



1           (3) The person makes an assignment for the benefit of  
2                   creditors;

3           "Petition" means a petition for the appointment of a  
4 receiver under this chapter;

5           §   -2   **Jurisdiction.** The state circuit courts shall have  
6 supervision of proceedings under this chapter and may make all  
7 necessary orders and judgments therefor; provided that all  
8 assignments for the benefit of creditors shall be subject to  
9 this chapter.

10          §   -3   **Assignment; mistakes; amendments.** (a) Voluntary  
11 assignments for the benefit of creditors may be made to an  
12 assignee who is a resident of the State, who before taking  
13 possession of the property assigned and before taking upon the  
14 assignee any trust conferred by the assignment, shall file the  
15 assignment and deliver a bond pursuant to section   -9, to the  
16 clerk of the circuit court of the county in which the assignor  
17 resides or the assignor's principal place of business at the  
18 time of the assignment.

19          (b) No assignment shall be void because of any defect,  
20 informality, or mistake in the assignment or in the bond,  
21 inventory, or list of creditors accompanying the assignment.  
22 The court may direct the amendment of the assignment or of any



1 other document to effect the intention of the assignor or  
2 assignee, or to obtain a distribution of the assignor's assets  
3 as provided in this chapter. Any amendment shall relate back to  
4 the time of the execution of the document. No mistake in filing  
5 a copy instead of an original or any like mistake or inadvertent  
6 failure to comply with this chapter shall void the assignment.

7 (c) No creditor, in case a debtor has attempted to make an  
8 assignment for the benefit of creditors, or in case of the  
9 insolvency of any debtor, by attachment, garnishment, or  
10 otherwise, shall obtain priority over other creditors upon the  
11 assignment being adjudged void, or in consequence of any sale,  
12 lien, or security being adjudged void. In all cases, the  
13 property of the debtor shall be administered for the ratable  
14 benefit of all of the debtor's creditors under the direction of  
15 the court by the assignee or by a receiver.

16 § -4 **Liens by legal proceedings; assignment.** When a  
17 lien has been obtained by legal proceedings against the property  
18 of a debtor, the debtor, within thirty days thereafter, may make  
19 an assignment of all of the debtor's nonexempt property for the  
20 benefit of all of the debtor's creditors, whereupon the lien  
21 shall be dissolved and the property shall be turned over to the  
22 assignee.



1           §   -5   **Assignee's consent, recording copy of assignment.**

2   (a)   An assignee shall endorse in writing the assignee's  
3   acceptance of the assignment, and shall file the assignment with  
4   the clerk of circuit court in the county where the debtor's  
5   residence or principal place of business is located. The court,  
6   upon the filing of the assignment, shall order the assignee to  
7   administer the debtor's estate pursuant to this chapter and the  
8   assignee shall be vested with the powers of a receiver.

9           (b)   A certified copy of an assignment filed pursuant to  
10   subsection (a) shall be recorded in the state bureau of  
11   conveyances.

12          §   -6   **Assignee required to comply, when.**   An assignee  
13   under a voluntary assignment not previously filed under this  
14   chapter, upon petition of any creditor without proof of the  
15   insolvency of the assignor, shall be required to file the  
16   assignment and comply with this chapter.

17          §   -7   **Preferred creditors.**   (a)   A person is considered  
18   to have given a preference if the insolvent person has made a  
19   transfer of any of the person's property or has procured or  
20   permitted a judgment to be entered against the person in favor  
21   of any other person and the effect of the transfer or the  
22   enforcement of the judgment will enable any creditor to obtain a



1 greater percentage of the person's debt than any other creditor  
2 of the same class.

3 (b) For the purposes of this section:

4 "Recipient" means a person or that person's agent who  
5 receives a preference or benefits from a preference.

