Mr. Neu's call the same day and inquired as to the timeline Receiver had in mind for
9 such motion, Mr. Neu provided no timeline, stating merely that the motion would be noted in
10 accordance with the rules, and made no mention of any other motion or intended filings. Woo
11 Decl. ¶ 7.

12 Based on papers on file with the Court for this receivership proceeding, but
13 unbeknownst to the State at the time, a hearing set for December 6, 2024, was actually noted
14 on the very same day that Mr. Woo spoke to Mr. Neu. Note for Mot. Docket dated Nov. 25,
15 2024. On November 27, 2024, while counsel for the State was out of office, Woo Decl. ¶ 8,
16 Mr. Neu called and left another voice message at 12:06 pm, stating he would like to talk to Mr.
17 Woo about the State Lease, and specifically the State's intent as to the State Lease. He also
18 informed Mr. Woo that he does not believe RCW 7.60.130(7) applies to leases, and that he
19 wished to know if the State is in agreement. Woo Decl. ¶ 9-10. Mr. Neu's voice message did not
20 mention that various motions had already been noted by his firm for hearing the following
21 week, that Receiver was interested in an extension to the deadline under RCW 7.60.130(7), or
22 that Receiver intended to seek an order against the State on that issue via *ex parte* that very
23 afternoon. Woo Decl. ¶ 11.

24 On Monday, December 2, 2024, upon returning from the long holiday weekend, State
25 was served by mail with a copy of an Application to Employ Miller Nash LLP as Attorneys for
26 the Receiver, with accompanying papers, including a certificate of service dated November

1 25th, rather than the motion to approve stipulation on use of cash collateral to which Mr. Neu
2 referred. Woo Decl. ¶ 12. This Application was noted for hearing on the Friday of that week,
3 December 6, 2024, far short of the timeline required by law and court rules. The State also
4 became aware of the voice message from Mr. Neu, and attempted to contact Mr. Neu at 10:43
5 am to discuss the above issues as he requested. Woo Decl. ¶ 9-10, 13. Counsel for the State
6 was unable to reach Mr. Neu and left a message instead. Woo Decl. ¶ 14 Mr. Neu and his firm
7 never returned that call. Woo Decl. ¶ 15.

8 Later that day at 3:54 pm, State received an email from a third party forwarding a copy
9 of the *Ex Parte* Order, expressing concerns and inquiring whether State Parks was aware of the
10 order having been entered. Sternback Decl. ¶ 14. The State, through legal counsel, attempted to
11 reach Mr. Neu again at 4:23 pm. Woo Decl. ¶ 17. As with the call placed earlier that morning,
12 Mr. Neu and his firm never returned that call. Woo Decl. ¶ 18.

13 On Tuesday, December 3, 2024, State was served by mail with yet another batch of
14 documents: a second copy of the Application to Employ Miller Nash LLP as Attorneys for the
15 Receiver, but with a different certificate of service (dated November 26th rather than 25th),
16 along with two new filings. Woo Decl. ¶ 20. The first of the two was an Application to Employ
17 Sandman Savrann PLLC as Special Hospitality Law Counsel to the Receiver, with
18 accompanying papers; and the second was Receiver's Motion to Approve Stipulation on Use
19 of Cash Collateral, with accompanying papers. *Id.*

20 All three filings were served and noted for hearing short of the general requirements
21 under CR 5(b)(2) and LCR 5.5(a). *See* Woo Decl. ¶ 21. Having been unable to reach Mr. Neu
22 by phone, State followed up via email on December 3, 2024, to alert Mr. Neu and John Knapp,
23 also of Miller Nash, to the untimely service. Woo Decl. ¶ 22. Mr. Neu re-noted these hearings
24 for December 20, 2024, in response to the State's concerns.
25 Woo Decl. ¶ 23 & Exs. A-B. The State sought to confer again by email later that week on
26 December 6, 2024, as soon as it became apparent that the filings should comply with the notice

1 requirement under RCW 7.60.190(6)(c) and/or (d), not just the general motion timelines under
2 court rules. Woo Decl. ¶ 24. Rather than responding to emails from the State’s legal counsel,
3 Receiver instead filed a motion to shorten time. Woo Decl. ¶ 25-26.

4 As of the date of this Motion, neither Receiver nor any attorney representing Elliot Bay
5 Asset Solutions has provided State with a copy of its *ex parte* filings or a copy of the *Ex Parte*
6 Order. Sternback Decl. ¶ 16, Woo Decl. ¶ 19.

7 The sixty-day deadline provided by RCW 7.60.130(7) expired on December 3, 2024.²

8 State now submits this Motion for the Court to vacate the *Ex Parte* Order.

9 III. ARGUMENT

10 Washington’s Receivership Act governs receivership proceedings in Washington State.
11 RCW 7.60.005-.300. The Receivership Act was enacted in 2004 as a “result of a Washington
12 State Bar Association workgroup meeting over a ten-year period” to help the State Legislature
13 update the old receivership chapter that was enacted by the Territorial Legislature over 170
14 years ago. S.B. Rep. on S.B. 6189, 58th Leg., Reg. Sess. (Wash. Feb. 12, 2004). Web links to
15 the legislative material cited herein are provided in Appendix 1. Where web links are not
16 available, a certified copy is provided in Appendix 2. In that original bill as introduced, the
17 section that later became RCW 7.60.130 then contained only subsections (1) through (6),
18 codifying the power of a general receiver to assume or reject executory contracts or unexpired
19 leases. S.B. 6189, 58th Leg., Reg. Sess. § 15 (Wash. 2004). The two additional subsections
20 now found in RCW 7.60.130(7) and (8) were added through the striking amendment
21 introduced by former Representative Patricia Lantz in the House Judiciary Committee. Striking
22 Amendment, S.S.B. 6189, 6189-S AMH JUDI H5126.2, 58th Leg., Reg. Sess. § 15(7)-(8)
23 (Wash. 2004). One of the effects of the striking amendment is summarized as: “Provide that if

24 _____
25 ² RCW 7.60.130(7) establishes a 60-day time constraint on Receiver’s assumption of state
26 contracts. Receiver was appointed on October 4, 2024. Accordingly, the statutory time limit ran on
December 3, 2024.

1 a state is a party to a contract, the receiver and the state agency must agree to the receiver
2 assuming the contract or else it is deemed rejected by the receiver.” S.B. Rep. on S.B. 6189 at
3 3. Similarly, the subsequent Substitute Senate Bill Report summarized: “The amended bill
4 added provisions that . . . provide that if a state is a party to a contract, the receiver and the
5 state agency must agree to the receiver assuming the contract, or else it is deemed rejected by
6 the receiver.” S.B. Rep. on S.B. 6189 at 2. Notably, eight of the twelve amendments
7 highlighted in the Substitute Senate Bill Report³ relate to additional safeguards for state
8 agencies.

9 Following its enactment,⁴ RCW 7.60.130(7) was revised as part of the 2011
10 amendment to the Receivership Act, resulting in its current form, which provides: “Any
11 contract with the state shall be deemed rejected if not assumed within sixty days of
12 appointment of a general receiver unless the receiver and state agency agree to its assumption
13 or as otherwise ordered by the court for good cause shown.”

14 _____
15 ³ Full language from the Substitute Senate Bill Report, describing changes incorporated by the
16 House and subsequently the Senate into the substitute bill including multiple safeguards for state
17 agencies: “The amended bill added provisions that: (a) require that claims made against the receiver’s
18 bond must be made within one year from the date the receiver is discharged; (b) give a state agency’s
19 claim of the receiver’s bond priority; (c) clarify that the court controlling the receivership cannot
20 transfer other pending actions to the court’s jurisdiction if, in the other action, a state agency is a party
21 and there is a statute that vests jurisdiction or venue elsewhere; (d) explicitly add regulatory and taxing
22 state agencies in the various provisions to include them in the entities that must be notified; (e) clarify
23 that the receivership does not stay government actions or appeals of tax liabilities; (f) *provide that if a
24 state is a party to a contract, the receiver and the state agency must agree to the receiver assuming the
25 contract, or else it is deemed rejected by the receiver*; (g) provide that a receiver may not abandon
26 property that is a hazard or potential hazard to the public; (h) explicitly provide that a receiver is
personally liable to state agencies for failure to remit sales tax collected after appointment; (i) allow
state agencies to bring claims on the general receiver within 180 days (as opposed to 30 days) from the
date notice is given of the receivership; (j) require any objection to a claim to be mailed to the creditor
at least 30 days (rather than 20) prior to the hearing to approve the general receiver’s final report; (k)
provide that rejected state claims are not subject to mediation unless agreed upon by the state; and (l)
explicitly add support debts to the list of allowed claims in a general receivership, unless the support
debt is assigned to another entity.” (Emphasis added).

⁴ When adopted in 2004, RCW 7.60.130(7) stated: “Any contract with the state shall be deemed
rejected if not assumed within sixty days of appointment of a general receiver unless the receiver and
state agency agree to its assumption.”

1 Although not mentioned in the bill reports, the striking amendment also added another
2 important safeguard for state agencies by adding the provision now found in RCW 7.60.190(3),
3 requiring that “a[ny] request for relief against a state agency shall be mailed to or otherwise
4 served on the agency and on the office of the attorney general.” Striking Amendment, S.S.B.
5 6189, 6189-S AMH JUDI H5126.2 § 21(3).

6 The Legislature was deliberate and intentional in preserving the public interest and
7 ensuring that public property and resources would not be unnecessarily harmed or tied up in a
8 receivership proceeding. When a receiver disregards the requirement to serve the State and
9 moves the Court for an *ex parte* order to adjudicate provisions like RCW 7.60.130(7) without
10 the State’s knowledge or presence, it not only materially affects State’s substantial rights but
11 frustrates the legislative intent and public policy behind these provisions.

12 **A. The Court Should Vacate the *Ex Parte* Order Pursuant to CR 60(b)(1) for**
13 **Irregularities in Obtaining the Order.**

14 Washington State Superior Court Rule 60(b) provides the bases for the Court to vacate
15 an order on the party’s motion and upon such terms as are just. Under CR 60(b)(1) the Court
16 may relieve a party from an order for “irregularities” in obtaining the order. *Matter of*
17 *Guardianship of Adamec*, 100 Wn.2d 166, 174, 667 P.2d 1085 (1983). “Irregularities” which
18 can be considered on a motion to vacate an order “are those relating to want of adherence to
19 some prescribed rule or mode of proceeding.” *Id.* (citing *State v. Price*, 59 Wn.2d 788, 791,
20 370 P.2d 979 (1962)).

21 In a receivership proceeding, the “prescribed rule or mode of proceeding” to which
22 Receiver must adhere includes not only applicable court rules but also the requirements of the
23 Receivership Act. RCW 7.60.190, in particular, deals with the participation of creditors and
24 parties-in-interest in receivership proceedings and contains various provisions relating to their
25 rights to notice.
26

1 RCW 7.60.190(2) provides in pertinent parts:

2 Any person having a claim against or interest in any estate
3 property or in the receivership proceeding may appear in the
4 receivership The Receiver shall maintain a master mailing list
5 of . . . all persons serving and filing notices of appearance in the
6 receivership A creditor or other party in interest *has the right
to be heard with respect to all matters affecting the person,*
whether or not the person is joined as a party to the action.

7 (Emphasis added). RCW 7.60.190(3) additionally provides: “Any request for relief against a
8 state agency shall be mailed to or otherwise served on the agency and on the office of the
9 attorney general.” Subsection (8), the last subsection of RCW 7.60.190, in turn provides:

10 *Whenever notice is not specifically required to be given under this*
11 *chapter, the court may consider motions and grant or deny relief*
12 *without notice or hearing, if it appears that no person joined as a*
13 *party or who has appeared in the receivership would be prejudiced*
or harmed by the relief requested.

14 RCW 7.60.190(8) (emphasis added). Subsection (8), rather than providing blanket authority for
15 a receiver to seek *ex parte* orders at its convenience, instead applies only if “notice is not
16 specifically required” under Section .190 or elsewhere under the Receivership Act. Therefore,
17 the threshold question, before even applying the “prejudiced or harmed” test⁵ of Subsection
18 (8), is whether notice is specifically required by the Receivership Act.

19 Receiver’s *Ex Parte* Motion represented to the Court that its motion “can be heard *ex*
20 *parte* pursuant to RCW 7.60.190(8),” Receiver’s Mot. To Extend Deadline at 3, but failed to
21 inform the Court that this provision applies only if notice is not specifically required by the
22 Receivership Act. Receiver conveniently skipped past that threshold question and omitted the
23 express requirements found in the preceding subsections.

24 _____
25 ⁵ Because notice clearly was required, RCW 7.60.190(8) does not apply and the Court need not
26 address the question of whether State was “prejudiced and harmed.” To the extent Court deems this
inquiry relevant, this Motion addresses prejudice and harm below in Section B.

1 Subsection (2) clearly states that a creditor or other party in interest has the right to be
2 heard “with respect to all matters” affecting that person. Receiver has known from the very
3 start, given State’s regular contact with representatives of Receiver, that the State is a party in
4 interest. Sternback Decl. ¶ 7-8. Even if that were not the case, State has filed and served its
5 notice of appearance via counsel, Woo Decl.¶ 4, identifying itself as both creditor and party in
6 interest, as well as owner and landlord of the demised premises. Notice of Appearance for
7 Creditor/Party-in-Interest Washington State Parks and Recreation Commission at 1. Receiver’s
8 requested relief, which the Court granted, was to “extend any deadline that may exist for
9 [Receiver] to assume or reject the Lease” with the State, which clearly is something that affects
10 the State.

11 Furthermore, Receiver clearly was aware of the existence of RCW 7.60.190(3). Woo
12 Decl. ¶ 27 & Ex. B at 10. Receiver conveniently ignored and omitted any mention of this
13 provision in persuading the Court to hear its motion without any notice to the State and grant
14 its desired relief: one that is expressly for the purpose of undermining the protection a state
15 agency should receive under RCW 7.60.130(7). Allowing Receiver to do so contravenes both
16 the clear statutory language and underlying policy of RCW 7.60.190(3) for ensuring that state
17 agencies are properly served regardless of whether it has appeared in the proceeding. Receiver
18 also should not be permitted to, on the one hand, cite this provision when it is convenient for
19 Receiver’s desired outcome, such as upon being challenged on the issue of improper service,
20 Woo Decl. ¶ 27 Ex. B at 10, but ignore it when it is inconvenient for Receiver’s desired
21 outcome, such as when using the *ex parte* process to end run around statutory deadlines and
22 procedures in order to prevent returning possession of publicly owned property to the State.

23 Where CR 60 applies, trial courts are given “a broad measure of equitable power to
24 grant parties relief from judgment or orders,” *Vaughn v. Chung*, 119 Wn.2d 273, 280, 830 P.2d
25 668 (1992), and the Court should exercise that authority “liberally, as well as equitably, to the
26

1 end that substantial rights be preserved and justice between the parties be fairly and judiciously
2 done,” *id. at* 278-79 (internal quotations and citations omitted).

3 At issue now before the Court in this Motion are the State’s substantial rights as a state
4 agency, public landowner, and landlord under the Receivership Act. In seeking and obtaining
5 the relief it sought against the State *ex parte*, Receiver failed to comply with or disclose to the
6 Court express legal and procedural requirements for obtaining such relief. Thus, CR 60(b) is
7 the correct mechanism by which the Court should now set the *Ex Parte* Order aside for
8 preserving substantial rights and justice.

9 **B. The Court Should Vacate the *Ex Parte* Order and Grant Reconsideration**
10 **Pursuant to CR 59(a)(7)**

11 Under Washington State Superior Court Rule 59(a), “on the motion of the party
12 aggrieved . . . any other decision or order may be vacated and reconsideration granted” for any
13 of the causes set forth in the rule that materially affects the substantial rights of the moving
14 party. Under CR 59(a)(7), the Court “may vacate its decision, on motion of the aggrieved
15 party, on the grounds that the decision was ‘contrary to law.’” *Singleton v. Naegeli Reporting*
16 *Corp.*, 142 Wn. App. 598, 601, 175 P.3d 594 (2008). Additionally, CR 59(a)(7) provides basis
17 for vacating and granting reconsideration where “there is no evidence or reasonable inference
18 from the evidence to justify . . . the decision.”

