CHAPTER 128

CREDITORS' ACTIONS

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128.001 Definitions. In this chapter:

(1) INSOLVENT. A person is considered "insolvent" whenever any of the following conditions is met:

(a) The aggregate of the person's property, exclusive of any property that the person may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay the person's creditors, shall not, at a fair valuation be sufficient in amount to pay the person's debts.

(b) An execution against the person or the person's property is returned unsatisfied.

(c) The person makes an assignment for the benefit of creditors.

(2) PETITION. "Petition" means a petition for the appointment of a receiver under this chapter.

History: 1997 a. 253.

128.01 Jurisdiction. The circuit courts shall have supervision of proceedings under this chapter and may make all necessary orders and judgments therefor; and all assignments for the benefit of creditors shall be subject to this chapter.

History: 1977 c. 449.

This chapter does not encroach upon the field occupied by the federal Bankruptcy Act merely because the chapter provides for a distribution, either voluntary or not, of assets of an insolvent corporation among its creditors. Gelatt v. DeDakis, 77 Wis. 2d 578, 254 N.W.2d 171 (1977).

Chapter 128: Wisconsin's Bankruptcy Alternative. Murrell. Wis. Law. May 2008.

Chapter 128: A Change Will Do Us Good. Furay. Wis. Law. June 2019.

128.02 Assignment; mistakes; amendments. (1) Voluntary assignments for the benefit of creditors may be made to an assignee who is a resident of this state, who shall, before taking possession of the property assigned and before taking upon himself or herself any trust conferred by the assignment, file the assignment and deliver to the clerk of the circuit court of the county in which such assignor resides or has his or her principal place of business at the time of the assignment, a bond as required by s. 128.09.

(2) No assignment shall be void because of any defect, informality or mistake in the assignment or in the bond, inventory or list of creditors accompanying the assignment. The court may direct the amendment of the assignment or of any other document to effect the intention of the assignor or assignee, or to obtain a distribution of the assignor's assets as provided in this chapter, and any such amendment shall relate back to the time of the execution of the document. No mistake in filing a copy instead of an original or any like mistake or inadvertent failure to comply with this chapter shall void the assignment.

(3) (a) No creditor shall, in case a debtor has attempted to make an assignment for the benefit of creditors, or in case of the insolvency of any debtor, by attachment, garnishment or otherwise, obtain priority over other creditors upon the assignment being adjudged void, or in consequence of any sale, lien or security being adjudged void.

(b) In all cases described in par. (a), the property of the debtor shall be administered for the ratable benefit of all of the debtor's creditors under the direction of the court by the assignee or by a receiver.

History: 1993 a. 492; 1997 a. 253.

128.03 Liens by legal proceedings; assignment. When a lien has been obtained by legal proceedings against the property of a debtor the debtor may, within 30 days thereafter, make an assignment of all of the debtor's nonexempt property for the benefit of all of the debtor's creditors, whereupon the lien shall be dissolved and the property shall be turned over to the assignee.

History: 1993 a. 492; 1997 a. 253.

128.05 Assignee's consent, recording copy of assignment. (1) The assignee shall endorse in writing the assignee's acceptance of the assignment, and shall file the assignment with the clerk of circuit court in the county where the debtor has his or her residence or principal place of business. The court shall, upon the filing of the assignment, order the assignee to administer the debtor's estate pursuant to this chapter, and the assignee shall be vested with the powers of a receiver.

(2) A certified copy of an assignment filed under sub. (1) may be recorded in the office of the register of deeds of any county wherein lands are conveyed by the assignment in the same manner and with the same effect as other conveyances.

History: 1993 a. 492; 1997 a. 253.

An assignee is a trustee for both the debtor and creditors but must look primarily to the interests of creditors. Voluntary Assignment of Linton v. Schmidt, 88 Wis. 2d 183, 277 N.W.2d 136 (1979).