6 "Transfer" means any of the following, whether made  
7 absolutely or conditionally, voluntarily or involuntarily, by or  
8 without judicial proceedings, as a conveyance, sale, assignment,  
9 payment, pledge, mortgage, lien, encumbrance, gift, security, or  
10 otherwise:

11 (1) The sale or other disposal of, or parting with  
12 property, an interest in property, or the possession  
13 of property; or

14 (2) The fixing of a lien upon property or upon an interest  
15 in property;

16 (c) The retention of a security title to property  
17 delivered to a debtor shall be considered a transfer permitted  
18 by the debtor.

19 (d) If the debtor has given a preference within four  
20 months before the filing of a petition or an assignment, after  
21 the filing of the petition and before the appointment of a  
22 receiver, or after the filing of an assignment and before the



1 qualification of the assignee, and the recipient has reasonable  
2 cause to believe that the enforcement of the judgment or  
3 transfer would effect a preference, the judgment shall be  
4 voidable by the receiver or assignee. The receiver or assignee  
5 may recover the property or its value from the recipient.

6 (e) A transfer of property other than real property is  
7 considered to have been made or permitted at the time when it  
8 became so far perfected that no subsequent lien upon the  
9 property obtainable by legal or equitable proceedings on a  
10 simple contract could become superior to the rights of the  
11 transferee. A transfer of real property shall be considered to  
12 have been made or permitted when it became so far perfected that  
13 no subsequent bona fide purchase from the debtor could create  
14 rights in the property superior to the rights of the transferee.

15 If any transfer of real property is not perfected against a  
16 bona fide purchase, or if any transfer of other property is not  
17 perfected against such liens by legal or equitable proceedings  
18 prior to the filing of a petition initiating a proceeding in  
19 insolvency, it shall be considered to have been made immediately  
20 before the filing of the petition.



1           §   **-8 Receiver; custodian.** (a) The circuit court within  
2 the proper county may sequester the property of a debtor and  
3 appoint a receiver:

4           (1) When an execution against a judgment debtor is  
5 returned unsatisfied in whole or in part; or

6           (2) When a corporation has been dissolved, is insolvent,  
7 or is in imminent danger of insolvency or has  
8 forfeited its corporate rights.

9           (b) Upon application, the court shall appoint as receiver  
10 the person nominated by the petitioning creditor or creditors.

11          §   **-9 Bond.** To qualify, the receiver or assignee shall  
12 give to, and file with the clerk of the circuit court, a bond  
13 sufficient to cover all property likely to come into the  
14 receiver's or assignee's hands, conditioned in the usual manner  
15 with surety to be approved by the judge having supervision of  
16 the proceedings.

17          §   **-10 Meetings of creditors; removal or death of**  
18 **receiver.** (a) The circuit court may provide for hearings and  
19 meetings of creditors to elect a receiver or to pass upon  
20 matters submitted to creditors by a majority vote in number and  
21 amount of claims.



1 (b) The circuit court, upon notice and hearing may remove  
2 any receiver or assignee who is shown to be incompetent,  
3 unqualified, or has wasted or misapplied any of the trust  
4 estate. The court shall remove any assignee or receiver upon  
5 the application of a majority of the creditors who shall  
6 represent a majority in number and amount of claims against the  
7 subject estate and order a settlement of the receiver's or  
8 assignee's account and the surrender of all the estate to a  
9 successor.

10 The court shall appoint the person named in the petition or  
11 some suitable person as the receiver's or assignee's successor  
12 who shall qualify in the manner provided by this chapter. In  
13 place of any receiver or assignee who dies or is removed, the  
14 court may appoint a replacement who shall provide bond and  
15 administer the estate pursuant to this chapter.

16 § -11 **Provisional remedies.** In all actions authorized  
17 by this chapter, appropriate provisional remedies may be made  
18 and final relief administered to equally distribute all assets  
19 recovered among the creditors of the debtor. The circuit court  
20 may order the payment of costs and expenses as necessary.



1 An action or proceeding authorized by this chapter for the  
2 benefit of all creditors may be taken by a creditor although the  
3 creditor's demand is not due at the commencement thereof.

