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SUMMARY

A BILL FOR AN ACT

Relating to receivership; creating new provisions; and amending ORS 465.255 and ORCP 80 A.

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

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

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

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

( ) "Affiliate" means:

(a) With respect to an individual:

(A) A companion of the individual;

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

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

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

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

any of them; or

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

(b) With respect to any person:

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

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

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

( ) "Companion" means spouse or domestic partner.

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

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

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

( ) "Executory contract" means:

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

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

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

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

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

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

(B) Any property exempt from execution under any law of this

state; or

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

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

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

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

( ) "Party" means:

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

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

( ) "Person" means an individual, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, cooperative, business trust, governmental entity or other entity, of any kind or nature.

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

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

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

( ) "Residential property" means real property:

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

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

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

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

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

( ) "Utility" means a person providing any service regulated by the Public Utility Commission.

SECTION 4. Applicability. (1) The Oregon Receivership Code applies to all receiverships initiated in a court of this state, except for:

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

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

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

(3) The provisions of the Oregon Receivership Code control over conflicting provisions of ORCP 80 with respect to receiverships governed by the Oregon Receivership Code.

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

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

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

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

(d) Property held in trust for another person.

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

(3) A court may appoint a receiver with respect to any nonexempt

interest in property that is partially exempt from execution, including fee title to real property subject to a homestead exemption.

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

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

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

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

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

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

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

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

(f) After judgment, either before or after the issuance of an execution, to preserve, protect or prevent the transfer of property subject to execution and sale thereunder.

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

(h) In any situation in which the appointment of a receiver is expressly required or permitted by statute.

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

parties.

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

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

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

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

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

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

(b) An order appointing a receiver may appoint the receiver over all of a person's property, wherever located.

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

2017 Act.

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

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

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

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

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

(2) If a court appoints an entity as a receiver, the court may require a specific individual to appear in the receivership on behalf of the entity.

SECTION 8. Required disclosures relating to conflicts of interest. A court may not appoint a person as a receiver unless the person first:

(1) Discloses whether the person:

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

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

(c) Has a material financial interest in the outcome of the action, other than compensation approved by the court;

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

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

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

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

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

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

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

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

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

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

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

<u>SECTION 10.</u> <u>Exclusive jurisdiction of appointing court.</u> (1) The court appointing a receiver has:

(a) Exclusive authority over the receiver;

(b) Exclusive jurisdiction over and right to control all real property

and all tangible and intangible personal property constituting the estate, wherever located, to the full extent of the court's jurisdiction; and

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

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

<u>SECTION 11.</u> <u>Powers of receiver.</u> (1) The court appointing a receiver may confer upon the receiver the power to perform any of the following actions, in any combination:

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

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

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

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

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

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

(g) On subpoena, compel a person to submit to examination under oath in the manner of a deposition in a civil case, or to produce and

permit inspection and copying of designated records or tangible things, with respect to estate property or any other matter that may affect administration of the receivership;

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

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

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

(k) Make improvements to estate property;

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

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

(n) Pay compensation to the receiver;

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

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

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

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

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

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

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

<u>SECTION 12.</u> <u>Duties of receiver.</u> (1) A receiver shall notify all fed-

eral and state taxing and applicable regulatory agencies of the receiver's appointment in accordance with any applicable laws imposing this duty, including 26 U.S.C. 6036.

(2) A receiver shall comply with applicable law.

(3) If appointed with respect to any real property, a receiver shall file with the recorder of the county in which the real property is located a certified copy of the order of appointment, together with a legal description of the real property if one is not included in the order.

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

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

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

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

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

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

recoupment.

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

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

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

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

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

(d) After the receiver's appointment, submit to examination under oath by the receiver, or by any other person upon order of the court, concerning the acts, conduct, property, liabilities and financial condition of the owner or any matter relating to the receiver's administration of the estate.

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

SECTION 16. **Mailing lists to be maintained by receiver.** **(1) A receiver shall maintain a master mailing list of the names and addresses of all parties to the receivership, all known creditors of the owner and interested persons who have filed notices of appearance in the receivership. The receiver shall make a copy of the current master mailing list available to any person on the list upon the person's request.**

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

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

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

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

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

(C) File notice with the court; and

(D) File proof of service with the court.

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

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

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

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

(4)(a) Except as provided in section 18 of this 2017 Act, whenever a

provision of the Oregon Receivership Code authorizes a person to take an action after giving notice, the person may take the action without specific authorization from the court if:

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

(B) No objections are filed.

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

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

(d) If a person is allowed under this subsection to take an action without specific authorization from the court, the person may nonetheless move the court for an order authorizing the action.