128.06 Assignee required to comply, when. (1) The assignee under a voluntary assignment not previously filed under the provisions of this chapter shall upon petition of any creditor without proof of the insolvency of the assignor be required to file the assignment and comply with the provisions of this chapter.

128.07 Preferred creditors. (1) DEFINITIONS. In this section:

(a) A person shall be considered to have given a preference if, being insolvent, the person has made a transfer of any of his or her property, or has procured or permitted a judgment to be entered against him or her in favor of any other person, and the effect of the transfer or the enforcement of the judgment will be to enable any creditor to obtain a greater percentage of his or her debt than any other creditor of the same class.

(b) "Recipient" means a person who receives a preference, or benefits from a preference, or that person's agent.

(c) 1. "Transfer" means any of the following, whether made absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings, as a conveyance, sale, assignment, payment, pledge, mortgage, lien, encumbrance, gift, security or otherwise:

a. The sale or other disposal of or parting with property, an interest in property or the possession of property.

b. The fixing of a lien upon property or upon an interest in property.

2. The retention of a security title to property delivered to a debtor shall be considered a transfer permitted by the debtor.

(2) If the debtor has given a preference within 4 months before the filing of a petition, or an assignment, after the filing of the petition and before the appointment of a receiver, or after the filing of an assignment and before the qualification of the assignee, and the recipient has reasonable cause to believe that the enforcement of the judgment or transfer would effect a preference, the judgment shall be voidable by the receiver or assignee, and the receiver or assignee may recover the property or its value from the recipient.

(4) A transfer of property other than real property shall be considered to have been made or permitted at the time when it became so far perfected that no subsequent lien upon the property obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee. A transfer of real property shall be considered to have been made or permitted when it became so far perfected that no subsequent bona fide purchase from the debtor could create rights in the property superior to the rights of the transferee. If any transfer of real property is not so perfected against a bona fide purchase, or if any transfer of other property is not so perfected against such liens by legal or equitable proceedings prior to the filing of a petition initiating a proceeding in insolvency, it shall be considered to have been made immediately before the filing of the petition.

History: 1993 a. 492; 1997 a. 253.

A preference is voidable under sub. (2) if an ordinarily prudent business person would, under the circumstances, have reasonable cause to believe both that the transferor is insolvent and that the effect of the transfer would be to enable the recipient to obtain a greater percentage of its debt than any other creditor of the same class. Freund v. Nasonville Dairy, Inc., 2019 WI App 55, 389 Wis. 2d 35, 934 N.W.2d 913, 18-1215.

Circumstantial factors may support a finding under sub. (2) that a creditor had reasonable cause to believe a transfer would effect a preference. Facts relevant to such a determination can include: 1) the relation of the parties; 2) their intimacy or lack of it; 3) the usual or unusual nature of the transfer; 4) the opportunities of the creditor for knowledge; 5) the participation of the creditor, if any, in the debtor's business; and 6) the credibility and forthrightness of the witnesses as to the disclosure of relevant facts within their knowledge. Freund v. Nasonville Dairy, Inc., 2019 WI App 55, 389 Wis. 2d 35, 934 N.W.2d 913, 18-1215.

Wisconsin's public policy favoring the equal distribution of assets when creditors cannot be fully paid—to the point of allowing a receiver to recover preferential payments under this section—embodies a public policy so important that parties may not avoid it. Therefore, in this case, the choice of law and forum selection provisions contained in contracts between an alleged insolvent debtor and a creditor were unenforceable when a Wisconsin receiver sought to recover preferential payments made to the creditor from the debtor as governed by this section. Dizard v. Torro LLC, 2025 WI App 31, 416 Wis. 2d 405, 21 N.W.3d 821, 23-2135.

Because the preference provisions of this section do not conflict with the federal bankruptcy code, they are not preempted by it. Ready Fixtures Co. v. Stevens Cabinets, 488 F. Supp. 2d 787 (2007).