19 Receiver sought and obtained the *Ex Parte* Motion by asserting three main premises:
20 (1) that the Receivership Act provided Receiver with a basis to bring a motion before the Court
21 without notice or hearing, Mot. to Extend Deadline at 3; (2) that RCW 7.60.130(7) apply only
22 to “contract[s]” and not “lease[s],” Heath Decl. ¶ 4, Mot. to Extend Deadline at 3; and (3) that
23 none of the parties, including State, would be prejudiced or harmed, Heath Decl. ¶ 4.

24 First, as already discussed above, the Receivership Act does not allow for Receiver’s
25 motion to be heard *ex parte*. To the extent the *Ex Parte* Order premised upon the Receivership
26

1 Act requiring not notice, it is contrary to law. The remaining two premises are likewise
2 contrary to law or unsupported by the evidence, as detailed below.

3 **1. The *Ex Parte* Order is contrary to law to the extent it was granted on the basis**
4 **that RCW 7.60.130(7) does not apply to leases.**

5 Receiver, in its *Ex Parte* motion, proposed a self-serving (and in State's view,
6 *incorrect*) interpretation of RCW 7.60.130(7) that must be addressed by the State, given that
7 the provision was enacted for the protection of state agencies should they ever, as in this
8 instance, contract with a party that is subsequently placed under receivership.

9 Leases are contracts. This statement is well supported by the plain meaning of those
10 terms as well as by property and contract law since the origin of common law. Washington
11 State common law is no exception. *Seattle-First Nat'l Bank v. Westlake Park Assoc.*, 42 Wn.
12 App. 269, 272, 711 P.2d 361 (1985) ("Leases are contracts, as well as conveyances. It is
13 axiomatic that the rights and obligations of the parties to a *contract* are defined by the
14 provisions of that document.") (Emphasis added). Certainly, the Legislature may abrogate
15 common law by enacting law under which certain terms take a different statutory meaning than
16 ordinarily understood either in its plain meaning or common law definition. That has not
17 occurred here.

18 RCW 7.60.005 sets forth statutory definitions that apply throughout the Receivership
19 Act. Notably, RCW 7.60.005 does not provide specific statutory definitions for "lease,"
20 "unexpired lease," or "contract," and certainly nothing to suggest that for the purposes of the
21 Receivership Act, leases ceased being "contracts," or that the ordinary meaning of those terms
22 have been abrogated. Likewise, the Receivership Act variously mentions "real estate contract,"
23 RCW 7.60.260(1), "forward contract merchant," "commodity contract," "forward contract,"
24 and "securities contract," RCW 7.60.110(3)(g), without setting a statutory definition for any of
25 these terms. In contrast, the term of art "executory contract" is specifically defined, meaning "a
26

1 *contract* where the obligation of both the person over whose property the receiver is appointed
2 and the other party to the *contract* are so far unperformed that the failure of either party to the
3 *contract* to complete performance would constitute a material breach of the *contract*, thereby
4 excusing the other party’s performance of the *contract*.” In defining “executory contract,” the
5 Legislature used the term “contract” by itself five times. If, as Receiver suggests, the term
6 “contract” whenever used means only “executory contract” to the exclusion anything else, that
7 would render this definition entirely circular and incomprehensible.

8 In the absence of statutory language abrogating the plain meaning of the words, the
9 Court should, as suggested by Receiver, “look to the plain language of the statute.” Mot. to
10 Extend Deadline at 3 (citing *Birgen v. Dep’t of Lab. & Indus.*, 186 Wn. App. 851, 857, 347
11 P.3d 503 (2015). Receiver’s motion reminds us that “[c]ourts cannot modify the language of a
12 statute under the guise of statutory interpretation or construction,” Mot. to Extend Deadline at
13 3 (citing *Garcia v. Dep’t of Soc. & Health Servs.*, 10 Wn. App. 2d 885, 916, 451 P.3d 1107
14 (2019)), while disingenuously arguing that the “statute clearly differentiates between
15 ‘unexpired leases’ and ‘contracts,’” Mot. to Extend Deadline at 3, when, in actuality, the
16 statute differentiates between “unexpired leases” and “*executory contracts*.” See RCW
17 7.60.130. We “must not add words where the legislature has chosen not to include them,” *Rest.*
18 *Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 682, 80 P.3d 598 (2003), and the Court must
19 “construe statutes assuming that the legislature meant exactly what it said,” *Birgen*, 186 Wn.
20 App. at 858. Moreover, the purpose of the phrase “executory contract or unexpired lease”
21 serves not so much to distinguish the one from the other, but to distinguish both from all the
22 other contracts to which a general receiver’s authority to assume and reject has no relevance.
23 Both executory contract and unexpired lease share the same defining characteristic for
24 purposes of a receivership: they both represent agreements with outstanding rights and
25 obligations that have not been fully performed.

1 Reading “contract” in RCW 7.60.130(7) as referring to just “contract” as it is ordinarily
2 understood and not the Receivership Act-specific terminology of “executory contract” is
3 supported by the legislative history evidencing the legislative intent behind RCW 7.60.130(7).
4 None of the legislative material indicates any intent to distinguish “contract” from leases for
5 the purposes of Subsection (7) and (8). These two sections were meant, instead, to address
6 concerns raised by state agencies and to scale back the receiver’s otherwise fairly absolute
7 power in assuming and rejecting executory contracts and unexpired leases as set forth in
8 Subsections (1) through (6). In fact, the House Bill Report summarized RCW 7.60.130 and the
9 insertion of Subsection (7) thusly: “The power of a general receiver to assume or reject
10 executory contracts and unexpired leases is codified. *However*, if the state is party to the
11 contract, there must be agreement to assume the contract, or else it is deemed rejected.” H.R.
12 Rep. on SSB 6189, 58th Leg., Reg. Sess. (Wash. 2004) (emphasis added). Receiver, in asking
13 this Court to enter an *Ex Parte* Order that disregards the protection embodied in RCW
14 7.60.130(7) and .190, without notice or opportunity for the State to be heard, in fact engaged in
15 the type of unrestrained behavior that the Legislature sought to curtail when a state contract is
16 at issue.

17 **2. There is no evidence or reasonable inference from the evidence to support**
18 **Receiver’s claim that no party would be prejudiced or harmed**

19 Receiver asserted in its Ex Parte Motion that no party, including State, would be
20 prejudiced or harmed. This argument is unsupported and lacks merit for several reasons. First,
21 the Declaration of Stuart Heath in Support of Ex Parte Motion to Extend Deadline to Assume
22 or Reject the Lease contains numerous statements of belief, opinion, and legal arguments that
23 should not have been considered. Second, it establishes no factual basis that would support the
24 conclusion that extending the time set forth in RCW 7.60.130(7) will not prejudice or harm any
25 person joined as a party or who has appeared in the receivership. Heath Decl. ¶ 4.
26

1 Indeed, State is prejudiced or harmed by both the process by which Receiver obtained
2 the *Ex Parte* Order and its substance. State was certainly prejudiced by being deprived of the
3 opportunity to be heard and explain to this Court State’s understanding of the unique
4 protections the Receivership Act affords state agencies., Moreover, RCW 7.60.130(7) provides
5 sideboards so that state property is not held within the limbo of receivership for too long. The
6 statute requires that receivers must act quickly to assume the lease and thereby undertake the
7 obligations required for occupation of the premises, or otherwise reject it if those obligations
8 simply prove too onerous for the receivership. A receiver cannot defer a decision on assuming
9 a state contract past the 60-day statutory period without communicating with the state agency,
10 as Receiver seems intent to do, and during the interim proceed to use limited cash collateral,
11 potentially negatively impacting the state agency and larger public interest.

12 Even if Receiver genuinely believes, as it claims, that RCW 7.60.130 does not apply
13 because “the Lease is a lease and not a contract,” it should (or should have been) aware that the
14 State Lease is not the only agreement at issue where a state agency is a party. The June 20,
15 2024 contract between the State and the PDA certainly constitutes an executory contract, as the
16 PDA has received state funds but never fulfilled its obligations by disbursing them as agreed
17 upon. Sternback Decl. ¶ 17.

18 **C. Public Policy and Equitable Principles Weigh in Favor of the Relief Sought by the**
19 **State and Against Receiver’s Continued Occupation of Public Property Without the**
20 **State’s Permission**

21 As of the filing of this Motion, Receiver has had the statutory 60 days and 10 days
22 beyond that by operation of the *Ex Parte* Order to seek permission from the Court and State to
23 assume the State Lease. Notably, Receiver has never attempted to do so. Since its appointment,
24 Receiver has only ever sought to extract more favorable terms and concessions from the State
25 for a new lease. Sternback Decl. ¶ 9. With willing parties, this in and of itself may not be
26 objectionable. However, having failed to achieve its desired terms and concessions, Receiver

1 now seeks to make an end run around the safeguards and limitations of the Receivership Act.
2 Should the *Ex Parte* Order be allowed to stand, it creates a precedent within this proceeding
3 enabling Receiver to indefinitely extend its occupation of Fort Worden State Park by endlessly
4 seeking *ex parte* extensions one after another, without ever needing to notify the State or other
5 parties and show good cause as required. In doing so, Receiver can have its cake and eat it, too:
6 by holding the premises in limbo, neither assumed nor rejected, Receiver reaps the benefits of
7 a tenant without all of the corresponding obligations. Receiver's actions to date raise a
8 significant concern that its aim here is to occupy State property until such time the State finally
9 relents to its demands for a favorable lease and perhaps other benefits from the State. Allowing
10 judicial mechanisms like receiverships to be abused in such a way does not further the public
11 policy behind the Receivership Act.

12 Receiver also cannot argue that there existed some unforeseen emergency which
13 necessitated an *ex parte* motion or order. Any urgency or emergency is of Receiver's own
14 doing and results from its failure to manage statutorily established deadlines. In any event,
15 RCW 7.60.190 does not provide grounds for receivers to present *ex parte* motions simply for
16 "emergencies." As mentioned above, RCW 7.60.190 only allows for *ex parte* motion and
17 orders when "notice is not specifically required to be given under this chapter," and, even then,
18 only "if it appears that no person joined as a party or who has appeared in the receivership
19 would be prejudiced or harmed by the relief requested. Moreover, allowing Receiver to obtain
20 *ex parte* order simply because it is an "emergency" sets a dangerous precedent for this
21 receivership proceeding. It incentivizes Receiver to provide no notice or minimal notice to the
22 parties at its own convenience and discretion. It serves to both reward litigation by ambush,
23 which an *ex parte* motion on the eve of the Thanksgiving weekend certainly constitutes, and
24 lack of diligence by Receiver, who had no fewer than sixty days to either confer with relevant
25 parties regarding a stipulated extension or to properly note its request for extension for hearing.
26

1 Any argument Receiver might raise pertaining to wanting more time should not be
2 weighed in favor of keeping the *Ex Parte* Order in place. If maintaining possession of the state
3 park is so crucial to Receiver, it had more than sixty days to request the State's consent for
4 assumption of the State Lease. Receiver has chosen not to do so.

5 6 IV. CONCLUSION

7 Receiver's self-serving interpretations of the Receivership Act and apparent casual
8 disregard for procedural requirements established therein and by Court Rules do nothing but
9 erode the trust of creditors and other parties-in-interests in this Receiver's ability to conduct an
10 orderly and transparent proceeding, and should rightly alarm the Port Townsend community
11 and the citizens of the State of Washington at large, all of whom are directly or indirectly
12 impacted by this receivership.

13 The Washington State Parks and Recreation Commission, as the landlord and owner of
14 Fort Worden State Park (and agency charged with caring for Washington's most treasured
15 lands, waters, and historic places) rightly expects Receiver to conduct itself in a manner
16 befitting one appointed by the Court, as a disinterested party and "the court's own agent," S.B.
17 Rep. on S.B. 6189, 58th Leg., Reg. Sess. (Wash. Feb. 12, 2004), with the Court's
18 administration of the property under receivership, rather than simply for the benefit of either
19 itself or any particular creditor. Currently, Receiver is using the receivership process to
20 indefinitely occupy publicly owned property, without either assuming the lease to undertake
21 the obligations required for occupation of the premises or rejecting it so that the State can
22 properly resume management of this state park. To indefinitely occupy public property in order
23 to effect and compel the particular ends sought by or to exact value for either the receiver or a
24 particular creditor is not an appropriate use of the receivership proceeding. At the same time,
25 Receiver is seeking the Court's permission to use limited cash collateral.

1 Accordingly, The State respectfully requests that the Court grant this Motion to Vacate
2 the Order dated December 2, 2024, as improperly sought and obtained by Receiver and
3 contrary to law, as well as any other relief as is just and proper.

4 DATED this 12th day of December, 2024.

5 ROBERT W. FERGUSON
6 Attorney General

7
8 *s/ Andy Woo*
9 ANDY WOO, WSBA No. 46741
10 Assistant Attorney General

11
12 *Attorneys for Washington State Parks and*
13 *Recreation Commission*

APPENDIX 1

S.B. Rep. on S.B. 6189, 58th Leg., Reg. Sess. (Wash. Feb. 12, 2004)	https://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Bill%20Reports/Senate/6189-S.SBR.pdf?q=20241210145649
S.B. 6189, 58th Leg., Reg. Sess. (Wash. 2004)	https://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Bills/Senate%20Bills/6189.pdf?q=20241210145649
Striking Amendment, S.S.B. 6189, 6189-S AMH JUDI H5126.2, 58th Leg., Reg. Sess. (Wash. 2004)	https://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Amendments/House/6189-S%20AMH%20JUDI%20H5126.2.pdf
S.S.B. 6189, 58th Leg., Reg. Sess. (Wash. 2004)	https://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Bills/Senate%20Bills/6189-S.pdf#page=1
H.R. Rep. on SSB 6189, 58th Leg., Reg. Sess. (Wash. 2004)	https://lawfilesexternal.wa.gov/biennium/2003-04/Pdf/Bill%20Reports/House%20Historical/6189-S%20BRH%20JUDI.pdf?q=20241210145649

APPENDIX 2

State of Washington
Steve Hobbs, Secretary of State

CERTIFICATION

Washington State Archives, in accordance with the provisions of RCW 40.14.030, certifies the attached copy of the record listed below is a true and correct copy of the original document held at the State Archives and this certification shall have the same force and effect as though made by the officer originally in charge of the records.

RECORD INFORMATION:

Washington State Legislature – House Committee on Judiciary,
2004 SSB 6189,
(53 pages)

Certifier:



Jewell Lorenz Dunn, Archivist

Dec. 11, 2024

by Rep. Lantz

SSB 6189 - H COMM AMD
By Committee on Judiciary

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. Sec. 1. PURPOSE. The purpose of this act is to
4 create more comprehensive, streamlined, and cost-effective procedures
5 applicable to proceedings in which property of a person is administered
6 by the courts of this state for the benefit of creditors and other
7 persons having an interest therein.

8 NEW SECTION. Sec. 2. A new section is added to chapter 7.60 RCW
9 to read as follows:

10 DEFINITIONS. The definitions in this section apply throughout this
11 chapter unless the context requires otherwise.

12 (1) "Court" means the superior court of this state in which the
13 receivership is pending.

14 (2) "Entity" means a person other than a natural person.

15 (3) "Estate" means the entirety of the property with respect to
16 which a receiver's appointment applies, but does not include trust fund
17 taxes or property of an individual person exempt from execution under
18 the laws of this state. Estate property includes any nonexempt
19 interest in property that is partially exempt, including fee title to
20 property subject to a homestead exemption under chapter 6.13 RCW.

21 (4) "Executory contract" means a contract where the obligation of
22 both the person over whose property the receiver is appointed and the
23 other party to the contract are so far unperformed that the failure of
24 either party to the contract to complete performance would constitute
25 a material breach of the contract, thereby excusing the other party's
26 performance of the contract.