4 § -12 **Dismissal; intervention.** (a) After the  
5 designation of a receiver or custodian by the court, proceedings  
6 under this chapter shall not be dismissed for want of  
7 prosecution or by consent of parties until after reasonable  
8 notice to creditors. The circuit court, before entertaining an  
9 application for dismissal, shall require the debtor to file a  
10 list, under oath, of all of the debtor's creditors and their  
11 addresses and shall notify by mail, all the creditors of the  
12 pendency of the application. The court shall fix a date for the  
13 hearing to allow parties in interest an opportunity to be heard.

14 (b) When proceedings have been commenced under this  
15 chapter and are not diligently prosecuted or delayed, causing  
16 possible injury to other creditors, any creditor may intervene  
17 for the purpose of obtaining a continuance of the administration  
18 or dismissal of the proceedings.

19 § -13 **Inventory of assets and list of creditors.** With  
20 the filing of an assignment or within ten days after the  
21 appointment of a receiver, the debtor shall file with the clerk  
22 of the circuit court, a correct inventory of the debtor's assets

1 and a list of the debtor's creditors, stating the place of  
 2 residence of each and the amount due. The inventory and list  
 3 shall be verified by the debtor by oath. No mistake in the  
 4 inventory or list shall affect the rights of any creditor.

5       §   -14   **Notice; injunction; time of filing claims.**   (a)

6 The circuit court shall require creditors to file their verified  
 7 claims within three months from the date of the filing of an  
 8 assignment or the appointment of a receiver and may enjoin  
 9 proceedings by any other creditor against the insolvent party.

10 The receiver or assignee shall be required to give notice  
 11 promptly to the department of taxation and to all creditors of  
 12 the pendency of the proceeding, the injunction against other  
 13 actions, and the time within which creditors are required to  
 14 file claims.

15       The notice shall be mailed to the department of taxation  
 16 and to each creditor at the creditor's last-known address and  
 17 shall be published in the county where the claim is filed.

18       (b) Creditors not filing claims within the time limit may  
 19 be precluded from participation in any dividend that may be  
 20 declared.

21       §   -15   **Objections to claims; appeal; secured claims.**   (a)

22 At the expiration of the period for the filing of claims, the



1 receiver or assignee shall file all of the following with the  
2 clerk of the circuit court:

3 (1) Proof of publication of the notice under section  
4 -14;

5 (2) A list of the creditors to whom the notice was given,  
6 including the debts owed to the creditors verified by  
7 an affidavit; and

8 (3) A list of claims filed stating the name, residence,  
9 and the amount claimed by each creditor who has filed  
10 a claim.

11 (b) At any time after the expiration of the period for the  
12 filing of claims by a receiver or assignee, or upon the  
13 receiver's or assignee's refusal or failure to act, any creditor  
14 may file written objections to any claim specifying the grounds  
15 for the objection. The party filing the objection shall serve a  
16 copy of the objection upon the claimant as ordered by the  
17 circuit court. Depositions may thereafter be taken as in civil  
18 actions.

19 The circuit court, on the application of either party,  
20 shall enter an order fixing a time when the objections shall be  
21 heard, which shall be served upon the adverse party as



1 prescribed in the order. Upon the final hearing, the court may  
2 order the payment of costs as necessary.

3 (c) Claims of secured creditors may be allowed to enable  
4 the creditors to participate in the proceedings but shall be  
5 allowed for sums proved to be due, over and above the value of  
6 the securities. Dividends shall be paid only upon the excess of  
7 the claim over the value of the security at the time of the  
8 commencement of the proceedings.

9 § -16 **Discovery.** (a) The circuit court may compel the  
10 debtor to discover any property alleged to belong or to have  
11 belonged to the debtor, the disposition of the property, the  
12 consideration, and all the circumstances of the disposition.

13 Every officer, agent, or stockholder of a corporation,  
14 every manager or member of a limited liability company, and  
15 every person to whom it shall be alleged that any transfer of  
16 property has been made, or in whose possession or control the  
17 property is alleged to be, may be compelled to testify in  
18 relation to the property and to the transfer or possession of  
19 the property; provided that the witness shall not be criminally  
20 liable for such testimony.