128.08 Receiver; custodian. (1) The court within the proper county may sequestrate the property of a debtor and appoint a receiver therefor:

(a) When an execution against a judgment debtor is returned unsatisfied in whole or in part.

(b) When a corporation has been dissolved or is insolvent or is in imminent danger of insolvency or has forfeited its corporate rights.

(2) Upon application duly made, the court shall appoint as receiver the person nominated by the petitioning creditor or creditors, subject to s. 128.10.

A defendant who was notified of the proceeding to appoint a receiver and participated in the proceedings cannot, after the lapse of one year, object to irregularities. Home Bank v. Becker, 48 Wis. 2d 1, 179 N.W.2d 855 (1970).

Due process procedures required for determination of receivership are not required for selection of a receiver. Anchor Coatings, Inc. v. De Gelleke Co., 71 Wis. 2d 333, 237 N.W.2d 725 (1976).

The power recognized by sub. (1) is inherent in the courts. Northridge Bank v. Community Eye Care Center, Inc., 91 Wis. 2d 298, 282 N.W.2d 632 (Ct. App. 1979).

128.09 Bond. In order to qualify, the receiver or assignee shall give to and file with the clerk of the court a bond sufficient to cover all property likely to come into the receiver's or assignee's hands, conditioned in the usual manner with surety to be approved by the judge having supervision of the proceedings.

History: 1993 a. 492.

128.10 Meetings of creditors; removal or death of receiver. (1) The court may provide for hearings and meetings of creditors to elect a receiver or to pass upon matters submitted to creditors by a majority vote in number and amount of claims.

(2) The court may, upon notice and hearing, remove any receiver or assignee who is shown to be incompetent or to have become disqualified, or to have wasted or misapplied any of the trust estate; and shall remove any assignee or receiver upon the application of a majority of the creditors who shall represent a majority in number and amount of claims against said estate, and order a settlement of the receiver's or assignee's account and the surrender of all the estate to a successor, and shall appoint the person named in such petition or some suitable person as the receiver's or assignee's successor, who shall qualify in the manner provided by this chapter; and in place of any receiver or assignee who shall die or be removed, may appoint another who shall give bond and administer said estate pursuant to the provisions of this chapter.

History: 1993 a. 492.

128.11 Provisional remedies. In all actions authorized by this chapter, appropriate provisional remedies may be had and final relief administered to the equal distribution of all assets recovered among the creditors of the debtor, and the court may make such orders for the payment of costs and expenses as may be just. An action or proceeding authorized by this chapter for the benefit of all creditors may be taken by a creditor although the creditor's demand is not due at the commencement thereof.

History: 1993 a. 492; 1997 a. 253.

128.12 Dismissal; intervention. (1) After the designation of a receiver or custodian by the court, proceedings under this chapter shall not be dismissed for want of prosecution or by consent of parties until after notice to creditors, and the court shall, before entertaining an application for dismissal, require the debtor to file a list, under oath, of all of the debtor's creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of the application and shall fix a date for such hearing so as to allow parties in interest an opportunity to be heard.

(2) When proceedings have been commenced under this chapter and are not diligently prosecuted or are so delayed as to cause possible injury to other creditors, any creditor may intervene for the purpose of obtaining a continuance of the administration or dismissal of the proceedings.

History: 1993 a. 492.

128.13 Inventory of assets and list of creditors. With the filing of an assignment or within 10 days after the appointment of a receiver, the debtor shall file with the clerk of circuit court a correct inventory of the debtor's assets and a list of the

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

History: 1993 a. 492; 1997 a. 253.

128.14 Notice; injunction; time of filing claims. (1) The court shall require creditors to file their verified claims within 3 months from the date of the filing of an assignment or the appointment of a receiver and may enjoin proceedings by any other creditor against the insolvent. The receiver or assignee shall be required to give notice promptly to the department of revenue and to all creditors of the pendency of the proceeding, the injunction against other actions and the time within which creditors are required to file claims. The notice shall be mailed to the department of revenue and to each creditor at the creditor's last-known address and shall be published in the county as a class 3 notice under ch. 985.