27 (5) "Insolvent" or "insolvency" means a financial condition of a
28 person such that the sum of the person's debts and other obligations is
29 greater than all of that person's property, at a fair valuation,



1 exclusive of (a) property transferred, concealed, or removed with
2 intent to hinder, delay, or defraud any creditors of the person, and
3 (b) any property exempt from execution under any statutes of this
4 state.

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

7 (7) "Notice and a hearing" or any similar phrase means notice and
8 opportunity for a hearing.

9 (8) "Person" means an individual, corporation, limited liability
10 company, general partnership, limited partnership, limited liability
11 partnership, association, governmental entity, or other entity, of any
12 kind or nature.

13 (9) "Property" includes all right, title, and interests, both legal
14 and equitable, and including any community property interest, in or
15 with respect to any property of a person with respect to which a
16 receiver is appointed, regardless of the manner by which the property
17 has been or is acquired. "Property" includes any proceeds, products,
18 offspring, rents, or profits of or from property in the estate.
19 "Property" does not include any power that a person may exercise solely
20 for the benefit of another person or trust fund taxes.

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

24 (11) "Receivership" means the case in which the receiver is
25 appointed. "General receivership" means a receivership in which a
26 general receiver is appointed. "Custodial receivership" means a
27 receivership in which a custodial receiver is appointed.

28 (12) "Security interest" means a lien created by an agreement.

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

33 (14) "Utility" means a person providing any service regulated by
34 the utilities and transportation commission.

35 NEW SECTION. Sec. 3. A new section is added to chapter 7.60 RCW
36 to read as follows:



1 TYPES OF RECEIVERS. A receiver must be either a general receiver
2 or a custodial receiver. A receiver must be a general receiver if the
3 receiver is appointed to take possession and control of all or
4 substantially all of a person's property with authority to liquidate
5 that property and, in the case of a business over which the receiver is
6 appointed, wind up affairs. A receiver must be a custodial receiver if
7 the receiver is appointed to take charge of limited or specific
8 property of a person or is not given authority to liquidate property.
9 The court shall specify in the order appointing a receiver whether the
10 receiver is appointed as a general receiver or as a custodial receiver.
11 When the sole basis for the appointment is the pendency of an action to
12 foreclose upon a lien against real property, or the giving of a notice
13 of a trustee's sale under RCW 61.24.040 or a notice of forfeiture under
14 RCW 61.30.040, the court shall appoint the receiver as a custodial
15 receiver. The court by order may convert either a general receivership
16 or a custodial receivership into the other.

17 NEW SECTION. Sec. 4. A new section is added to chapter 7.60 RCW
18 to read as follows:

19 APPOINTMENT OF RECEIVER. (1) A receiver may be appointed by the
20 superior court of this state in the following instances, but except in
21 any case in which a receiver's appointment is expressly required by
22 statute, or any case in which a receiver's appointment is sought by a
23 state agent whose authority to seek the appointment of a receiver is
24 expressly conferred by statute, or any case in which a receiver's
25 appointment with respect to real property is sought under (b)(ii) of
26 this subsection, a receiver shall be appointed only if the court
27 additionally determines that the appointment of a receiver is
28 reasonably necessary and that other available remedies either are not
29 available or are inadequate:

30 (a) On application of any party, when the party is determined to
31 have a probable right to or interest in property that is a subject of
32 the action and in the possession of an adverse party, or when the
33 property or its revenue-producing potential is in danger of being lost
34 or materially injured or impaired. A receiver may be appointed under
35 this subsection (1)(a) whether or not the application for appointment



1 of a receiver is combined with, or is ancillary to, an action seeking
2 a money judgment or other relief;

3 (b) Provisionally, during the pendency of any action to foreclose
4 upon any lien against or for forfeiture of any interest in real or
5 personal property, or after notice of a trustee's sale has been given
6 under RCW 61.24.040, or after notice of forfeiture has been given under
7 RCW 61.30.040, on application of any person, when the interest in the
8 property that is the subject of foreclosure or forfeiture of the person
9 seeking the receiver's appointment is determined to be probable and
10 either:

11 (i) The property or its revenue-producing potential is in danger of
12 being lost or materially injured or impaired; or

13 (ii) The appointment of a receiver with respect to the real or
14 personal property that is the subject of the action, the notice of
15 trustee's sale or notice of forfeiture is provided for by agreement or
16 is reasonably necessary to effectuate or enforce an assignment of rents
17 or other revenues from the property;

18 (c) After judgment, in order to give effect to the judgment;

19 (d) To dispose of property according to provisions of a judgment
20 dealing with its disposition;

21 (e) To the extent that property is not exempt from execution, at
22 the instance of a judgment creditor either before or after the issuance
23 of any execution, to preserve or protect it, or prevent its transfer;

24 (f) If and to the extent that property is subject to execution to
25 satisfy a judgment, to preserve the property during the pendency of an
26 appeal, or when an execution has been returned unsatisfied; or when an
27 order requiring a judgment debtor to appear for proceedings
28 supplemental to judgment has been issued and the judgment debtor fails
29 to submit to examination as ordered;

30 (g) Upon an attachment of real or personal property when the
31 property attached is of a perishable nature or is otherwise in danger
32 of waste, impairment, or destruction, or where the abandoned property's
33 owner has absconded with, secreted, or abandoned the property, and it
34 is necessary to collect, conserve, manage, control, or protect it, or
35 to dispose of it promptly, or when the court determines that the nature
36 of the property or the exigency of the case otherwise provides cause
37 for the appointment of a receiver;



1 (h) In an action by a transferor of real or personal property to
2 avoid or rescind the transfer on the basis of fraud, or in an action to
3 subject property or a fund to the payment of a debt;

4 (i) In an action against any person who is not an individual if the
5 object of the action is the dissolution of that person, or if that
6 person has been dissolved, or if that person is insolvent or is not
7 generally paying the person's debts as those debts become due unless
8 they are the subject of bona fide dispute, or if that person is in
9 imminent danger of insolvency;

10 (j) In accordance with RCW 7.08.030 (4) and (6), in cases in which
11 a general assignment for the benefit of creditors has been made;

12 (k) In quo warranto proceedings under chapter 7.56 RCW;

13 (l) As provided under RCW 11.64.022;

14 (m) In an action by the department of licensing under RCW
15 18.35.220(3) with respect to persons engaged in the business of
16 dispensing of hearing aids, RCW 18.85.350 in the case of persons
17 engaged in the business of a real estate broker, associate real estate
18 broker, or real estate salesperson, or RCW 19.105.470 with respect to
19 persons engaged in the business of camping resorts;

20 (n) In an action under RCW 18.44.470 or 18.44.490 in the case of
21 persons engaged in the business of escrow agents;

22 (o) Upon a petition with respect to a nursing home in accordance
23 with and subject to receivership provisions under chapter 18.51 RCW;

24 (p) Under RCW 19.40.071(3), in connection with a proceeding for
25 relief with respect to a transfer fraudulent as to a creditor or
26 creditors;

27 (q) Under RCW 19.100.210(1), in an action by the attorney general
28 or director of financial institutions to restrain any actual or
29 threatened violation of the franchise investment protection act;

30 (r) In an action by the attorney general or by a prosecuting
31 attorney under RCW 19.110.160 with respect to a seller of business
32 opportunities;

33 (s) In an action by the director of financial institutions under
34 RCW 21.20.390 in cases involving actual or threatened violations of the
35 securities act of Washington or under RCW 21.30.120 in cases involving
36 actual or threatened violations of chapter 21.30 RCW with respect to
37 certain businesses and transactions involving commodities;



1 (t) In an action for dissolution of a business corporation under
2 RCW 23B.14.310 or 23B.14.320, for dissolution of a nonprofit
3 corporation under RCW 24.03.270, for dissolution of a mutual
4 corporation under RCW 24.06.305, or in any other action for the
5 dissolution or winding up of any other entity provided for by Title 23,
6 23B, 24, or 25 RCW;

7 (u) In any action in which the dissolution of any public or private
8 entity is sought, in any action involving any dispute with respect to
9 the ownership or governance of such an entity, or upon the application
10 of a person having an interest in such an entity when the appointment
11 is reasonably necessary to protect the property of the entity or its
12 business or other interests;

13 (v) Under RCW 25.05.215, in aid of a charging order with respect to
14 a partner's interest in a partnership;

15 (w) Under and subject to RCW 30.44.100, 30.44.270, and 30.56.030,
16 in the case of a bank or trust company or, under and subject to RCW
17 32.24.070 through 32.24.090, in the case of a mutual savings bank;

18 (x) Under and subject to RCW 31.12.637 and 31.12.671 through
19 31.12.724, in the case of credit unions;

20 (y) Upon the application of the director of financial institutions
21 under RCW 31.35.090 in actions to enforce chapter 31.35 RCW applicable
22 to agricultural lenders, under RCW 31.40.120 in actions to enforce
23 chapter 31.40 RCW applicable to entities engaged in federally
24 guaranteed small business loans, under RCW 31.45.160 in actions to
25 enforce chapter 31.45 RCW applicable to persons licensed as check
26 cashers or check sellers, or under RCW 19.230.230 in actions to enforce
27 chapter 19.230 RCW applicable to persons licensed under the uniform
28 money services act;

29 (z) Under RCW 35.82.090 or 35.82.180, with respect to a housing
30 project;

31 (aa) Under RCW 39.84.160 or 43.180.360, in proceedings to enforce
32 rights under any revenue bonds issued for the purpose of financing
33 industrial development facilities or bonds of the Washington state
34 housing finance commission, or any financing document securing any such
35 bonds;

36 (bb) Under and subject to RCW 43.70.195, in an action by the



1 secretary of health or by a local health officer with respect to a
2 public water system;

3 (cc) As contemplated by RCW 61.24.030, with respect to real
4 property that is the subject of nonjudicial foreclosure proceedings
5 under chapter 61.24 RCW;

6 (dd) As contemplated by RCW 61.30.030(3), with respect to real
7 property that is the subject of judicial or nonjudicial forfeiture
8 proceedings under chapter 61.30 RCW;

9 (ee) Under RCW 64.32.200(2), in an action to foreclose upon a lien
10 for common expenses against a dwelling unit subject to the horizontal
11 property regimes act, chapter 64.32 RCW;

12 (ff) Under RCW 64.34.364(10), in an action by a unit owners'
13 association to foreclose a lien for nonpayment of delinquent
14 assessments against condominium units;

15 (gg) Upon application of the attorney general under RCW
16 64.36.220(3), in aid of any writ or order restraining or enjoining
17 violations of chapter 64.36 RCW applicable to timeshares;

18 (hh) Under RCW 70.95A.050(3), in aid of the enforcement of payment
19 or performance of municipal bonds issued with respect to facilities
20 used to abate, control, or prevent pollution;

21 (ii) Upon the application of the department of social and health
22 services under RCW 74.42.580, in cases involving nursing homes;

23 (jj) Upon the application of the utilities and transportation
24 commission under RCW 80.28.040, with respect to a water company that
25 has failed to comply with an order of such commission within the time
26 deadline specified therein;

27 (kk) Under RCW 87.56.065, in connection with the dissolution of an
28 irrigation district;

29 (ll) Upon application of the attorney general or the department of
30 licensing, in any proceeding that either of them are authorized by
31 statute to bring to enforce Title 18 or 19 RCW; the securities act of
32 Washington, chapter 21.20 RCW; the Washington commodities act, chapter
33 21.30 RCW; the land development act, chapter 58.19 RCW; or under
34 chapter 64.36 RCW relating to the regulation of timeshares;

35 (mm) Upon application of the director of financial institutions in
36 any proceeding that the director of financial institutions is
37 authorized to bring to enforce chapters 31.35, 31.40, and 31.45 RCW; or



1 (nn) In such other cases as may be provided for by law, or when, in
2 the discretion of the court, it may be necessary to secure ample
3 justice to the parties.

4 (2) The superior courts of this state shall appoint as receiver of
5 property located in this state a person who has been appointed by a
6 federal or state court located elsewhere as receiver with respect to
7 the property specifically or with respect to the owner's property
8 generally, upon the application of the person or of any party to that
9 foreign proceeding, and following the appointment shall give effect to
10 orders, judgments, and decrees of the foreign court affecting the
11 property in this state held by the receiver, unless the court
12 determines that to do so would be manifestly unjust or inequitable.
13 The venue of such a proceeding may be any county in which the person
14 resides or maintains any office, or any county in which any property
15 over which the receiver is to be appointed is located at the time the
16 proceeding is commenced.

17 (3) At least seven days' notice of any application for the
18 appointment of a receiver shall be given to the owner of property to be
19 subject thereto and to all other parties in the action, and to other
20 parties in interest as the court may require. If any execution by a
21 judgment creditor under Title 6 RCW or any application by a judgment
22 creditor for the appointment of a receiver, with respect to property
23 over which the receiver's appointment is sought, is pending in any
24 other action at the time the application is made, then notice of the
25 application for the receiver's appointment also shall be given to the
26 judgment creditor in the other action. The court may shorten or expand
27 the period for notice of an application for the appointment of a
28 receiver upon good cause shown.

29 (4) The order appointing a receiver in all cases shall reasonably
30 describe the property over which the receiver is to take charge, by
31 category, individual items, or both if the receiver is to take charge
32 of less than all of the owner's property. If the order appointing a
33 receiver does not expressly limit the receiver's authority to
34 designated property or categories of property of the owner, the
35 receiver is a general receiver with the authority to take charge over
36 all of the owner's property, wherever located.



1 (5) The court may condition the appointment of a receiver upon the
2 giving of security by the person seeking the receiver's appointment, in
3 such amount as the court may specify, for the payment of costs and
4 damages incurred or suffered by any person should it later be
5 determined that the appointment of the receiver was wrongfully
6 obtained.

7 NEW SECTION. Sec. 5. A new section is added to chapter 7.60 RCW
8 to read as follows:

9 ELIGIBILITY TO SERVE AS RECEIVER. Except as provided in this
10 chapter or otherwise by statute, any person, whether or not a resident
11 of this state, may serve as a receiver, with the exception that a
12 person may not be appointed as a receiver, and shall be replaced as
13 receiver if already appointed, if it should appear to the court that
14 the person:

15 (1) Has been convicted of a felony or other crime involving moral
16 turpitude or is controlled by a person who has been convicted of a
17 felony or other crime involving moral turpitude;

18 (2) Is a party to the action, or is a parent, grandparent, child,
19 grandchild, sibling, partner, director, officer, agent, attorney,
20 employee, secured or unsecured creditor or lienor of, or holder of any
21 equity interest in, or controls or is controlled by, the person whose
22 property is to be held by the receiver, or who is the agent or attorney
23 of any disqualified person;

24 (3) Has an interest materially adverse to the interest of persons
25 to be affected by the receivership generally; or

26 (4) Is the sheriff of any county.

27 NEW SECTION. Sec. 6. A new section is added to chapter 7.60 RCW
28 to read as follows:

29 RECEIVER'S BOND. Except as otherwise provided for by statute or
30 court rule, before entering upon duties of receiver, a receiver shall
31 execute a bond with one or more sureties approved by the court, in the
32 amount the court specifies, conditioned that the receiver will
33 faithfully discharge the duties of receiver in accordance with orders
34 of the court and state law. Unless otherwise ordered by the court, the
35 receiver's bond runs in favor of all persons having an interest in the



1 receivership proceeding or property held by the receiver and in favor
2 of state agencies. The receiver's bond must provide substantially as
3 follows:

4 [Case Caption]

5 RECEIVER'S BOND

6 TO WHOM IT MAY CONCERN:

7 KNOW ALL BY THESE PRESENTS, that, as
8 Principal, and, as Surety, are held and firmly
9 bound in the amount of Dollars
10 (\$) for the faithful performance by Principal
11 of the Principal's duties as receiver with respect to property
12 of in accordance with order(s) of such court
13 previously or hereafter entered in the above-captioned
14 proceeding and state law. If the Principal faithfully
15 discharges the duties of receiver in accordance with such
16 orders, this obligation shall be void, but otherwise it will
17 remain in full force and effect.