21 (b) The immunity provided under subsection (a) is subject  
22 to any restriction provided by law.



1           §   -17   **Order of distribution.**   (a)   The order of  
2   distribution out of the debtor's estate shall be as follows:

3           (1)   The actual and necessary costs of preserving the  
4                estate subsequent to the commencement of the  
5                proceedings;

6           (2)   The costs of administration, including reasonable  
7                attorney's fees for the representation of the debtor;

8           (3)   Wages, including pension, welfare and vacation  
9                benefits for workers, clerks, salespersons, or  
10              servants that have been earned and unpaid within three  
11              months before the commencement of the proceedings, not  
12              to exceed \$           to each claimant;

13          (4)   Taxes, assessments, and debts due the United States,  
14                the State or county;

15          (5)   Other debts entitled to priority;

16          (6)   Debts due to creditors generally, in proportion to the  
17                amount of their claims, as allowed; and

18          (7)   After payment of the foregoing, the surplus, if any,  
19                shall be returned to the debtor.

20          (b)   Debts to become due and debts due may be proved, but a  
21   lessor's claim shall be limited to past due rent and to any  
22   actual damage caused to the lessor by a rejection of the lease



1 on the part of the debtor or by its termination by force of its  
2 provisions. The lessor shall be entitled to payment in full at  
3 the rate specified in the lease for the period of any actual  
4 occupancy by the receiver or assignee.

5 (c) The receiver or assignee may pay or the circuit court  
6 may order a dividend to be paid at any time; provided that  
7 claims in dispute are adequately protected.

8 (d) The receiver or assignee, as soon as practicable,  
9 shall report to the circuit court the amount due the employees  
10 of the debtor. The court shall order the receiver or assignee  
11 to promptly, if practicable, pay the wage claims with priority  
12 under this chapter.

13 § -18 Liens. (a) Claims that for lack of record or for  
14 other reasons would not have been valid liens as against  
15 creditors of the debtor armed with process, pursuant to which  
16 the property has been attached or levied upon, shall not be  
17 liens against the estate.

18 (b) Whenever a creditor is prevented from enforcing the  
19 creditor's rights as against a lien created or attempted to be  
20 created by a debtor, the receiver or assignee shall be  
21 subrogated to, and may enforce the rights of a creditor for the  
22 benefit of the estate.



1 (c) For the purposes of this section, "preference" has the  
2 meaning referred to in section -7.

3 (d) A lien created by, or obtained in, or pursuant to any  
4 action that was begun against a person within ninety days before  
5 the commencement of proceedings for the appointment of a  
6 receiver or the filing of an assignment under this chapter shall  
7 be dissolved by the appointment of a receiver or the  
8 qualification of the assignee. The receiver or assignee shall  
9 be subrogated to the rights of the holder of the lien for the  
10 benefit of all creditors, if:

11 (1) It appears that the lien was obtained and permitted  
12 while the debtor was insolvent and that its existence  
13 or enforcement will work a preference; or

14 (2) The lien was sought and permitted in violation of this  
15 chapter.

16 (e) Liens given or accepted in good faith for a present  
17 consideration that have been properly recorded or filed, to the  
18 extent of the present consideration only, shall not be affected  
19 by this chapter.

20 (f) All conveyances, transfers, assignments, or  
21 encumbrances of a debtor's property, or any part of a debtor's  
22 property made or given by the debtor within ninety days prior to



1 the filing of a petition or assignment under this chapter with  
2 the intent to hinder, delay, or defraud any of the debtor's  
3 creditors, shall be void against the debtor's creditors except  
4 as to purchasers in good faith for a present fair consideration.

5 (g) All property that is the subject of a conveyance,  
6 transfer, assignment, or encumbrance rendered void under  
7 subsection (d) and is not exempt from execution, shall be and  
8 remain a part of the assets and estate of the debtor. The  
9 property shall pass to the debtor's receiver or assignee who  
10 shall recover and retain the property for the benefit of the  
11 creditors.