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

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

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

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

(a) Sale or other disposition of real property;

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

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

(d) Assumption of an executory contract;

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

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

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

(h) Termination of the receivership.

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

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

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

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

SECTION 20. **Receiver's periodic reports.** **(1) A receiver shall file**

with the court a monthly report of the receiver's operations and financial affairs, unless the court orders a different reporting period. The receiver shall file each report no later than 30 days after the end of a reporting period. The initial report under this section must be filed no later than 60 days after the receiver is appointed, unless the court orders a different deadline.

(2) Each periodic report must include:

(a) A concise narrative summary of the receiver's activities during the period and a description of any major upcoming events;

(b) Beginning and ending cash balances;

(c) A statement of cash receipts and disbursements;

(d) A statement of noncash receipts and payments;

(e) A statement of receipts and dispositions of estate property outside the ordinary course of business, including a description of the property, the value of the property and the amounts received from any disposition of the property;

(f) A statement of accounts receivable;

(g) A statement of fees and expenses of the receiver;

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

(i) Any other information required by the court.

<u>SECTION 21.</u> <u>Claims bar date.</u> A receiver may, after providing notice to all known creditors of the owner, set a deadline for the submission of claims by creditors. The receiver, upon court order, may disallow any claims submitted after the deadline.

<u>SECTION 22.</u> <u>Automatic stay of certain proceedings.</u> (1) Except as otherwise ordered by the court, the entry of an order appointing a receiver operates as a stay, applicable to all persons, of:

(a) The commencement or continuation, including the issuance or employment of process, of a judicial, administrative or other action

or proceeding against the owner that was or could have been commenced before the entry of the order of appointment, or to recover a claim against the owner that arose before the entry of the order of appointment;

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

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

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

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

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

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

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

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

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

(a) The continuation of a judicial or nonjudicial foreclosure action

that was initiated by the party seeking the receiver's appointment, unless otherwise ordered by the court;

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

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

(d) Any act to perfect, or to maintain or continue the perfection of, an interest in estate property if the interest perfected would be effective against a creditor of the owner holding at the time of the entry of the order of appointment either a perfected nonpurchase money security interest under ORS chapter 79 against the property, or a lien by attachment, levy or the like, including liens under ORS chapter 87, whether or not such a creditor exists, except that if perfection of an interest would require seizure of the property involved or the commencement of an action, the perfection may and must instead be accomplished by filing and serving on the receiver notice of the interest within the time fixed by law for seizure or commencement;

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

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

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

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

(7) If a person knowingly violates the stay imposed by this section,

the court may:

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

(b) Sanction the violation as civil contempt.

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

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

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

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

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

(3) Any obligation or liability incurred by a receiver due to the receiver's assumption of an executory contract is an expense of the receivership. A receiver's rejection of an executory contract is treated as a breach of the contract occurring immediately before the receiver's appointment, and the receiver's right to possess or use property pur-

suant to an executory contract terminates upon rejection of the contract. The other party to an executory contract that is rejected by a receiver may take any necessary steps to terminate or cancel the contract. Any claims resulting from a receiver's rejection of an executory contract must be submitted to the receiver in the manner provided for by section 35 of this 2017 Act within 30 days after the rejection.

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

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

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

(b) The contract is a contract to make a loan or extend credit or financial accommodations to or for the benefit of the owner, or to issue a security of the owner; or

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

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

(7) If the receiver rejects an executory contract for the sale of real property under which the owner is the seller and the purchaser is in possession of the real property, the sale of a real property timeshare interest under which the owner is the seller, the license of intellectual

property rights under which the owner is the licensor or the lease of real property under which the owner is the lessor, then:

(a) The purchaser, licensee or lessee may:

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

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

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

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

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

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

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

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

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

(2) Upon court order, a receiver may transfer estate property other

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

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

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

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

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

(7) If at the time of appointment of a receiver an owner holds an

undivided interest in property as a tenant in common, joint tenant or tenant by the entirety, the receiver may sell both the interest that is estate property and the interest of any co-owner upon court order if the court determines that:

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

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

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

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

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

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

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

SECTION 27. Recovery of costs related to secured property. A receiver may recover from property securing a secured claim the necessary costs and expenses of preserving, or disposing of, the property to

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

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

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

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

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

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

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

(b) The assignment would not promote judicial efficiency.

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

the agency consents to the transfer.