18 Dated this . . . day of,

19

20 [Signature of Receiver]

21

22 [Signature of Surety]

23 The court, in lieu of a bond, may approve the posting of alternative
24 security, such as a letter of credit or a deposit of funds with the
25 clerk of the court, to be held by the clerk to secure the receiver's
26 faithful performance of the receiver's duties in accordance with orders
27 of the court and state law until the court authorizes the release or
28 return of the deposited sums. No part of the property over which the
29 receiver is appointed may be used in making the deposit; however, any
30 interest that may accrue on a deposit ordered by the court shall be
31 remitted to the receiver upon the receiver's discharge. A claim
32 against the bond shall be made within one year from the date the
33 receiver is discharged. Claims by state agencies against the bond
34 shall have priority.



1 NEW SECTION. **Sec. 7.** A new section is added to chapter 7.60 RCW
2 to read as follows:

3 **POWERS OF THE COURT.** Except as otherwise provided for by this
4 chapter, the court in all cases has exclusive authority over the
5 receiver, and the exclusive possession and right of control with
6 respect to all real property and all tangible and intangible personal
7 property with respect to which the receiver is appointed, wherever
8 located, and the exclusive jurisdiction to determine all controversies
9 relating to the collection, preservation, application, and distribution
10 of all the property, and all claims against the receiver arising out of
11 the exercise of the receiver's powers or the performance of the
12 receiver's duties. However, the court does not have exclusive
13 jurisdiction over actions in which a state agency is a party and in
14 which a statute expressly vests jurisdiction or venue elsewhere.

15 NEW SECTION. **Sec. 8.** A new section is added to chapter 7.60 RCW
16 to read as follows:

17 **POWERS AND DUTIES OF RECEIVER GENERALLY.** (1) A receiver has the
18 following powers and authority in addition to those specifically
19 conferred by this chapter or otherwise by statute, court rule, or court
20 order:

21 (a) The power to incur or pay expenses incidental to the receiver's
22 preservation and use of the property with respect to which the
23 appointment applies, and otherwise in the performance of the receiver's
24 duties, including the power to pay obligations incurred prior to the
25 receiver's appointment if and to the extent that payment is determined
26 by the receiver to be prudent in order to preserve the value of
27 property in the receiver's possession and the funds used for this
28 purpose are not subject to any lien or right of setoff in favor of a
29 creditor who has not consented to the payment and whose interest is not
30 otherwise adequately protected;

31 (b) If the appointment applies to all or substantially all of the
32 property of an operating business or any revenue-producing property of
33 any person, to do all things which the owner of the business or
34 property might do in the ordinary course of the operation of the
35 business as a going concern or use of the property including, but not



1 limited to, the purchase and sale of goods or services in the ordinary
2 course of such business, and the incurring and payment of expenses of
3 the business or property in the ordinary course;

4 (c) The power to assert any rights, claims, or choses in action of
5 the person over whose property the receiver is appointed relating
6 thereto, if and to the extent that the claims are themselves property
7 within the scope of the appointment or relate to any property, to
8 maintain in the receiver's name or in the name of such a person any
9 action to enforce any right, claim, or chose in action, and to
10 intervene in actions in which the person over whose property the
11 receiver is appointed is a party for the purpose of exercising the
12 powers under this subsection (1) (c);

13 (d) The power to intervene in any action in which a claim is
14 asserted against the person over whose property the receiver is
15 appointed relating thereto, for the purpose of prosecuting or defending
16 the claim and requesting the transfer of venue of the action to the
17 court. However, the court shall not transfer actions in which both a
18 state agency is a party and as to which a statute expressly vests
19 jurisdiction or venue elsewhere. This power is exercisable with court
20 approval in the case of a liquidating receiver, and with or without
21 court approval in the case of a general receiver;

22 (e) The power to assert rights, claims, or choses in action of the
23 receiver arising out of transactions in which the receiver is a
24 participant;

25 (f) The power to pursue in the name of the receiver any claim under
26 chapter 19.40 RCW assertable by any creditor of the person over whose
27 property the receiver is appointed, if pursuit of the claim is
28 determined by the receiver to be appropriate;

29 (g) The power to seek and obtain advice or instruction from the
30 court with respect to any course of action with respect to which the
31 receiver is uncertain in the exercise of the receiver's powers or the
32 discharge of the receiver's duties;

33 (h) The power to obtain appraisals with respect to property in the
34 hands of the receiver;

35 (i) The power by subpoena to compel any person to submit to an
36 examination under oath, in the manner of a deposition in a civil case,



1 with respect to estate property or any other matter that may affect the
2 administration of the receivership; and

3 (j) Other powers as may be conferred upon the receiver by the court
4 or otherwise by statute or rule.

5 (2) A receiver has the following duties in addition to those
6 specifically conferred by this chapter or otherwise by statute or court
7 rule:

8 (a) The duty to notify all federal and state taxing and applicable
9 regulatory agencies of the receiver's appointment in accordance with
10 any applicable laws imposing this duty, including but not limited to 26
11 U.S.C. Sec. 6036 and RCW 51.14.073, 51.16.160, and 82.32.240, or any
12 successor statutes;

13 (b) The duty to comply with state law;

14 (c) If the receiver is appointed with respect to any real property,
15 the duty to file with the auditor of the county in which the real
16 property is located, or the registrar of lands in accordance with RCW
17 65.12.600 in the case of registered lands, a certified copy of the
18 order of appointment, together with a legal description of the real
19 property if one is not included in that order; and

20 (d) Other duties as the receiver may be directed to perform by the
21 court or as may be provided for by statute or rule.

22 (3) The various powers and duties of a receiver provided for by
23 this chapter may be expanded, modified, or limited by order of the
24 court for good cause shown.

25 NEW SECTION. Sec. 9. A new section is added to chapter 7.60 RCW
26 to read as follows:

27 TURNOVER OF PROPERTY. Upon demand by a receiver appointed under
28 this chapter, any person shall turn over any property over which the
29 receiver has been appointed that is within the possession or control of
30 that person unless otherwise ordered by the court for good cause shown.
31 A receiver by motion may seek to compel turnover of estate property
32 unless there exists a bona fide dispute with respect to the existence
33 or nature of the receiver's interest in the property, in which case
34 turnover shall be sought by means of an action under section 18 of this
35 act. In the absence of a bona fide dispute with respect to the



1 receiver's right to possession of estate property, the failure to
2 relinquish possession and control to the receiver shall be punishable
3 as a contempt of the court.

4 NEW SECTION. Sec. 10. A new section is added to chapter 7.60 RCW
5 to read as follows:

6 DUTIES OF PERSON OVER WHOSE PROPERTY THE RECEIVER IS APPOINTED.
7 The person over whose property the receiver is appointed shall:

8 (1) Assist and cooperate fully with the receiver in the
9 administration of the estate and the discharge of the receiver's
10 duties, and comply with all orders of the court;

11 (2) Supply to the receiver information necessary to enable the
12 receiver to complete any schedules that the receiver may be required to
13 file under section 11 of this act, and otherwise assist the receiver in
14 the completion of the schedules;

15 (3) Upon the receiver's appointment, deliver into the receiver's
16 possession all of the property of the estate in the person's
17 possession, custody, or control, including, but not limited to, all
18 accounts, books, papers, records, and other documents; and

19 (4) Following the receiver's appointment, submit to examination by
20 the receiver, or by any other person upon order of the court, under
21 oath, concerning the acts, conduct, property, liabilities, and
22 financial condition of that person or any matter relating to the
23 receiver's administration of the estate.

24 When the person over whose property the receiver is appointed is an
25 entity, each of the officers, directors, managers, members, partners,
26 or other individuals exercising or having the power to exercise control
27 over the affairs of the entity are subject to the requirements of this
28 section.

29 NEW SECTION. Sec. 11. A new section is added to chapter 7.60 RCW
30 to read as follows:

31 SCHEDULES OF PROPERTY AND LIABILITIES--INVENTORY OF PROPERTY--
32 APPRAISALS. (1) In the event of a general assignment of property for
33 the benefit of creditors under chapter 7.08 RCW, the assignment shall
34 have annexed as schedule a true list of all of the person's known
35 creditors, their mailing addresses, the amount and nature of their



1 claims, and whether their claims are disputed; and as schedule B a true
2 list of all property of the estate, including the estimated liquidation
3 value and location of the property and, if real property, a legal
4 description thereof, as of the date of the assignment.

5 (2) In all other cases, within twenty days after the date of
6 appointment of a general receiver, the receiver shall file as schedule
7 A a true list of all of the known creditors and applicable regulatory
8 and taxing agencies of the person over whose assets the receiver is
9 appointed, their mailing addresses, the amount and nature of their
10 claims, and whether their claims are disputed; and as schedule B a true
11 list of all property of the estate identifiable by the receiver,
12 including the estimated liquidation value and location of the property
13 and, if real property, a legal description thereof, as of the date of
14 appointment of the receiver.

15 (3) The schedules must be in substantially the following forms:

16 SCHEDULE A--CREDITOR LIST

17 1. List all creditors having security interests or liens, showing:

18 Name Address Amount Collateral Whether or not disputed

19 2. List all wages, salaries, commissions, or contributions to an employee benefit plan owed, showing:

20 Name Address Amount Whether or not disputed

21 3. List all consumer deposits owed, showing:

22 Name Address Amount Whether or not disputed

23 4. List all taxes owed, showing:

24 Name Address Amount Whether or not disputed

25 5. List all unsecured claims, showing:

26 Name Address Amount Whether or not disputed

27 6. List all owners or shareholders, showing:

28 Name Address Percentage of Ownership

29 7. List all applicable regulatory agencies, showing:

30 Name Address

31 SCHEDULE B--LIST OF PROPERTY

32 List each category of property and for each give approximate value obtainable for the asset on the date of
33 assignment/appointment of the receiver, and address where asset is located.

34 1. Nonexempt Property



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Description Liquidation Value on Date of
and Location Assignment/Appointment of Receiver

- 1. Legal Description and street address of real property, including leasehold interests:
- 2. Fixtures:
- 3. Cash and bank accounts:
- 4. Inventory:
- 5. Accounts receivable:
- 6. Equipment:
- 7. Prepaid expenses, including deposits, insurance, rents, and utilities:
- 8. Other, including loans to third parties, claims, and choses in action:

II. Exempt Property

Description Liquidation Value on Date of
and Location Assignment/Appointment of Receiver

I DECLARE under penalty of perjury under the laws of the state of Washington that the foregoing is true, correct, and complete to the best of my knowledge. DATED this ... day of, at, state of

[SIGNATURE]

(4) When schedules are filed by a person making a general assignment of property for the benefit of creditors under chapter 7.08 RCW, the schedules shall be duly verified upon oath by such person.

(5) The receiver shall obtain an appraisal or other independent valuation of the property in the receiver's possession if ordered by the court.



1 (6) The receiver shall file a complete inventory of the property in
2 the receiver's possession if ordered by the court.

3 NEW SECTION. Sec. 12. A new section is added to chapter 7.60 RCW
4 to read as follows:

5 RECEIVER'S REPORTS. A general receiver shall file with the court
6 a monthly report of the receiver's operations and financial affairs
7 unless otherwise ordered by the court. Except as otherwise ordered by
8 the court, each report of a general receiver shall be due by the last
9 day of the subsequent month and shall include the following:

10 (1) A balance sheet;

11 (2) A statement of income and expenses;

12 (3) A statement of cash receipts and disbursements;

13 (4) A statement of accrued accounts receivable of the receiver.
14 The statement shall disclose amounts considered to be uncollectable;

15 (5) A statement of accounts payable of the receiver, including
16 professional fees. The statement shall list the name of each creditor
17 and the amounts owing and remaining unpaid over thirty days; and

18 (6) A tax disclosure statement, which shall list postfiling taxes
19 due or tax deposits required, the name of the taxing agency, the amount
20 due, the date due, and an explanation for any failure to make payments
21 or deposits.

22 A custodial receiver shall file with the court all such reports the
23 court may require.

24 NEW SECTION. Sec. 13. A new section is added to chapter 7.60 RCW
25 to read as follows:

26 AUTOMATIC STAY OF CERTAIN PROCEEDINGS. (1) Except as otherwise
27 ordered by the court, the entry of an order appointing a general
28 receiver or a custodial receiver with respect to all of a person's
29 property shall operate as a stay, applicable to all persons, of:

30 (a) The commencement or continuation, including the issuance or
31 employment of process, of a judicial, administrative, or other action
32 or proceeding against the person over whose property the receiver is
33 appointed that was or could have been commenced before the entry of the
34 order of appointment, or to recover a claim against the person that
35 arose before the entry of the order of appointment;



1 (b) The enforcement, against the person over whose property the
2 receiver is appointed or any estate property, of a judgment obtained
3 before the order of appointment;

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

7 (d) Any act to create, perfect, or enforce any lien or claim
8 against estate property except by exercise of a right of setoff, to the
9 extent that the lien secures a claim against the person that arose
10 before the entry of the order of appointment; or

11 (e) Any act to collect, assess, or recover a claim against the
12 person that arose before the entry of the order of appointment.

13 (2) The stay shall automatically expire as to the acts specified in
14 subsection (1)(a), (b), and (e) of this section sixty days after the
15 entry of the order of appointment unless before the expiration of the
16 sixty-day period the receiver, for good cause shown, obtains an order
17 of the court extending the stay, after notice and a hearing. A person
18 whose action or proceeding is stayed by motion to the court may seek
19 relief from the stay for good cause shown. Any judgment obtained
20 against the person over whose property the receiver is appointed or
21 estate property following the entry of the order of appointment is not
22 a lien against estate property unless the receivership is terminated
23 prior to a conveyance of the property against which the judgment would
24 otherwise constitute a lien.

25 (3) The entry of an order appointing a receiver does not operate as
26 a stay of:

27 (a) The commencement or continuation of a criminal proceeding
28 against the person over whose property the receiver is appointed;

29 (b) The commencement or continuation of an action or proceeding to
30 establish paternity, or to establish or modify an order for alimony,
31 maintenance, or support, or to collect alimony, maintenance, or support
32 under any order of a court;

33 (c) Any act to perfect, or to maintain or continue the perfection
34 of, an interest in estate property if the interest perfected would be
35 effective against a creditor of the person over whose property the
36 receiver is appointed holding at the time of the entry of the order of
37 appointment either a perfected nonpurchase money security interest



1 under chapter 62A.9A RCW against the property involved, or a lien by
2 attachment, levy, or the like, whether or not such a creditor exists.
3 If perfection of an interest would require seizure of the property
4 involved or the commencement of an action, the perfection shall instead
5 be accomplished by filing, and by serving upon the receiver, or
6 receiver's counsel, if any, notice of the interest within the time
7 fixed by law for seizure or commencement;

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

10 (e) The enforcement of a judgment, other than a money judgment,
11 obtained in an action or proceeding by a governmental unit to enforce
12 its police or regulatory power, or with respect to any licensure of the
13 person over whose property the receiver is appointed;

14 (f) The exercise of a right of setoff, including but not limited to
15 (i) any right of a commodity broker, forward contract merchant,
16 stockbroker, financial institution, or securities clearing agency to
17 set off a claim for a margin payment or settlement payment arising out
18 of a commodity contract, forward contract, or securities contract
19 against cash, securities, or other property held or due from the
20 commodity broker, forward contract merchant, stockbroker, financial
21 institution, or securities clearing agency to margin, guarantee,
22 secure, or settle the commodity contract, forward contract, or
23 securities contract, and (ii) any right of a swap participant to set
24 off a claim for a payment due to the swap participant under or in
25 connection with a swap agreement against any payment due from the swap
26 participant under or in connection with the swap agreement or against
27 cash, securities, or other property of the debtor held by or due from
28 the swap participant to guarantee, secure, or settle the swap
29 agreement; or

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

32 NEW SECTION. **Sec. 14.** A new section is added to chapter 7.60 RCW
33 to read as follows:

34 **UTILITY SERVICE.** A utility providing service to estate property
35 may not alter, refuse, or discontinue service to the property without
36 first giving the receiver fifteen days' notice of any default or



1 intention to alter, refuse, or discontinue service to estate property.
2 This section does not prohibit the court, upon motion by the receiver,
3 to prohibit the alteration or cessation of utility service if the
4 receiver can furnish adequate assurance of payment, in the form of
5 deposit or other security, for service to be provided after entry of
6 the order appointing the receiver.