(2) Creditors not filing claims within the time limited may be precluded from participation in any dividend which may be declared.

History: 1993 a. 492.

128.15 Objections to claims; appeal; secured claims. (1) (a) At the expiration of the period of time limited for the filing of claims, the receiver or assignee shall file all of the following with the clerk of circuit court:

1. Proof of publication of the notice required under s. 128.14 (1).

2. A list of the creditors to whom the notice was given that includes the debts owed to the creditors, verified by an affidavit.

3. A list of claims filed stating the name and residence of and amount claimed by each creditor who has filed a claim.

(b) At any time after the expiration of the period of time limited for the filing of claims, the receiver or assignee or, upon the receiver's or assignee's refusal or failure to act, any creditor may file written objections to any claim specifying the grounds for the objection. The party filing the objection shall serve a copy of the objection upon the claimant as ordered by the court. Depositions may thereafter be taken as in civil actions. The court, on the application of either party, shall enter an order fixing a time when the objections shall be heard, which shall be served upon the adverse party as prescribed in the order. Upon the final hearing the court shall make such order as shall be just and may compel the payment of costs.

(2) Claims of secured creditors may be allowed to enable such creditors to participate in the proceedings but shall be allowed for such sums only as shall be proved to be due, over and above the value of the securities, and dividends shall be paid only upon the excess of the claim over the value of the security at the time of the commencement of the proceedings.

History: 1983 a. 219; 1997 a. 253.

Judicial Council Note, 1983: The last sentence of sub. (1), providing an appeal deadline of 30 days after entry of order, is repealed for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats. [Bill 151-S]

Under this section, a secured creditor may become a party by general appearance or by filing a claim for a deficiency on a secured claim and thus be allowed to participate. The creditor's security cannot be taken away without consent, and the court adjudicating a proceeding under this chapter can do no more than value the security for the purpose of allowing the unsecured part of the claim. Wisconsin Brick & Block Corp. v. Vogel, 54 Wis. 2d 321, 195 N.W.2d 664 (1972).

The trial court erred in subordinating a shareholder's claim on the grounds that the shareholder's advance to the corporation was a capital contribution rather than a debt when the court did not evaluate the sufficiency of the corporation's stated capital and relied entirely on the corporation's inability to obtain commercial financing. Gelatt v. DeDakis, 77 Wis. 2d 578, 254 N.W.2d 171 (1977).

Under *Wisconsin Brick & Block*, 54 Wis. 2d 321 (1972), a secured creditor's participation in the receivership proceeding is necessary to establish consent. That case does not suggest that the secured creditor's participation is sufficient, by itself, to establish consent nor does it suggest that the creditor's participation in the proceedings trumps the secured creditor's express objection to the sale of its collateral. BNP Paribas v. Olsen's Mill, Inc., 2011 WI 61, 335 Wis. 2d 427, 799 N.W.2d 792, 09-1007.

128.16 Discovery. (1) The court may compel the debtor to discover any property alleged to belong or to have belonged to him or her, the disposition of the property and the consideration and all the circumstances of the disposition. Every officer, agent or stockholder of a corporation, every manager or member of a limited liability company and every person to whom it shall be alleged that any transfer of property has been made, or in whose possession or control the property is alleged to be, may be compelled to testify in relation to the property and to the transfer or possession of the property; but the witness shall not be liable to criminal prosecution or proceeding for or on account of his or her testimony.

(2) The immunity provided under sub. (1) is subject to the restrictions under s. 972.085.

History: 1989 a. 122; 1993 a. 112; 1997 a. 253.

A debtor who is compelled to answer an interrogatory may be granted immunity without a request from the district attorney. A refusal to answer the interrogatory without an order under this section was sufficient invocation of the privilege against self-incrimination. State v. Worgull, 128 Wis. 2d 1, 381 N.W.2d 547 (1986).