12 (h) All conveyances, transfers, or encumbrances of a  
13 debtor's property made by the debtor at any time within four  
14 months prior to the filing of a petition or assignment hereunder  
15 while insolvent that are null and void against creditors by law,  
16 shall pass to the receiver or assignee for the benefit of the  
17 creditors.

18 (i) All levies, judgments, attachments, or other liens  
19 obtained through legal proceedings against a person who is  
20 insolvent at any time within four months prior to the filing of  
21 a petition or assignment under this chapter are void in case a  
22 receiver is appointed or an assignee qualifies.



1           The property affected by the levy, judgment, attachment, or  
2 other lien shall be wholly discharged and released from the  
3 levy, judgment, attachment, or lien and pass to the receiver or  
4 assignee as a part of the estate of the debtor, unless the  
5 court, on due notice, orders that the right under the levy,  
6 judgment, attachment, or lien shall be preserved for the benefit  
7 of the estate. The right under the levy, judgment, attachment,  
8 or lien may pass to, and shall be preserved by the receiver or  
9 assignee for the benefit of the estate.

10           §   **-19 Title to property.** (a) The receiver or assignee  
11 upon qualifying, shall be vested with the title of the debtor as  
12 of the date of the filing of the petition or assignment, except  
13 for property that is exempt, including:

- 14           (1) Property transferred by the debtor in fraud of the  
15               debtor's creditors;
- 16           (2) Property that prior to the filing of the petition or  
17               assignment could by any means have transferred or  
18               levied upon and sold under judicial process against  
19               the debtor; and
- 20           (3) Rights of action arising upon contracts or from the  
21               unlawful taking or detention of, or injury to the  
22               debtor's property.



1 (b) The receiver or assignee may avoid any transfer by the  
2 debtor of the debtor's property that any creditor might have  
3 avoided, and may recover the property transferred or its value  
4 from the person to whom it was transferred unless the transferee  
5 was a bona fide holder for value prior to the filing of the  
6 petition or assignment hereunder.

7 § -20 Settlement of receiver's or assignee's accounts.

8 (a) Every receiver or assignee, within six months after the  
9 time limited for filing claims or within any further time that  
10 the circuit court allows, shall file with the clerk of the  
11 circuit court, a full and itemized statement verified by the  
12 receiver's or assignee's oath showing all of the following in  
13 regard to the receivership or assignment:

- 14 (1) The property received by the receiver or assignee;  
15 (2) The manner of the receiver's or assignee's dealing  
16 with the property received;  
17 (3) The amount of money realized by the receiver or  
18 assignee;  
19 (4) The condition of the property and funds in the  
20 receiver's or assignee's possession;  
21 (5) The names and residences of the debtor's creditors;  
22 (6) The dividends paid to the debtor's creditors;



1 (7) The receiver's or assignee's receipts and  
2 disbursements; and

3 (8) The receiver's or assignee's claim for compensation  
4 and administrative expenses.

5 (b) If any receiver or assignee neglects to promptly apply  
6 for a settlement account, the circuit court, upon application of  
7 any creditor, may compel the making and filing of the account or  
8 settlement of the account and the receiver or assignee may be  
9 denied compensation.

10 (c) Upon filing the report described in subsection (a),  
11 the receiver or assignee may apply to the circuit court upon not  
12 less than ten days notice by mail to the respective creditors  
13 named in the report for a final settlement of the account. The  
14 circuit court shall fix a time and place for the hearing of  
15 objections or taking of evidence and by order, settle and adjust  
16 the accounts and the compensation and expenses of the receiver  
17 or assignee, regardless of whether objection is made. The order  
18 shall be conclusive upon all parties including the sureties of  
19 the receiver or assignee.

20 The receiver or assignee or any creditor may appeal from  
21 the order in the manner prescribed for appeals in civil actions,  
22 except that the receiver or assignee may file a notice and



1 undertaking with the clerk without other service of the notice  
2 and undertaking.