7 NEW SECTION. Sec. 15. A new section is added to chapter 7.60 RCW
8 to read as follows:

9 EXECUTORY CONTRACTS AND UNEXPIRED LEASES. (1) A general receiver
10 may assume or reject any executory contract or unexpired lease of the
11 person over whose property the receiver is appointed upon order of the
12 court following notice to the other party to the contract or lease upon
13 notice and a hearing. The court may condition assumption or rejection
14 of any executory contract or unexpired lease on the terms and
15 conditions the court believes are just and proper under the particular
16 circumstances of the case. A general receiver's performance of an
17 executory contract or unexpired lease prior to the court's
18 authorization of its assumption or rejection shall not constitute an
19 assumption of the contract or lease, or an agreement by the receiver to
20 assume it, nor otherwise preclude the receiver thereafter from seeking
21 the court's authority to reject it.

22 (2) Any obligation or liability incurred by a general receiver on
23 account of the receiver's assumption of an executory contract or
24 unexpired lease shall be treated as an expense of the receivership. A
25 general receiver's rejection of an executory contract or unexpired
26 lease shall be treated as a breach of the contract or lease occurring
27 immediately prior to the receiver's appointment; and the receiver's
28 right to possess or use property pursuant to any executory contract or
29 lease shall terminate upon rejection of the contract or lease. The
30 other party to an executory contract or unexpired lease that is
31 rejected by a general receiver may take such steps as may be necessary
32 under applicable law to terminate or cancel the contract or lease. The
33 claim of a party to an executory contract or unexpired lease resulting
34 from a general receiver's rejection of it shall be served upon the
35 receiver in the manner provided for by section 23 of this act within
36 thirty days following the rejection.



1 (3) A general receiver's power under this section to assume an
2 executory contract or unexpired lease shall not be affected by any
3 provision in the contract or lease that would effect or permit a
4 forfeiture, modification, or termination of it on account of either the
5 receiver's appointment, the financial condition of the person over
6 whose property the receiver is appointed, or an assignment for the
7 benefit of creditors by that person.

8 (4) A general receiver may not assume an executory contract or
9 unexpired lease of the person over whose property the receiver is
10 appointed without the consent of the other party to the contract or
11 lease if:

12 (a) Applicable law would excuse a party, other than the person over
13 whose property the receiver is appointed, from accepting performance
14 from or rendering performance to anyone other than the person even in
15 the absence of any provisions in the contract or lease expressly
16 restricting or prohibiting an assignment of the person's rights or the
17 performance of the person's duties;

18 (b) The contract or lease is a contract to make a loan or extend
19 credit or financial accommodations to or for the benefit of the person
20 over whose property the receiver is appointed, or to issue a security
21 of the person; or

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

24 (5) A receiver may not assign an executory contract or unexpired
25 lease without assuming it, absent the consent of the other parties to
26 the contract or lease.

27 (6) If the receiver rejects an executory contract or unexpired
28 lease for:

29 (a) The sale of real property under which the person over whose
30 property the receiver is appointed is the seller and the purchaser is
31 in possession of the real property;

32 (b) The sale of a real property timeshare interest under which the
33 person over whose property the receiver is appointed is the seller;

34 (c) The license of intellectual property rights under which the
35 person over whose property the receiver is appointed is the licensor;

36 or



1 (d). The lease of real property in which the person over whose
2 property the receiver is appointed is the lessor;
3 then the purchaser, licensee, or lessee may treat the rejection as a
4 termination of the contract, license agreement, or lease, or
5 alternatively, the purchaser, licensee, or lessee may remain in
6 possession in which case the purchaser, licensee, or lessee shall
7 continue to perform all obligations arising thereunder as and when they
8 may fall due, but may offset against any payments any damages occurring
9 on account of the rejection after it occurs. The purchaser of real
10 property in such a case is entitled to receive from the receiver any
11 deed or any other instrument of conveyance which the person over whose
12 property the receiver is appointed is obligated to deliver under the
13 executory contract when the purchaser becomes entitled to receive it,
14 and the deed or instrument has the same force and effect as if given by
15 the person. A purchaser, licensee, or lessee who elects to remain in
16 possession under the terms of this subsection has no rights against the
17 receiver on account of any damages arising from the receiver's
18 rejection except as expressly provided for by this subsection. A
19 purchaser of real property who elects to treat rejection of an
20 executory contract as a termination has a lien against the interest in
21 that real property of the person over whose property the receiver is
22 appointed for the recovery of any portion of the purchase price that
23 the purchaser has paid.

24 (7) Any contract with the state shall be deemed rejected if not
25 assumed within sixty days of appointment of a general receiver unless
26 the receiver and state agency agree to its assumption.

27 (8) Nothing in this chapter affects the enforceability of
28 antiassignment prohibitions provided under contract or applicable law.

29 NEW SECTION. Sec. 16. A new section is added to chapter 7.60 RCW
30 to read as follows:

31 RECEIVERSHIP FINANCING. (1) If a receiver is authorized to operate
32 the business of a person or manage a person's property, the receiver
33 may obtain unsecured credit and incur unsecured debt in the ordinary
34 course of business allowable under section 25(1)(a) of this act as an
35 administrative expense of the receiver without order of the court.



1 (2) The court, after notice and a hearing, may authorize a receiver
2 to obtain credit or incur indebtedness other than in the ordinary
3 course of business. The court may allow the receiver to mortgage,
4 pledge, hypothecate, or otherwise encumber estate property as security
5 for repayment of any indebtedness that the receiver may incur.

6 NEW SECTION. Sec. 17. A new section is added to chapter 7.60 RCW
7 to read as follows:

8 ABANDONMENT OF PROPERTY. The receiver, or any party in interest,
9 upon order of the court following notice and a hearing, and upon the
10 conditions or terms the court considers just and proper, may abandon
11 any estate property that is burdensome to the receiver or is of
12 inconsequential value or benefit. However, a receiver may not abandon
13 property that is a hazard or potential hazard to the public in
14 contravention of a state statute or rule that is reasonably designed to
15 protect the public health or safety from identified hazards, including
16 but not limited to chapters 70.105 and 70.105D RCW. Property that is
17 abandoned no longer constitutes estate property.

18 NEW SECTION. Sec. 18. A new section is added to chapter 7.60 RCW
19 to read as follows:

20 ACTIONS BY AND AGAINST THE RECEIVER OR AFFECTING PROPERTY HELD BY
21 RECEIVER. (1) The receiver has the right to sue and be sued in the
22 receiver's capacity as such, without leave of court, in all cases
23 necessary or proper for the conduct of the receivership. However,
24 action seeking to dispossess the receiver of any estate property or
25 otherwise to interfere with the receiver's management or control of any
26 estate property may not be maintained or continued unless permitted by
27 order of the court obtained upon notice and a hearing.

28 (2) Litigation by or against a receiver is adjunct to the
29 receivership case. The clerk of the court shall assign a cause number
30 that reflects the relationship of any litigation to the receivership
31 case. All pleadings in adjunct litigation shall include the cause
32 number of the receivership case as well as the adjunct litigation
33 number assigned by the clerk of the court. All adjunct litigation
34 shall be referred to the judge, if any, assigned to the receivership
35



1 (3) The receiver may be joined or substituted as a party in any
2 suit or proceeding that was pending at the time of the receiver's
3 appointment and in which the person over whose property the receiver is
4 appointed is a party, upon application by the receiver to the court or
5 agency before which the action is pending.

6 (4) Venue for adjunct litigation by or against the receiver shall
7 lie in the court in which the receivership is pending, if the courts of
8 this state have jurisdiction over the cause. Actions in other courts
9 in this state shall be transferred to the court upon the receiver's
10 filing of a motion for change of venue, provided that the receiver
11 files the motion within thirty days following service of original
12 process upon the receiver. However, actions in other courts or forums
13 in which a state agency is a party shall not be transferred on request
14 of the receiver absent consent of the affected state agency or grounds
15 provided under other applicable law.

16 (5) Action by or against a receiver does not abate by reason of
17 death or resignation of the receiver, but continues against the
18 successor receiver or against the entity in receivership, if a
19 successor receiver is not appointed.

20 (6) Whenever the assets of any domestic or foreign corporation,
21 that has been doing business in this state, has been placed in the
22 hands of any general receiver and the receiver is in possession of its
23 assets, service of all process upon the corporation may be made upon
24 the receiver.

25 (7) A judgment against a general receiver is not a lien on the
26 property or funds of the receivership, nor shall any execution issue
27 thereon, but upon entry of the judgment in the court in which a general
28 receivership is pending, or upon filing in a general receivership of a
29 certified copy of the judgment from another jurisdiction, the judgment
30 shall be treated as an allowed claim in the receivership. A judgment
31 against a custodial receiver shall be treated and has the same effect
32 as a judgment against the person over whose property the receiver is
33 appointed, except that the judgment is not enforceable against estate
34 property unless otherwise ordered by the court upon notice and a
35 hearing.



1 NEW SECTION. **Sec. 19.** A new section is added to chapter 7.60 RCW
2 to read as follows:

3 **PERSONAL LIABILITY OF RECEIVER.** (1)(a) The receiver is personally
4 liable to the person over whose property the receiver is appointed or
5 its record or beneficial owners, or to the estate, for loss or
6 diminution in value of or damage to estate property, only if (i) the
7 loss or damage is caused by a failure on the part of the receiver to
8 comply with an order of the court, or (ii) the loss or damage is caused
9 by an act or omission for which members of a board of directors of a
10 business corporation organized and existing under the laws of this
11 state who vote to approve the act or omission are liable to the
12 corporation in cases in which the liability of directors is limited to
13 the maximum extent permitted by RCW 23B.08.320.

14 (b) A general receiver is personally liable to state agencies for
15 failure to remit sales tax collected after appointment. A custodial
16 receiver is personally liable to state agencies for failure to remit
17 sales tax collected after appointment with regard to assets
18 administered by the receiver.

19 (2) The receiver has no personal liability to a person other than
20 the person over whose property the receiver is appointed or its record
21 or beneficial owners for any loss or damage occasioned by the
22 receiver's performance of the duties imposed by the appointment, or out
23 of the receiver's authorized operation of any business of a person,
24 except loss or damage occasioned by fraud on the part of the receiver,
25 by acts intended by the receiver to cause loss or damage to the
26 specific claimant, or by acts or omissions for which an officer of a
27 business corporation organized and existing under the laws of this
28 state are liable to the claimant under the same circumstances.

29 (3) Notwithstanding subsections (1)(a) and (2) of this section, a
30 receiver has no personal liability to any person for acts or omissions
31 of the receiver specifically contemplated by any order of the court.

32 (4) A person other than a successor receiver duly appointed by the
33 court does not have a right of action against a receiver under this
34 section to recover property or the value thereof for or on behalf of
35 the estate.



1 NEW SECTION. Sec. 20. A new section is added to chapter 7.60 RCW
2 to read as follows:

3 EMPLOYMENT AND COMPENSATION OF PROFESSIONALS. (1) The receiver,
4 with the court's approval, may employ one or more attorneys,
5 accountants, appraisers, auctioneers, or other professional persons
6 that do not hold or represent an interest adverse to the estate to
7 represent or assist the receiver in carrying out the receiver's duties.

8 (2) A person is not disqualified for employment under this section
9 solely because of the person's employment by, representation of, or
10 other relationship with a creditor or other party in interest, if the
11 relationship is disclosed in the application for the person's
12 employment and if the court determines that there is no actual conflict
13 of interest or inappropriate appearance of a conflict.

14 (3) This section does not preclude the court from authorizing the
15 receiver to act as attorney or accountant if the authorization is in
16 the best interests of the estate.

17 (4) The receiver, and any professionals employed by the receiver,
18 is permitted to file an itemized billing statement with the court
19 indicating both the time spent, billing rates of all who perform work
20 to be compensated, and a detailed list of expenses and serve copies on
21 any person who has been joined as a party in the action, or any person
22 requesting the same, advising that unless objections are filed with the
23 court, the receiver may make the payments specified in the notice. If
24 an objection is filed, the receiver or professional whose compensation
25 is affected may request the court to hold a hearing on the objection on
26 five days' notice to the persons who have filed objections. If the
27 receiver is a custodial receiver appointed in aid of foreclosure,
28 payment of fees and expenses may be allowed upon the stipulation of any
29 creditor holding a security interest in the property for whose benefit
30 the receiver is appointed.

31 NEW SECTION. Sec. 21. A new section is added to chapter 7.60 RCW
32 to read as follows:

33 PARTICIPATION OF CREDITORS AND PARTIES IN INTEREST IN RECEIVERSHIP
34 PROCEEDING--EFFECT OF COURT ORDERS ON NONPARTIES. (1) Creditors and
35 parties in interest to whom written notice of the pendency of the
36 receivership is given in accordance with section 23 of this act, and



1 creditors or other persons submitting written claims in the
2 receivership or otherwise appearing and participating in the
3 receivership, are bound by the acts of the receiver with regard to
4 management and disposition of estate property whether or not they are
5 formally joined as parties.

6 (2) Any person having a claim against or interest in any estate
7 property or in the receivership proceedings may appear in the
8 receivership, either in person or by an attorney. Appearance must be
9 made by filing a written notice of appearance, including the name and
10 mailing address of the party in interest, and the name and address of
11 the person's attorney, if any, with the clerk, and by serving a copy of
12 the notice upon the receiver and the receiver's attorney of record, if
13 any. The receiver shall maintain a master mailing list of all persons
14 joined as parties in the receivership and of all persons serving and
15 filing notices of appearance in the receivership in accordance with
16 this section. A creditor or other party in interest has a right to be
17 heard with respect to all matters affecting the person, whether or not
18 the person is joined as a party to the action.

19 (3) Any request for relief against a state agency shall be mailed
20 to or otherwise served on the agency and on the office of the attorney
21 general.

22 (4) Orders of the court with respect to the treatment of claims and
23 disposition of estate property, including but not limited to orders
24 providing for sales of property free and clear of liens, are effective
25 as to any person having a claim against or interest in the receivership
26 estate and who has actual knowledge of the receivership, whether or not
27 the person receives written notice from the receiver and whether or not
28 the person appears or participates in the receivership.

29 (5) The receiver shall give not less than ten days' written notice
30 by mail of any examination by the receiver of the person with respect
31 to whose property the receiver has been appointed and to persons who
32 serve and file an appearance in the proceeding.

33 (6) Persons on the master mailing list are entitled to not less
34 than thirty days' written notice of the hearing of any motion or other
35 proceeding involving any proposed:

36 (a) Allowance or disallowance of any claim or claims;



1 (b) Abandonment, disposition, or distribution of estate property,
2 other than an emergency disposition of perishable property or a
3 disposition of property in the ordinary course of business;

4 (c) Compromise or settlement of a controversy that might affect the
5 distribution to creditors from the estate;

6 (d) Compensation of the receiver or any professional employed by
7 the receiver; or

8 (e) Application for termination of the receivership or discharge of
9 the receiver. Notice of the application shall also be sent to state
10 taxing and applicable regulatory agencies.

11 Any opposition to any motion to authorize any of the actions under
12 (a) through (e) of this subsection must be filed and served upon the
13 receiver and the receiver's attorney, if any, at least three days
14 before the date of the proposed action. Persons on the master mailing
15 list shall be served with all pleadings or in opposition to any motion.
16 The court may require notice to be given to persons on the master
17 mailing list of additional matters the court deems appropriate, and may
18 enlarge or reduce any time period provided for by this section for good
19 cause shown. The receiver shall make a copy of the current master
20 mailing list available to any person on that list upon the person's
21 request.