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

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

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

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

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

<u>SECTION 30.</u> <u>Personal liability of receiver.</u> (1) A receiver may be personally liable to the owner, or a record or beneficial owner of estate property, for loss or diminution in value of or damage to estate property only if the loss, diminution or damage is caused by:

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

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

(2) A receiver may be personally liable to a person other than the owner, or the record or beneficial owner of estate property, for any

loss, diminution or damage caused by the receiver's performance of the receiver's duties, or the receiver's authorized operation of a business, only if the loss, diminution or damage is caused by:

(a) Fraud by the receiver;

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

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

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

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

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

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

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

(a) The identity and qualifications of the professional;

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

(c) Any potential conflict of interest; and

(d) The proposed compensation.

(3) If an objection is filed after the receiver provides notice of the professional's employment, the professional may continue to perform

the professional's duties while the objection is pending.

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

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

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

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

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

(2) Persons who receive notice of the pendency of a receivership, whether actual or constructive, and creditors or other persons submitting written claims in the receivership or otherwise appearing and participating in the receivership, are bound by the acts of the receiver with respect to management and disposition of estate property, re-

gardless of whether they are formally joined as parties to the receivership.

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

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

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

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

(a) The date of appointment of the receiver;

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

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

(d) The name and address of the owner;

(e) The name and address of the receiver and receiver's attorney, if any;

(f) A procedure for notifying the receiver if the recipient is represented by an attorney;

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

(h) A statement that the person may not receive notice of all further proceedings in the receivership unless the person requests to be

placed on the special notice list.

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

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

<u>SECTION 34.</u> <u>Claims process.</u> (1) If a receiver determines that the estate is sufficient to provide distributions to creditors, the receiver shall, upon notice, establish a claims process by sending a written document describing a claims process, including relevant dates and deadlines, to all known creditors of the owner. The receiver may prescribe forms or otherwise specify information required to be included in a claim.

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

<u>SECTION 35.</u> <u>Submission of claims by creditors.</u> (1) Claims may not be submitted until a claims process is established under section 34 of this 2017 Act.

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

(3) Claims must be submitted by delivering the claim to the receiver or an agent designated by the receiver within 30 days after the claims process is established, except that a claim arising from the rejection

of an executory contract of the owner must be submitted within 30 days after the rejection. Claims by state agencies must be submitted within 180 days after the claims process is established. The court may shorten or extend any time period set forth in this subsection.

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

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

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

(c) Be executed by the claimant or the claimant's agent; and

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

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

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

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

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

(2) Upon request of a creditor, the receiver or a person objecting to a creditor's claim, or upon order of the court, an objection is subject to mediation before adjudication of the objection, under the rules or orders adopted or issued with respect to mediations. However, claims

by the state are not subject to mediation unless the state consents to mediation.

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

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

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

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

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

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

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

(c) The third priority is actual, necessary costs and expenses incurred during the administration of the estate, other than those expenses allowable under subsection (2) of this section, including allowed fees and reimbursement of reasonable charges and expenses of the receiver and professional persons employed by the receiver under section 31 of this 2017 Act. Notwithstanding paragraph (b) of this subsection, expenses incurred during the administration of the estate have priority over the secured claim of any creditor obtaining the ap-

pointment of the receiver.

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

(e) The fifth priority is claims of creditors with liens on estate property that are not required to be perfected under applicable law. Such creditors receive the proceeds of the disposition of their collateral.

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

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

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

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

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

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

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

(k) The eleventh priority is other unsecured claims.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A list of dispositions of estate property;

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

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

(f) Any other information required by the court.

(3) If the court approves the final report and accounting, the court shall discharge the receiver. The court may issue an order exonerating the receiver's bond or alternative security.

(4) The receiver's discharge:

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

(b) Releases the receiver and any persons acting on behalf of the receiver from all further liability in connection with the administration of estate property or the receivership.

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

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

<u>SECTION 42.</u> <u>Applicability.</u> Sections 2 to 41 of this 2017 Act apply to receiverships in which the receiver is appointed on or after January 1, 2018.

<u>SECTION 43.</u> ORCP 80 A is amended to read:

<u>A Receiver defined **and applicability**.</u>

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

A(2) The provisions of the Oregon Receivership Code control over conflicting provisions of this rule with respect to receiverships gov-

erned by the Oregon Receivership Code.

SECTION 44. ORS 465.255 is amended to read:

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

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

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

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

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

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

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

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

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

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

(B) An act of war.

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

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

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

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

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

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

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

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

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

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section such persons shall be liable

for remedial action costs incurred by the state or any other person that are attributable to or associated with a facility, and for damages for injury to or destruction of any natural resources caused by a release, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

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

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

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

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

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

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

(6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this section, that the person did or did not have reason to

know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

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

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

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

SECTION 45. The section captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.