3 The receiver or assignee shall be discharged of the trust  
4 and the cancel the bond upon compliance with the final order of  
5 the court.

6 § -21 **Voluntary proceedings by wage earners for**  
7 **amortization of debts.** (a) Any person whose principal source  
8 of income consists of wages or salary may file a verified  
9 petition with the circuit court in the county of the person's  
10 residence stating that the person is unable to meet current  
11 debts as they mature but is able to make regular future payments  
12 on account sufficient to amortize the debts over a period of not  
13 more than three years and that the person desires the aid of the  
14 court to effectuate the amortization.

15 The petition shall also set forth the names and addresses  
16 of any creditors who have levied any executions, attachments,  
17 garnishments, and of any garnishees. The court shall order that  
18 proceedings for the enforcement of the executions, attachments,  
19 or garnishments be stayed during the pendency of proceedings  
20 under this section. The petition shall be accompanied by a fee  
21 as prescribed by the court.



1 (b) After the filing of a petition under this section and  
2 until the dismissal of the proceedings, no execution,  
3 attachment, or garnishment may be levied or enforced by any  
4 creditor seeking the collection of any claim that arose prior to  
5 the proceedings, unless the claim is not included by the debtor  
6 in the claims to be amortized pursuant to this section.

7 With respect to the claims to be amortized, the time  
8 between the filing of the petition and the dismissal of the  
9 proceedings shall not be counted as a part of the period of any  
10 statute of limitation.

11 (c) On the filing of the petition, the circuit court shall  
12 appoint a disinterested trustee who shall forthwith meet with  
13 the debtor to make a list of the debtor's creditors with their  
14 addresses and the amounts owing to each. The debtor shall:

- 15 (1) Sign and verify the list;
- 16 (2) Send notices to each creditor and the amount claimed  
17 by that creditor; and
- 18 (3) Hold a meeting in the trustee's office not less than  
19 five nor more than ten days thereafter to consider an  
20 amortization plan to determine the claims covered by  
21 the plan.

22 (d) Upon conclusion of the meeting, the trustee shall:



1 (1) Report to the circuit court that no equitable plan of  
2 amortization is feasible or needed, in which case the  
3 court may forthwith dismiss the proceedings; or

4 (2) Recommend to the circuit court an amortization plan  
5 calculated by bi-weekly or monthly payments to  
6 discharge in full, the claims of the creditors listed  
7 in the plan within a period not to exceed three years.

8 (e) The trustee shall attach to a plan recommended under  
9 subsection (d), the written consents and objections, if any, of  
10 the creditors present or represented at the meeting and an  
11 analysis with the trustee's recommendations regarding the  
12 disposition of any claim whose amount is in dispute or appears  
13 to be uncertain.

14 (f) If warranted, the circuit court shall enter an order  
15 approving the plan recommended under subsection (d) and  
16 determine for the purposes of the plan, the amounts of the  
17 claims, unless a creditor objects under subsection (d) and  
18 requests a hearing with respect to the plan, the amount of the  
19 creditor's claim, or the person named as trustee.

20 The circuit court shall set a date for a hearing as soon as  
21 possible after notifying the debtor, the trustee, and creditors.

22 At the hearing, the court shall:



- 1           (1) Enter an order either approving the plan, if satisfied
- 2                   that it is feasible and equitable, and determine for
- 3                   the purposes of the plan, the amounts of the claims;
- 4           (2) Dismiss the proceedings; or
- 5           (3) Modify and approve a fair and just plan.

6           The circuit court may replace an unsuitable trustee after  
7 proper objection.

8           (g) If the plan recommended under subsection (d) or a  
9 modification of the plan is approved under this section, the  
10 debtor shall make the periodic payments provided for in the plan  
11 to the trustee; provided that the debtor may make additional  
12 payments from time to time to the trustee. The trustee shall  
13 distribute the payments proportionally among the creditors  
14 listed in the plan, less the following:

- 15           (1) A deduction for the trustee's compensation shall be
- 16                   fixed by the court when the plan is approved in an
- 17                   amount not to exceed seven per cent of each
- 18                   distribution if the payments are made through an
- 19                   assignment to the trustee of the debtor's wages or
- 20                   salary. Compensation shall not exceed ten per cent if
- 21                   no assignment is made; and



1           (2) A deduction for postage to mail payments, meeting  
2           notices required under this section, and any  
3           correspondence with creditors.