22 (7) All persons duly notified by the receiver of any hearing to
23 approve or authorize an action or a proposed action by the receiver is
24 bound by any order of the court with respect to the action, whether or
25 not the persons have appeared or objected to the action or proposed
26 action or have been joined formally as parties to the particular
27 action.

28 (8) Whenever notice is not specifically required to be given under
29 this chapter, the court may consider motions and grant or deny relief
30 without notice or hearing, if it appears that no person joined as a
31 party or who has appeared in the receivership would be prejudiced or
32 harmed by the relief requested.

33 NEW SECTION. **Sec. 22.** A new section is added to chapter 7.60 RCW
34 to read as follows:

35 **NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST.** (1) A general
36 receiver shall give notice of the receivership by publication in a



1 newspaper of general circulation published in the county or counties in
 2 which estate property is known to be located once a week for three
 3 consecutive weeks, the first notice to be published within twenty days
 4 after the date of appointment of the receiver; and by mailing notice to
 5 all known creditors and other known parties in interest within twenty
 6 days after the date of appointment of the receiver. The notice of the
 7 receivership shall include the date of appointment of the receiver; the
 8 name of the court and the case number; the last day on which claims may
 9 be filed and served upon the receiver; and the name and address of the
 10 debtor, the receiver, and the receiver's attorney, if any. For
 11 purposes of this section, all intangible property of a person is deemed
 12 to be located in the county in which an individual owner thereof
 13 resides, or in which any entity owning the property maintains its
 14 principal administrative offices.

15 (2) The notice of the receivership shall be in substantially the
 16 following form:

17 IN THE SUPERIOR COURT, IN AND FOR
 18 _____ COUNTY, WASHINGTON

19 [Case Name]

)
)
)
)
)
)

Case No.

21 NOTICE OF RECEIVERSHIP

25 TO CREDITORS AND OTHER PARTIES IN INTEREST:

26 PLEASE TAKE NOTICE that a receiver was appointed for _____, whose last known
 27 address is _____, on _____.

28 YOU ARE HEREBY FURTHER NOTIFIED that in order to receive any dividend in this proceeding you
 29 must file proof of claim with the receiver on or before _____, ____ (120 days from the date of
 30 appointment of the receiver).

32 _____
 RECEIVER

33 Attorney for receiver (if any): _____

34 Address: _____



1 NEW SECTION. **Sec. 23.** A new section is added to chapter 7.60 RCW
2 to read as follows:

3 **SUBMISSION OF CLAIMS IN GENERAL RECEIVERSHIPS.** (1) All claims,
4 whether contingent, liquidated, unliquidated, or disputed, other than
5 claims of creditors with security interests in or other liens against
6 property of the estate, arising prior to the receiver's appointment,
7 must be served in accordance with this chapter, and any claim not so
8 filed is barred from participating in any distribution to creditors in
9 any general receivership.

10 (2) Claims must be served by delivering the claim to the general
11 receiver within thirty days from the date notice is given by mail under
12 this section, unless the court reduces or extends the period for cause
13 shown, except that a claim arising from the rejection of an executory
14 contract or an unexpired lease of the person over whose property the
15 receiver is appointed may be filed within thirty days after the
16 rejection. Claims need not be filed. Claims must be served by state
17 agencies on the general receiver within one hundred eighty days from
18 the date notice is given by mail under this section.

19 (3) Claims must be in written form entitled "Proof of Claim,"
20 setting forth the name and address of the creditor and the nature and
21 amount of the claim, and executed by the creditor or the creditor's
22 authorized agent. When a claim, or an interest in estate property of
23 securing the claim, is based on a writing, the original or a copy of
24 the writing must be included as a part of the proof of claim, together
25 with evidence of perfection of any security interest or other lien
26 asserted by the claimant.

27 (4) A claim, executed and served in accordance with this section,
28 constitutes prima facie evidence of the validity and amount of the
29 claim.

30 NEW SECTION. **Sec. 24.** A new section is added to chapter 7.60 RCW
31 to read as follows:

32 **OBJECTION TO AND ALLOWANCE OF CLAIMS.** (1) At any time prior to the
33 entry of an order approving the general receiver's final report, the
34 general receiver or any party in interest may file with the court an
35 objection to a claim, which objection must be in writing and must set
36 forth the grounds for the objection. A copy of the objection, together



1 with notice of hearing, must be mailed to the creditor at least thirty
2 days prior to the hearing. Claims properly served upon the general
3 receiver and not disallowed by the court are entitled to share in
4 distributions from the estate in accordance with the priorities
5 provided for by this chapter or otherwise by law.

6 (2) Upon the request of a creditor, the general receiver, or any
7 party in interest objecting to the creditor's claim, or upon order of
8 the court, an objection is subject to mediation prior to adjudication
9 of the objection, under the rules or orders adopted or issued with
10 respect to mediations. However, state claims are not subject to
11 mediation absent agreement of the state.

12 (3) Upon motion of the general receiver or other party in interest,
13 the following claims may be estimated for purpose of allowance under
14 this section under the rules or orders applicable to the estimation of
15 claims under this subsection:

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

19 (b) Any right to payment arising from a right to an equitable
20 remedy for breach of performance.

21 Claims subject to this subsection shall be allowed in the estimated
22 amount thereof.

23 NEW SECTION. Sec. 25. A new section is added to chapter 7.60 RCW
24 to read as follows:

25 PRIORITIES. (1) Allowed claims in a general receivership shall
26 receive distribution under this chapter in the order of priority under
27 (a) through (h) of this subsection and, with the exception of (a) and
28 (c) of this subsection, on a pro rata basis.

29 (a) Creditors with liens on property of the estate, which liens are
30 duly perfected under applicable law, shall receive the proceeds from
31 the disposition of their collateral. However, the receiver may recover
32 from property securing an allowed secured claim the reasonable,
33 necessary expenses of preserving, protecting, or disposing of the
34 property to the extent of any benefit to the creditors. If and to the
35 extent that the proceeds are less than the amount of a creditor's
36 allowed claim or a creditor's lien is avoided on any basis, the



1 creditor is an unsecured claim under (h) of this subsection. Secured
2 claims shall be paid from the proceeds in accordance with their
3 respective priorities under otherwise applicable law.

4 (b) Actual, necessary costs and expenses incurred during the
5 administration of the estate, other than those expenses allowable under
6 (a) of this subsection, including allowed fees and reimbursement of
7 reasonable charges and expenses of the receiver and professional
8 persons employed by the receiver under section 20 of this act.
9 Notwithstanding (a) of this subsection, expenses incurred during the
10 administration of the estate have priority over the secured claim of
11 any creditor obtaining or consenting to the appointment of the
12 receiver.

13 (c) Creditors with liens on property of the estate, which liens
14 have not been duly perfected under applicable law, shall receive the
15 proceeds from the disposition of their collateral if and to the extent
16 that unsecured claims are made subject to those liens under applicable
17 law.

18 (d) Claims for wages, salaries, or commissions, including vacation,
19 severance, and sick leave pay, or contributions to an employee benefit
20 plan, earned by the claimant within ninety days of the date of
21 appointment of the receiver or the cessation of the estate's business,
22 whichever occurs first, but only to the extent of two thousand dollars.

23 (e) Allowed unsecured claims, to the extent of nine hundred dollars
24 for each individual, arising from the deposit with the person over
25 whose property the receiver is appointed before the date of appointment
26 of the receiver of money in connection with the purchase, lease, or
27 rental of property or the purchase of services for personal, family, or
28 household use by individuals that were not delivered or provided.

29 (f) Claims for a support debt as defined in RCW 74.20A.020(10), but
30 not to the extent that the debt (i) is assigned to another entity,
31 voluntarily, by operation of law, or otherwise; or (ii) includes a
32 liability designated as a support obligation unless that liability is
33 actually in the nature of a support obligation.

34 (g) Unsecured claims of governmental units for taxes which accrued
35 prior to the date of appointment of the receiver.

36 (h) Other unsecured claims.



1 (2) If all of the classes under subsection (1) of this section have
2 been paid in full, any residue shall be paid to the person over whose
3 property the receiver is appointed.

4 NEW SECTION. Sec. 26. A new section is added to chapter 7.60 RCW
5 to read as follows:

6 SECURED CLAIMS AGAINST AFTER-ACQUIRED PROPERTY. Except as
7 otherwise provided for by statute, property acquired by the estate or
8 by the person over whose property the receiver is appointed after the
9 date of appointment of the receiver is subject to an allowed secured
10 claim to the same extent as would be the case in the absence of a
11 receivership.

12 NEW SECTION. Sec. 27. A new section is added to chapter 7.60 RCW
13 to read as follows:

14 INTEREST ON CLAIMS. To the extent that funds are available in the
15 estate for distribution to creditors in a general receivership, the
16 holder of an allowed noncontingent, liquidated claim is entitled to
17 receive interest at the legal rate or other applicable rate from the
18 date of appointment of the receiver or the date on which the claim
19 became a noncontingent, liquidated claim. If there are sufficient
20 funds in the estate to fully pay all interest owing to all members of
21 the class, then interest shall be paid proportionately to each member
22 of the class.

23 NEW SECTION. Sec. 28. A new section is added to chapter 7.60 RCW
24 to read as follows:

25 RECEIVER'S DISPOSITION OF PROPERTY--SALES FREE AND CLEAR. (1) The
26 receiver, with the court's approval after notice and a hearing, may
27 use, sell, or lease estate property other than in the ordinary course
28 of business. Except in the case of a leasehold estate with a remaining
29 term of less than two years or a vendor's interest in a real estate
30 contract, estate property consisting of real property may not be sold
31 by a custodial receiver other than in the ordinary course of business.

32 (2) The court may order that a general receiver's sale of estate
33 property under subsection (1) of this section be effected free and



1 clear of liens and of all rights of redemption, whether or not the sale
2 will generate proceeds sufficient to fully satisfy all claims secured
3 by the property, unless either:

4 (a) The property is real property used principally in the
5 production of crops, livestock, or aquaculture, or the property is a
6 homestead under RCW 6.13.010(1), and the owner of the property has not
7 consented to the sale following the appointment of the receiver; or

8 (b) The owner of the property or a creditor with an interest in the
9 property serves and files a timely opposition to the receiver's sale,
10 and the court determines that the amount likely to be realized by the
11 objecting person from the receiver's sale is less than the person would
12 realize within a reasonable time in the absence of the receiver's sale.

13 Upon any sale free and clear of liens authorized by this section,
14 all security interests and other liens encumbering the property
15 conveyed transfer and attach to the proceeds of the sale, net of
16 reasonable expenses incurred in the disposition of the property, in the
17 same order, priority, and validity as the liens had with respect to the
18 property immediately before the conveyance. The court may authorize
19 the receiver at the time of sale to satisfy, in whole or in part, any
20 allowed claim secured by the property out of the proceeds of its sale
21 if the interest of any other creditor having a lien against the
22 proceeds of the sale would not thereby be impaired.

23 (3) At a public sale of property under subsection (1) of this
24 section, a creditor with an allowed claim secured by a lien against the
25 property to be sold may bid at the sale of the property. A secured
26 creditor who purchases the property from a receiver may offset against
27 the purchase price its allowed secured claim against the property,
28 provided that the secured creditor tenders cash sufficient to satisfy
29 in full all secured claims payable out of the proceeds of sale having
30 priority over the secured creditor's secured claim. If the lien or the
31 claim it secures is the subject of a bona fide dispute, the court may
32 order the holder of the claim to provide the receiver with adequate
33 security to assure full payment of the purchase price in the event the
34 lien, the claim, or any part thereof is determined to be invalid or
35 unenforceable.

36 (4) If estate property includes an interest as a coowner of



1 property, the receiver shall have the rights and powers of a coowner
2 afforded by applicable state or federal law, including but not limited
3 to any rights of partition.

4 (5) The reversal or modification on appeal of an authorization to
5 sell or lease estate property under this section does not affect the
6 validity of a sale or lease under that authorization to an entity that
7 purchased or leased the property in good faith, whether or not the
8 entity knew of the pendency of the appeal, unless the authorization and
9 sale or lease were stayed pending the appeal.

10 NEW SECTION. **Sec. 29.** A new section is added to chapter 7.60 RCW
11 to read as follows:

12 **ANCILLARY RECEIVERSHIPS.** (1) A receiver appointed in any action
13 pending in the courts of this state, without first seeking approval of
14 the court, may apply to any court outside of this state for appointment
15 as receiver with respect to any property or business of the person over
16 whose property the receiver is appointed constituting estate property
17 which is located in any other jurisdiction, if the appointment is
18 necessary to the receiver's possession, control, management, or
19 disposition of property in accordance with orders of the court.

20 (2) A receiver appointed by a court of another state, or by a
21 federal court in any district outside of this state, or any other
22 person having an interest in that proceeding, may obtain appointment by
23 a superior court of this state of that same receiver with respect to
24 any property or business of the person over whose property the receiver
25 is appointed constituting property of the foreign receivership that is
26 located in this jurisdiction, if the person is eligible under section
27 5 of this act to serve as receiver, and if the appointment is necessary
28 to the receiver's possession, control, or disposition of the property
29 in accordance with orders of the court in the foreign proceeding. The
30 superior court upon the receiver's request shall enter the orders, not
31 offensive to the laws and public policy of this state, necessary to
32 effectuate orders entered by the court in the foreign receivership
33 proceeding. A receiver appointed in an ancillary receivership in this
34 state is required to comply with this chapter requiring notice to
35 creditors or other parties in interest only as may be required by the
36 superior court in the ancillary receivership.



1 NEW SECTION. **Sec. 30.** A new section is added to chapter 7.60 RCW
2 to read as follows:

3 **RESIGNATION OR REMOVAL OF RECEIVER.** (1) The court shall remove or
4 replace the receiver on application of the person over whose property
5 the receiver is appointed, the receiver, or any creditor, or on the
6 court's own motion, if the receiver fails to execute and file the bond
7 required by section 6 of this act, or if the receiver resigns or
8 refuses or fails to serve for any reason, or for other good cause.

9 (2) Upon removal, resignation, or death of the receiver, the court
10 shall appoint a successor receiver if the court determines that further
11 administration of the estate is required. Upon executing and filing a
12 bond under section 6 of this act, the successor receiver shall
13 immediately take possession of the estate and assume the duties of
14 receiver.

15 (3) Whenever the court is satisfied that the receiver so removed or
16 replaced has fully accounted for and turned over to the successor
17 receiver appointed by the court all of the property of the estate and
18 has filed a report of all receipts and disbursements during the
19 person's tenure as receiver, the court shall enter an order discharging
20 that person from all further duties and responsibilities as receiver
21 after notice and a hearing.

22 NEW SECTION. **Sec. 31.** A new section is added to chapter 7.60 RCW
23 to read as follows:

24 **TERMINATION OF RECEIVERSHIP.** (1) Upon distribution or disposition
25 of all property of the estate, or the completion of the receiver's
26 duties with respect to estate property, the receiver shall move the
27 court to be discharged upon notice and a hearing.

28 (2) The receiver's final report and accounting setting forth all
29 receipts and disbursements of the estate shall be annexed to the
30 petition for discharge and filed with the court.

31 (3) Upon approval of the final report, the court shall discharge
32 the receiver.

33 (4) The receiver's discharge releases the receiver from any further
34 duties and responsibilities as receiver under this chapter.

35 (5) Upon motion of any party in interest, or upon the court's own
36 motion, the court has the power to discharge the receiver and terminate



1 the court's administration of the property over which the receiver was
2 appointed. If the court determines that the appointment of the
3 receiver was wrongfully procured or procured in bad faith, the court
4 may assess against the person who procured the receiver's appointment
5 (a) all of the receiver's fees and other costs of the receivership and
6 (b) any other sanctions the court determines to be appropriate.

7 NEW SECTION. Sec. 32. A new section is added to chapter 7.60 RCW
8 to read as follows:

9 APPLICABILITY. This chapter applies to receivers and receiverships
10 otherwise provided for by the laws of this state except as otherwise
11 expressly provided for by statute or as necessary to give effect to the
12 laws of this state. This chapter does not apply to any proceeding
13 authorized by or commenced under Title 48 RCW.