4           (h) If any payment under subsection (g) is so small as to  
5           make its immediate distribution impractical or needlessly  
6           expensive, the trustee shall deposit it in a special trustee  
7           account. The trustee may make additional deposits until the  
8           amount is large enough for distribution; provided that no  
9           payments shall remain undistributed for more than ninety days.

10          (i) If the debtor defaults in any payment provided for  
11          under the plan for a period of more than thirty days, the  
12          trustee shall, and before the end of the thirty day period may,  
13          report the matter to the court with the trustee's  
14          recommendations. The circuit court shall either dismiss the  
15          proceedings or, if satisfied from the trustee's report that the  
16          debtor is in good faith and should be able to make good on the  
17          default, extend the grace period for not more than thirty days.

18          At the end of the grace period, the trustee shall again  
19          report to the circuit court and if all defaults have not then  
20          been cured, the court shall immediately dismiss the proceedings.

21          If the debtor makes preferential payments to creditors  
22          during the pendency of the proceedings or appears for any reason



1 to be abusing the privileges of this section, the trustee shall  
2 promptly report the matter to the court and the circuit court  
3 may dismiss the proceedings.

4 If the claims of all creditors as listed in the plan are  
5 satisfied in full, the trustee, upon completion of the final  
6 distribution, shall report to the court and the court shall  
7 dismiss the proceedings.

8 (j) Neither the determination of the amount of any claim  
9 for the purposes of the plan, nor the acceptance of payments  
10 under the plan, shall affect the right of any creditor to  
11 litigate the creditor's claim and obtain judgment on the claim  
12 or the right of the debtor to dispute the claim. The amount of  
13 any judgment shall be substituted by the trustee for the amount  
14 fixed in the plan.

15 (k) Any secured creditor who wishes to realize on the  
16 creditor's security, shall give the trustee at least five days  
17 notice in writing of the time, place, and manner of the proposed  
18 realization and shall notify the trustee of the amount realized,  
19 by which amount the creditor's claim as listed under the plan  
20 shall be reduced.

21 (l) The state supreme court may adopt rules and forms not  
22 inconsistent with this chapter and may provide forms of



1 petitions for clerks of the circuit courts who upon request, and  
2 without charge, shall assist debtors in the preparation of their  
3 petitions.

4 (m) The circuit court in its discretion upon application,  
5 may amend or modify the plan of amortization and may render  
6 orders relating to the proceedings or the plan of amortization  
7 as required.

8 § -25 **Uniform act governing secured creditor's dividends**  
9 **in liquidation proceedings.** (a) As used in this section,

10 unless the context or subject matter requires otherwise:

11 "Creditor's sale" includes any sale effected by a secured  
12 creditor, by judicial process, or by the terms of the creditor's  
13 contract, or applicable law for the purpose of realizing the  
14 creditor's security.

15 "Liquidation proceeding" includes:

- 16 (1) All assignments for the benefit of creditors whether  
17 voluntary or by operation of law;
- 18 (2) Administration of insolvent decedents' estates;
- 19 (3) Liquidations of insolvent banks;
- 20 (4) Equity receiverships where the subject under  
21 receivership is insolvent; and



1           (5) Any other proceedings for distribution of assets of  
2           any insolvent debtor, whether a person, decedent's  
3           estate, partnership, corporation, or business  
4           association.

5           "Liquidator" means any person administering assets in any  
6           liquidation proceeding as defined in this section.

7           "Insolvent debtor" means any insolvent person, decedent's  
8           estate, partnership, corporation, or business association  
9           involved in a liquidation proceeding as defined in this section.

10          "Secured creditor" means a creditor who has either legal or  
11          equitable security for the creditor's debt upon any property of  
12          the insolvent debtor of a nature to be liquidated and  
13          distributed in a liquidation proceeding, or a creditor to whom  
14          is owed a debt for which the security is possessed by some  
15          endorser, surety, or other person secondarily liable.

16          (b) In a liquidation proceeding every secured creditor's  
17          claim against the general assets shall disclose the nature of  
18          the security. When a decedent's estate already in the course of  
19          administration is judicially declared insolvent or when in an  
20          equity receivership it is determined that the subject under  
21          receivership is insolvent, secured creditors having claims on



1 file that do not comply with this subsection shall disclose the  
2 security as ordered by the circuit court.

3 (c) Any secured creditor who, with intent to evade the  
4 provisions of this section, fails to disclose the existence of  
5 the security shall not be entitled to receive or retain  
6 dividends out of the general assets, unless the creditor  
7 thereafter releases or surrenders to the liquidator the security  
8 that the creditor failed to disclose or the creditor procures  
9 the release or surrender of the security if the security is in  
10 the possession of an endorser, surety, or other person  
11 secondarily liable for the insolvent debtor.

12 (d) Dividends paid to secured creditors shall be computed  
13 only upon the balance due after the value of all security not  
14 exempt from the claims of unsecured creditors and not released  
15 or surrendered to the liquidator is determined and credited upon  
16 the claim secured by it.

17 (e) When the asset constituting the security is an  
18 obligation for the payment of money, the secured creditor may  
19 determine the security's value by collection or by exhausting  
20 the creditor's remedies against the security and surrendering  
21 the obligation to the liquidator.



1 (f) When the asset constituting the security is other than  
2 an obligation for the payment of money, the secured creditor may  
3 determine its value by creditor's sale.

4 (g) Where valuation under subsection (d) is impracticable  
5 or would cause undue delay, the court, upon petition by either  
6 the secured creditor or the liquidator, may order the value of  
7 the security determined by:

8 (1) Compromise, if the secured creditor and the liquidator  
9 agree upon a value. The liquidator may redeem the  
10 assets by payment of the agreed value, if authorized  
11 by the court;

12 (2) Litigation, through proceedings in a liquidation  
13 proceeding. The liquidator may redeem the assets by  
14 paying the value so determined if authorized by the  
15 court; or

16 (3) Liquidator's sale of the assets that, when completed  
17 and approved by the court, shall pass to the purchaser  
18 good title, free and clear of all liens of the secured  
19 creditor. The liens shall be transferred to the  
20 proceeds of the sale. The order of sale may be:

21 (A) Conditional, requiring the sale to be made by the  
22 liquidator only if the secured creditor does not



1 complete a determination by collection or  
2 creditor's sale as set forth in subsection (f)  
3 within a time fixed by the court; or

4 (B) Absolute, requiring the sale to be made by the  
5 liquidator within a time fixed by the court.

6 This paragraph shall not apply to security upon  
7 real estate of insolvent decedents' estates  
8 administered by the probate court.

9 (h) When any creditor has legal or equitable security upon  
10 assets that are exempt from process for the satisfaction of  
11 unsecured debt and are duly claimed as exempt by the insolvent  
12 debtor, the value of the security shall not be credited upon the  
13 claim. Amounts realized by the creditor from the security after  
14 liquidation proceedings are begun shall be disregarded in  
15 computing dividends, unless the dividend computed exceeds the  
16 sum actually owing upon the claim, in which event only the  
17 amount owing shall be paid."

18 SECTION 2. This Act does not affect rights and duties that  
19 matured, penalties that were incurred, and proceedings that were  
20 begun, before its effective date.



1 SECTION 3. This Act shall take effect on January 1, 2009.

2

INTRODUCED BY: 

JAN 23 2008



**Report Title:**

State Preference; Creditors; Bankruptcy

**Description:**

Provides procedures to allow assignments for the benefit of creditors in bankruptcy proceedings.