14 Sec. 33. RCW 4.28.320 and 1999 c 233 s 1 are each amended to read
15 as follows:

16 ~~((In an action affecting the title to real property the plaintiff,~~
17 ~~at the time of filing the complaint, or at any time afterwards, or~~
18 ~~whenever a writ of attachment of property shall be issued, or at any~~
19 ~~time afterwards, the plaintiff or a defendant, when he sets up an~~
20 ~~affirmative cause of action in his answer, and demands substantive~~
21 ~~relief at the time of filing his answer, or at any time afterwards, if~~
22 ~~the same be intended to affect real property,)) At any time after an~~

23 action affecting title to real property has been commenced, or after a
24 writ of attachment with respect to real property has been issued in an
25 action, or after a receiver has been appointed with respect to any real
26 property, the plaintiff, the defendant, or such a receiver may file
27 with the auditor of each county in which the property is situated a
28 notice of the pendency of the action, containing the names of the
29 parties, the object of the action, and a description of the real
30 property in that county affected thereby. From the time of the filing
31 only shall the pendency of the action be constructive notice to a
32 purchaser or encumbrancer of the property affected thereby, and every
33 person whose conveyance or encumbrance is subsequently executed or
34 subsequently recorded shall be deemed a subsequent purchaser or
35 encumbrancer, and shall be bound by all proceedings taken after the



1 filing of such notice to the same extent as if he or she were a party
2 to the action. For the purpose of this section an action shall be
3 deemed to be pending from the time of filing such notice: PROVIDED,
4 HOWEVER, That such notice shall be of no avail unless it shall be
5 followed by the first publication of the summons, or by the personal
6 service thereof on a defendant within sixty days after such filing.
7 And the court in which the said action was commenced may, at its
8 discretion, at any time after the action shall be settled, discontinued
9 or abated, on application of any person aggrieved and on good cause
10 shown and on such notice as shall be directed or approved by the court,
11 order the notice authorized in this section to be canceled of record,
12 in whole or in part, by the county auditor of any county in whose
13 office the same may have been filed or recorded, and such cancellation
14 shall be evidenced by the recording of the court order.

15 **Sec. 34.** RCW 6.32.100 and 1893 c 133 s 10 are each amended to read
16 as follows:

17 ~~((After a receiver has been appointed or a receivership has been
18 extended to the special proceedings, the judge must, by order, direct
19 the sheriff to pay the money, or the proceeds of the property,
20 deducting his fees, to the receiver; or if the case so requires to
21 deliver to the receiver the property in his hands. But if it appears
22 to the satisfaction of the judge that an order appointing a receiver or
23 extending a receivership is not necessary, he may, by an order reciting
24 that fact,))~~ Unless a receiver has been appointed or extended with
25 respect to money or property in the hands of the sheriff, the judge may
26 direct the sheriff to apply the money ~~((so paid))~~, the property, or the
27 proceeds of the property ~~((so delivered))~~, upon an execution in favor
28 of the judgment creditor issued either before or after the payment or
29 delivery to the sheriff.

30 **Sec. 35.** RCW 6.32.150 and 1893 c 133 s 15 are each amended to read
31 as follows:

32 A special proceeding instituted as prescribed in this chapter may
33 be discontinued at any time upon such terms as justice requires, by an
34 order of the judge made upon the application of the judgment creditor.
35 ~~Where~~ the judgment creditor unreasonably delays or neglects to proceed,



1 or where it appears that ((his)) the judgment has been satisfied,
2 ((his)) the special proceedings may be dismissed upon like terms by a
3 like order made upon the application of the judgment debtor, or of
4 plaintiff in a judgment creditor's action against the debtor, or of a
5 judgment creditor who has instituted either of the special proceedings
6 authorized by this chapter. (~~Where an order appointing a receiver or~~
7 ~~extending a receivership has been made in the course of the special~~
8 ~~proceeding, notice of the application for an order specified in this~~
9 ~~section must be given in such manner as the judge deems proper, to all~~
10 ~~persons interested in the receivership as far as they can conveniently~~
11 ~~be ascertained.))~~

12 **Sec. 36.** RCW 7.08.010 and 1893 c 100 s 1 are each amended to read
13 as follows:

14 No general assignment of property by an insolvent, or in
15 contemplation of insolvency, for the benefit of creditors, shall be
16 valid unless it be made for the benefit of all ((his)) of the
17 assignor's creditors in proportion to the amount of their respective
18 claims (~~and after the payment of the costs and disbursements thereof,~~
19 ~~including the attorney fees allowed by law in case of judgment, out of~~
20 ~~the estate of the insolvent, such claim or claims shall be deemed as~~
21 ~~presented, and shall share pro rata with other claims as hereinafter~~
22 ~~provided)).~~

23 **Sec. 37.** RCW 7.08.030 and 1890 p 83 s 3 are each amended to read
24 as follows:

25 (~~The debtor shall annex to such assignment an inventory, under~~
26 ~~oath, of all his estate, real and personal, according to the best of~~
27 ~~his knowledge, and also a list of his creditors, with their post office~~
28 ~~address and a list of the amount of their respective demands, but such~~
29 ~~inventory shall not be conclusive as to the amount of the debtor's~~
30 ~~estate. Every assignment shall be in writing, and duly acknowledged in~~
31 ~~the same manner as conveyances of real estate, and recorded in the~~
32 ~~record of deeds of the county where the person making the same resides,~~
33 ~~or where the business in respect to which the same is made has been~~
34 ~~carried on.))~~



1 (1) An assignment under this chapter must be in substantially the
2 following form:

3 ASSIGNMENT

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

8 WHEREAS, the assignor has been engaged in the business of
9

10 WHEREAS, the assignor is indebted to creditors, as set forth in
11 Schedule A annexed hereto, is unable to pay debts as they become due,
12 and is desirous of providing for the payment of debts, so far as it is
13 possible by an assignment of all property for that purpose.

14 NOW, THEREFORE, the assignor, in consideration of the assignee's
15 acceptance of this assignment, and for other good and valuable
16 consideration, hereby grants, assigns, conveys, transfers, and sets
17 over, unto the assignee, and the assignee's successors and assigns, all
18 of assignor's property, except such property as is exempt by law from
19 levy and sale under an execution (and then only to the extent of such
20 exemption), including, but not limited to, all real property, fixtures,
21 goods, stock, inventory, equipment, furniture, furnishings, accounts
22 receivable, general intangibles, bank deposits, cash, promissory notes,
23 cash value and proceeds of insurance policies, claims, and demands
24 belonging to the assignor, wherever such property may be located
25 (hereinafter collectively the "estate"), which property is, to the best
26 knowledge and belief of the assignor, fully and accurately set forth on
27 Schedule B annexed hereto.

28 By making this assignment, the assignor consents to the appointment
29 of the assignee as a general receiver with respect to the assignee's
30 property in accordance with Chapter 7.60 RCW.

31 The assignee shall take possession and administer the estate, and
32 shall liquidate the estate with reasonable dispatch and convert the
33 estate into money, collect all claims and demands hereby assigned as
34 and to the extent they may be collectible, and pay and discharge all



1 reasonable expenses, costs, and disbursements in connection with the
2 execution and administration of this assignment from the proceeds of
3 such liquidations and collections.

4 The assignee shall then pay and discharge in full, to the extent
5 that funds are available in the estate after payment of administrative
6 expenses, costs, and disbursements, all of the debts and liabilities
7 now due from the assignor, including interest on such debts and
8 liabilities in full, according to their priority as established by law,
9 and on a pro rata basis within each class.

10 In the event that all debts and liabilities are paid in full, the
11 remainder of the estate shall be returned to the assignor.

12 To accomplish the purposes of this assignment, the assignor hereby
13 irrevocably appoints the assignee as the assignor's true and lawful
14 attorney in fact, with full power and authority to do all acts and
15 things which may be necessary to execute and fulfill the assignment
16 hereby created, to the same extent as such acts and things might be
17 done by assignor in the absence of this assignment, including but not
18 limited to the power to demand and recover from all persons all
19 property of the estate; to sue for the recovery of such property; to
20 execute, acknowledge, and deliver all necessary deeds, instruments, and
21 conveyances, and to grant and convey any or all of the real or personal
22 property of the estate pursuant thereto; and to appoint one or more
23 attorneys to assist the assignee in carrying out the assignee's duties
24 hereunder.

25 The assignor hereby authorizes the assignee to sign the name of the
26 assignor to any check, draft, promissory note, or other instrument in
27 writing which is payable to the order of the assignor, or to sign the
28 name of the assignor to any instrument in writing, whenever it shall be
29 necessary to do so, to carry out the purposes of this assignment.

30 The assignor declares, under penalty of perjury under the laws of
31 the state of Washington, that the attached list of creditors and of the
32 property of the assignor is true and complete to the best of the
33 assignor's knowledge.

34 The assignment shall be signed by the assignor and duly



1 acknowledged in the same manner as conveyances of real property before
2 a notary public of this state, and shall include an acceptance of the
3 assignment by the assignee in substantially the following form:

4 The assignee hereby accepts the trust created by the foregoing
5 assignment, and agrees faithfully and without delay to carry out the
6 assignee's duties under the foregoing assignment.

7
8 Assignor Assignee
9 Dated: Dated:

10 (2) The assignor shall annex to such assignment schedules in the
11 form provided for by section 11(3) of this act in the case of general
12 receiverships, setting forth the creditors and the property of the
13 assignor.

14 (3) Every assignment shall be effective when a petition to appoint
15 the assignee as receiver has been filed by the assignor, by the
16 assignee, or by any creditor of the assignor with the clerk of the
17 superior court in the county of the assignor's residence if the
18 assignor is an individual or a marital community, or in the county of
19 the assignor's principal place of business or registered office within
20 this state if the assignor is any other person. A petition shall set
21 forth the name and address of the assignor and the name and address of
22 the assignee, and shall include a copy of the assignment and the
23 schedules affixed thereto, and a request that the court fix the amount
24 of the receiver's bond to be filed with the clerk of the court.

25 (4) A person to whom a general assignment of property for the
26 benefit of creditors has been made shall be appointed as general
27 receiver with respect to the assignor's property by the superior court
28 upon the filing of a petition under subsection (3) of this section.
29 Except as provided for by subsection (5) of this section, following the
30 assignee's appointment as general receiver, all proceedings involving
31 the administration of the assignor's property and the claims of the
32 assignee's creditors shall be governed by the provisions of chapter
33 7.60 RCW applicable to general receiverships and court rules applicable
34 thereto.



1 (5) Upon ((the application)) motion of two or more creditors of
2 ((said debtor therefor, by petition to the judge of the superior court
3 of the county in which such assignment is or should be recorded,)) the
4 assignor served and filed at any time within thirty days ((from the
5 making or recording of such assignment)) following the date upon which
6 notice is mailed to all known creditors under section 22 of this act,
7 it shall be the duty of ((said superior judge)) the court to direct the
8 clerk of ((said superior)) the court to order a meeting of the
9 creditors of ((said debtors)) the assignor, to ((choose an assignee of
10 the estate of said debtor in lieu of)) determine whether a person other
11 than the assignee named ((by the debtor in his)) in the assignment
12 should be appointed as general receiver with respect to the property of
13 the assignor; and thereupon the clerk of ((said)) the court shall
14 ((forthwith)) immediately give notice to all the creditors ((of said
15 debtor)) identified in the schedules affixed to the assignment to meet
16 at ((his)) the clerk's office or at such other location within the
17 county as the clerk may specify, at a time stated((7)) not to exceed
18 fifteen days from the date of such notice, to ((select one or more
19 assignees in the place of the assignee named by the debtor in his
20 assignment)) determine whether a person other than the assignee named
21 in the assignment should be appointed as general receiver with respect
22 to the property of the assignor. ((Such)) The assignor's creditors may
23 appear in person or by proxy at the meeting, and a majority in both
24 number and value of ((said)) claims of the creditors attending ((such))
25 or represented at the meeting ((shall)) may select ((one or more
26 assignees; and in the event that no one shall receive a majority vote
27 of said creditors who represent at least one-half in amount of all
28 claims represented at such meeting, then, and in that event, said clerk
29 shall certify that fact to the judge of the superior court aforesaid,
30 and thereupon said superior judge shall select and appoint an assignee.
31 When such assignee shall have been selected by such creditors, or
32 appointed by the superior judge as herein provided, then the assignee
33 named in the debtor's assignment shall forthwith make to the assignee
34 elected by the creditors or appointed by the superior judge, an
35 assignment and conveyance of all the estate, real and personal, that
36 has been assigned or conveyed to him by said debtor; and such assignee
37 so elected by the creditors or appointed by the superior judge, upon



1 ~~giving the bond required of an assignee by RCW 7.08.010 through~~
2 ~~7.08.170, shall possess all the powers, and be subject to all the~~
3 ~~duties imposed by RCW 7.08.010 through 7.08.170, as fully to all~~
4 ~~intents and purposes as though named in the debtor's assignment.)) a~~
5 person other than the assignee named in the assignment to serve as
6 general receiver with respect to the assignor's property, whereupon the
7 court shall appoint the selected person as receiver under subsection
8 (4) of this section if a receiver has not already been appointed, and
9 shall appoint the person to replace the original assignee as receiver
10 if the appointment already has been made, unless the court determines
11 upon good cause shown that the appointment as receiver of the person
12 selected by the creditors would not be in the best interests of
13 creditors in general, in which event the court shall appoint or
14 substitute as the receiver a person selected by the court other than
15 the original assignee. If at least one-third of the number or amount
16 of claims represented in person or by proxy at the meeting of creditors
17 vote for the appointment as receiver of a person or persons other than
18 the assignee named in the assignment, then the court upon motion of any
19 creditor served and filed within ten days following the meeting shall
20 appoint as receiver a person selected by the court other than the
21 original assignee, discharging the original assignee if the person
22 previously was appointed as receiver. A creditor may not vote at any
23 meeting of creditors called for the purpose of determining whether a
24 person other than the assignee named in the assignment should be
25 appointed as receiver, until the creditor has presented to the clerk,
26 who presides at the meeting, a proof of claim in accordance with
27 section 23 of this act.

28 (6) From the time ((of the pending of an application to elect an
29 assignee by the creditors, and until the time shall be terminated by an
30 election or appointment as herein provided)) a motion is made to elect
31 a new assignee in accordance with subsection (5) of this section, and
32 until either the meeting of creditors occurs without a selection of a
33 new assignee, or until the court enters an order appointing as receiver
34 a person other than the original assignee if the creditors vote to
35 select a new assignee at that meeting, no property of the ((debtor))
36 assignor, except perishable property, ((shall)) may be sold or disposed
37 of by ((any)) the assignee, whether or not the assignee has been



1 appointed as receiver; but the same shall be safely and securely kept
2 until (~~the election or appointment of an assignee as herein provided.~~
3 ~~No creditor shall be entitled to vote at any such meeting called for~~
4 ~~the purpose of electing an assignee, until he shall have presented to~~
5 ~~the clerk of the superior court, who shall preside at such meeting, a~~
6 ~~verified statement of his claim against the debtor~~) then.

7 **Sec. 38.** RCW 7.56.110 and Code 1881 s 712 are each amended to read
8 as follows:

9 If judgment be rendered against any corporation or against any
10 persons claiming to be a corporation, the court may cause the costs to
11 be collected by executions against the persons claiming to be a
12 corporation or by attachment against the directors or other officers of
13 the corporation, and shall restrain the corporation, (~~appoint a~~
14 ~~receiver of its property and effects,~~) take an account, and make a
15 distribution thereof among the creditors. The prosecuting attorney
16 shall immediately institute proceedings for that purpose.

17 **Sec. 39.** RCW 11.64.022 and 1989 c 373 s 15 are each amended to
18 read as follows:

19 If the surviving partner or partners fail or refuse to furnish an
20 inventory or list of liabilities, to permit an appraisal, or to account
21 to the personal representative, or to furnish a bond when required
22 pursuant to RCW 11.64.016, the court shall order a citation to issue
23 requiring the surviving partner or partners to appear and show cause
24 why they have not furnished an inventory list of liabilities, or
25 permitted an appraisal or why they should not account to the personal
26 representative or file a bond. The citation shall be served not less
27 than ten days before the return day designated therein, or such shorter
28 period as the court upon a showing of good cause deems appropriate. If
29 the surviving partner or partners neglect or refuse to file an
30 inventory or list of liabilities, or to permit an appraisal, or fail to
31 account to the court or to file a bond, after they have been directed
32 to do so, they may be punished for a contempt of court as provided in
33 chapter 7.21 RCW. Where the surviving partner or partners fail to file
34 a bond after being ordered to do so by the court, the court may also
35 appoint a receiver of the partnership estate (~~with like powers and~~



1 ~~duties of receivers in equity~~) under chapter 7.60 RCW, and may order
2 the costs and expenses of the proceedings to be paid out of the
3 partnership estate or out of the estate of the decedent, or by the
4 surviving partner or partners personally, or partly by each of the
5 parties.

6 **Sec. 40.** RCW 23B.14.320 and 1989 c 165 s 165 are each amended to
7 read as follows:

8 (1) A court in a judicial proceeding brought to dissolve a
9 corporation may appoint one or more receivers to wind up and liquidate,
10 or one or more custodians to manage, the business and affairs of the
11 corporation. The court shall hold a hearing, after notifying all
12 parties to the proceeding and any interested persons designated by the
13 court, before appointing a receiver or custodian. ~~((The court
14 appointing a receiver or custodian has exclusive jurisdiction over the
15 corporation and all of its property wherever located.))~~

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

20 (3) ~~The ((court shall describe the powers and duties of the
21 receiver or custodian in its appointing order, which may be amended
22 from time to time. Among other powers:~~

23 ~~(a) The receiver (i) may dispose of all or any part of the assets
24 of the corporation wherever located, at a public or private sale, if
25 authorized by the court, and (ii) may sue and defend in the receiver's
26 own name as receiver of the corporation in all courts of this state,
27 and~~

28 ~~(b) The~~) receiver or custodian may exercise all of the powers of
29 the corporation, through or in place of its board of directors or
30 officers, to the extent necessary to manage the affairs of the
31 corporation in the best interests of its shareholders and creditors.

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



1 (5) The court from time to time during the receivership or
2 custodianship may order compensation paid and expense disbursements or
3 reimbursements made to the receiver or custodian and counsel from the
4 assets of the corporation or proceeds from the sale of the assets.

5 Sec. 41. RCW 24.06.305 and 1969 ex.s. c 120 s 61 are each amended
6 to read as follows:

7 (1) In proceedings to liquidate the assets and affairs of a
8 corporation the court shall have the power to:

9 (a) Issue injunctions;

10 (b) Appoint a receiver or receivers pendente lite, with such powers
11 and duties as the court may, from time to time, direct;

12 (c) Take such other proceedings as may be requisite to preserve the
13 corporate assets wherever situated; and

14 (d) Carry on the affairs of the corporation until a full hearing
15 can be had.

16 After a hearing had upon such notice as the court may direct to be
17 given to all parties to the proceedings, and to any other parties in
18 interest designated by the court, the court may appoint a receiver
19 (~~with authority to collect the assets of the corporation. Such~~
20 ~~receiver shall have authority, subject to the order of the court, to~~
21 ~~sell, convey and dispose of all or any part of the assets of the~~
22 ~~corporation wherever situated, either at public or private sale. The~~
23 ~~order appointing such receiver shall state his powers and duties. Such~~
24 ~~powers and duties may be increased or diminished at any time during the~~
25 ~~proceedings)).~~

26 (2) The assets of the corporation or the proceeds resulting from
27 the sale, conveyance, or other disposition thereof shall be applied and
28 distributed as follows:

29 (a) All costs and expenses of the court proceedings, and all
30 liabilities and obligations of the corporation shall be paid, satisfied
31 and discharged, or adequate provision made therefor;

32 (b) Assets held by the corporation upon condition requiring return,
33 transfer, or conveyance, which condition occurs by reason of the
34 dissolution or liquidation, shall be returned, transferred, or conveyed
35 in accordance with such requirements;



1 (c) Remaining assets, if any, shall be distributed to the members,
2 shareholders, or others in accordance with the provisions of the
3 articles of incorporation.

4 (3) The court shall have power to make periodic allowances, as
5 expenses of the liquidation and compensation to the receivers and
6 attorneys in the proceeding accrue, and to direct the payment thereof
7 from the assets of the corporation or from the proceeds of any sale or
8 disposition of such assets.

9 (~~(A receiver appointed under the provisions of this section shall~~
10 ~~have authority to sue and defend in all courts in his own name, as~~
11 ~~receiver of such corporation. The court appointing such receiver shall~~
12 ~~have exclusive jurisdiction of the corporation and its property,~~
13 ~~wherever situated.))~~

14 NEW SECTION. Sec. 42. A new section is added to chapter 31.12 RCW
15 to read as follows:

16 Except in cases in which a receiver is appointed by a court on a
17 temporary basis under RCW 31.12.721, the provisions of Title 7 RCW
18 generally applicable to receivers and receiverships do not apply to
19 receivers elected or appointed under this chapter.

20 NEW SECTION. Sec. 43. A new section is added to chapter 35.07 RCW
21 to read as follows:

22 The provisions of Title 7 RCW generally applicable to receivers and
23 receiverships do not apply to receivers elected or appointed under this
24 chapter.

25 NEW SECTION. Sec. 44. A new section is added to chapter 35A.15
26 RCW to read as follows:

27 The provisions of Title 7 RCW generally applicable to receivers and
28 receiverships do not apply to receivers elected or appointed under this
29 chapter.

30 Sec. 45. RCW 87.56.065 and 1925 ex.s. c 124 s 7 are each amended
31 to read as follows:

32 At the time and place fixed in ~~((said))~~ the notice the court shall
33 ~~hear~~ the objections of interested persons and shall determine whether



1 the district is insolvent within the provisions of this chapter and
2 whether the district shall be dissolved. If the court concludes that
3 the district shall not dissolve, ((he)) the court shall so find and
4 dismiss the action. If the court concludes that the district should be
5 dissolved, ((he)) the court shall appoint a receiver ((with bond
6 conditioned for faithful performance of his duties in such sum as the
7 court shall determine,)) to take charge of the district assets and to
8 perform such other duties as may be required by the court or by law.

9 **Sec. 46.** RCW 87.56.100 and 1925 ex.s. c 124 s 12 are each amended
10 to read as follows:

11 If the owner or holder of a claim of indebtedness against the
12 district not yet due or matured ((shall be entitled to serve upon the
13 receiver and file a statement of his claim with the clerk of the court,
14 as in the case of due and matured indebtedness, and the filing of such
15 claim shall constitute an election on the part of the claimant
16 authorizing the court in its discretion to accelerate the maturity of
17 said indebtedness)) files a claim in any case in which a receiver is
18 appointed under RCW 87.56.065, the maturity of the indebtedness owing
19 to the person by the district shall be accelerated to such date as the
20 court shall determine upon.

21 **NEW SECTION. Sec. 47.** The following acts or parts of acts are
22 each repealed:

23 (1) RCW 4.28.081 (Summons, how served--When corporation in hands of
24 receiver) and 1897 c 97 s 1;

25 (2) RCW 6.25.200 (Appointment of receiver for property) and 1987 c
26 442 s 820, 1957 c 9 s 9, & 1886 p 42 s 15;

27 (3) RCW 6.32.290 (Appointment of receiver--Notice) and 1893 c 133
28 s 28;

29 (4) RCW 6.32.300 (Effect on pending supplemental proceedings) and
30 1893 c 133 s 29;

31 (5) RCW 6.32.310 (Only one receiver may be appointed--Extending
32 receivership) and 1893 c 133 s 30;

33 (6) RCW 6.32.320 (Order, where to be filed) and 1893 c 133 s 31;

34 (7) RCW 6.32.330 (Property vested in receiver) and 1893 c 133 s 32;



1 (8) RCW 6.32.340 (Receiver's title extends back by relation) and
2 1893 c 133 s 33;
3 (9) RCW 6.32.350 (Records to be kept by clerk) and 2002 c 30 s 2 &
4 1893 c 133 s 34;
5 (10) RCW 7.08.020 (Assent of creditors presumed) and 1890 p 83 s 2;
6 (11) RCW 7.08.050 (Inventory by assignee--Bond) and 1890 p 85 s 4;
7 (12) RCW 7.08.060 (Notice to creditors) and 1890 p 85 s 5;
8 (13) RCW 7.08.070 (List of creditors' claims) and 1890 p 85 s 6;
9 (14) RCW 7.08.080 (Exceptions to claims) and 1957 c 9 s 7 & 1890 p
10 85 s 7;
11 (15) RCW 7.08.090 (Dividends--Final account--Compensation) and 1893
12 c 26 s 1 & 1890 p 86 s 8;
13 (16) RCW 7.08.100 (Assignee subject to court's control) and 1890 p
14 86 s 9;
15 (17) RCW 7.08.110 (Assignment not void, when) and 1957 c 9 s 8 &
16 1890 p 86 s 10;
17 (18) RCW 7.08.120 (Additional inventory) and 1890 p 86 s 11;
18 (19) RCW 7.08.130 (Procedure on claims not due--Limitation on
19 presentment of claims) and 1890 p 86 s 12;
20 (20) RCW 7.08.140 (Authority of assignee to dispose of assets) and
21 1890 p 87 s 13;
22 (21) RCW 7.08.150 (Procedure when assignee dies, fails to act,
23 misapplies estate, or if bond insufficient) and 1890 p 87 s 14;
24 (22) RCW 7.08.170 (Discharge of assignor) and 1895 c 151 s 1 & 1890
25 p 88 s 15;
26 (23) RCW 7.08.180 (Sheriff disqualified from acting) and 1893 c 137
27 s 1;
28 (24) RCW 7.08.190 (Right of assignor to exemption) and 1897 c 6 s
29 1;
30 (25) RCW 7.08.200 (Exemption, how claimed--Objections) and 1897 c
31 6 s 2;
32 (26) RCW 7.60.010 (Receiver defined) and 1891 c 52 s 1;
33 (27) RCW 7.60.020 (Grounds for appointment) and 1998 c 295 s 18,
34 1937 c 47 s 1, Code 1881 s 193, 1877 p 40 s 197, 1869 p 48 s 196, &
35 1854 p 162 s 171;
36 (28) RCW 7.60.030 (Oath--Bond) and Code 1881 s 194, 1877 p 41 s
37 198, 1869 p 48 s 198, & 1854 p 162 s 173;



1 (29) RCW 7.60.040 (Powers of receiver) and Code 1881 s 198, 1877 p
2 41 s 202, 1869 p 49 s 202, & 1854 p 163 s 177;
3 (30) RCW 7.60.050 (Order when part of claim admitted) and Code 1881
4 s 199, 1877 p 41 s 203, 1869 p 49 s 203, & 1854 p 163 s 178;
5 (31) RCW 23.72.010 (Definitions) and 1959 c 219 s 1 & 1941 c 103 s
6 1;
7 (32) RCW 23.72.020 (Action to recover--Limitation) and 1941 c 103
8 s 2;
9 (33) RCW 23.72.030 (Preference voidable, when--Recovery) and 1959
10 c 219 s 2 & 1941 c 103 s 3;
11 (34) RCW 23.72.040 (Mutual debts and credits) and 1941 c 103 s 4;
12 (35) RCW 23.72.050 (Attorney's fees--Reexamination) and 1941 c 103
13 s 5;
14 (36) RCW 23.72.060 (Setoffs and counterclaims) and 1941 c 103 s 6;
15 (37) RCW 24.03.275 (Qualification of receivers--Bond) and 1967 c
16 235 s 56;
17 (38) RCW 24.03.280 (Filing of claims in liquidation proceedings),
18 and 1967 c 235 s 57;
19 (39) RCW 24.03.285 (Discontinuance of liquidation proceedings) and
20 1967 c 235 s 58;
21 (40) RCW 24.03.310 (Powers of foreign corporation) and 1967 c 235
22 s 63;
23 (41) RCW 24.03.315 (Corporate name of foreign corporation--
24 Fictitious name) and 1982 c 35 s 98 & 1967 c 235 s 64;
25 (42) RCW 24.03.320 (Change of name by foreign corporation) and 1986
26 c 240 s 44 & 1967 c 235 s 65;
27 (43) RCW 87.56.070 (Qualifications, duties, compensation of
28 receiver) and 1925 ex.s. c 124 s 8;
29 (44) RCW 87.56.080 (Notice to creditors) and 1985 c 469 s 93 & 1925
30 ex.s. c 124 s 9;
31 (45) RCW 87.56.085 (Notice to creditors--Contents) and 1925 ex.s.
32 c 124 s 10;
33 (46) RCW 87.56.090 (Unfiled claims barred--Effect of not filing
34 claim of bond lien) and 1925 ex.s. c 124 s 11;
35 (47) RCW 87.56.110 (Collection and disbursement of funds) and 1925
36 ex.s. c 124 s 13;



1 (48) RCW 87.56.120 (Receiver's report--Plan of liquidation) and
2 1925 ex.s. c 124 s 14;

3 (49) RCW 87.56.130 (Time for hearing receiver's report to be
4 fixed--Notice) and 1985 c 469 s 94 & 1925 ex.s. c 124 s 15;

5 (50) RCW 87.56.135 (Time for hearing receiver's report to be
6 fixed--Contents) and 1925 ex.s. c 124 s 16;

7 (51) RCW 87.56.140 (Objections to report) and 1925 ex.s. c 124 s
8 17;

9 (52) RCW 87.56.145 (Objections to report--Fee) and 1925 ex.s. c 124
10 s 18;

11 (53) RCW 87.56.150 (Hearing--Court's powers and duties) and 1925
12 ex.s. c 124 s 19; and

13 (54) RCW 87.56.155 (Decree--Plan of liquidation) and 1925 ex.s. c
14 124 s 20.

15 NEW SECTION. Sec. 48. Captions used in this act are not part of
16 the law."

17 Correct the title.

--- END ---



**Striking Amendment to SSB 6189
by Rep. Lantz**

EFFECT:

- Requires that claims made against the receiver's bond must be made within one year from the date the receiver is discharged;
- Gives a state agency's claim on the receiver's bond priority;
- Clarifies that the court controlling the receivership cannot transfer other pending actions to the court's jurisdiction if, in the other action, a state agency is a party and there is a statute that vests jurisdiction or venue elsewhere;
- Explicitly adds regulatory and taxing state agencies in the various provisions to include them in the entities that must be notified;
- Clarifies that the receivership does not stay government actions or appeals of tax liabilities;
- Provides that if a state is a party to a contract, the receiver and the state agency must agree to the receiver assuming the contract or else it is deemed rejected by the receiver;
- Provides that a receiver may not abandon property that is a hazard or potential hazard to the public;
- Explicitly provides that a receiver is personally liable to state agencies for failure to remit sales tax collected after appointment;
- Allows state agencies to bring claims on the general receiver within 180 days (as opposed to 30 days) from the date notice is given of the receivership;
- Requires any objection to a claim to be mailed to the creditor at least 30 days (rather than 20) prior to the hearing to approve the general receiver's final report;
- Provides that rejected state claims are not subject to mediation unless agreed upon by the state;
- Explicitly adds support debts to the list of allowed claims in a general receivership, unless the support debt is assigned to another entity.



CERTIFICATION
I hereby certify that the foregoing is a true and correct copy of the original as the same appears in the files of the Washington State Legislature.

BY _____

DATE _____





CERTIFICATION

In accordance with RCW 40.14.030, I hereby certify that this is a true and correct 53-page copy of the record in the official custody of the Washington State Archives.

Source Washington State Legislature - House Committee of Judiciary
By Jewell Lorenz Dunn Title Archivist 2004 SSB6189
Signature *Jewell Lorenz Dunn* Date 12-11-2024