128.17 Order of distribution. (1) The order of distribution out of the debtor's estate shall be as follows:

(a) The actual and necessary costs of preserving the estate subsequent to the commencement of the proceedings.

(b) Costs of administration including a reasonable attorney's fee for the representation of the debtor.

(d) Wages, including pension, welfare and vacation benefits, due to workmen, clerks, traveling or city salespersons or servants, which have been earned within 3 months before the date of the commencement of the proceedings, not to exceed $600 to each claimant.

(e) Taxes, assessments and debts due the United States, this state or any county, district or municipality.

(f) Other debts entitled to priority.

(g) Debts due to creditors generally, in proportion to the amount of their claims, as allowed.

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

(2) Debts to become due as well as debts due may be proved, but a lessor's claim shall be limited to past due rent, and to any actual damage caused the lessor by a rejection of the lease on the part of the debtor or by its termination by force of its provisions. The lessor shall be entitled to payment in full, at the rate specified in the lease, for the period of any actual occupancy by the receiver or assignee.

(3) The receiver or assignee may pay or the court may order a dividend to be paid at any time, making such provision as shall be necessary for the protection of claims in dispute.

(4) The receiver or assignee shall, as soon as practicable, report to the court the amount due the employees of the debtor and the court shall order the receiver or assignee to promptly pay, if practicable, such wage claims as have priority under this chapter.

History: 1971 c. 63; 1983 a. 27; 1993 a. 492; 1999 a. 32.

When an entity is placed under receivership, the receiver may, with court permission, sell assets and distribute the proceeds of the sale. Upon closing, the receiver must distribute the proceeds among the estate's creditors pursuant to this section, which establishes the order of payment. Sub. (1) (f) describes certain secured claims and encompasses mortgages under s. 706.11. Sub. (1) (g) describes unsecured claims. Unlike secured creditors, unsecured creditors have no property interest in the debtor's assets. Accordingly, when distributing proceeds from the sale of an estate, a receiver must satisfy debts held by secured creditors before satisfying those held by unsecured creditors. Casanova v. Polsky, 2023 WI 19, 406 Wis. 2d 247, 986 N.W.2d 780, 19-1728.

128.18 Liens. (1) Claims which for want of record or for other reasons would not have been valid liens as against creditors of the debtor armed with process, pursuant to which such prop-

erty has been attached or levied upon, shall not be liens against the estate.

(2) Whenever a creditor is prevented from enforcing his or her rights as against a lien created or attempted to be created by his or her debtor, the receiver or assignee shall be subrogated to and may enforce such rights of such creditors for the benefit of the estate.

(3) (a) In this subsection, "preference" has the meaning given in s. 128.07 (1) (a).

(b) A lien created by, or obtained in or pursuant to any action that was begun against, a person within 4 months before the commencement of proceedings for the appointment of a receiver or the filing of an assignment under this chapter shall be dissolved by the appointment of a receiver or the qualification of the assignee, and the receiver or assignee shall be subrogated to the rights of the holder of the lien for the benefit of all creditors, if:

1. It appears that said lien was obtained and permitted while the debtor was insolvent, and that its existence or enforcement will work a preference, or

3. That such lien was sought and permitted in fraud of the provisions of this chapter.

(4) Liens given or accepted in good faith and for a present consideration which have been properly recorded or filed shall, to the extent of such present consideration only, not be affected by the provisions of this chapter.

(5) All conveyances, transfers, assignments or encumbrances of a debtor's property, or any part of a debtor's property, made or given by the debtor within 4 months prior to the filing of a petition or assignment under this chapter with the intent and purpose on the debtor's part to hinder, delay or defraud any of the debtor's creditors shall be void as against the debtor's creditors except as to purchasers in good faith and for a present fair consideration.

(5g) All property which is the subject of a conveyance, transfer, assignment or encumbrance rendered null and void under sub. (5) shall, if the property is not exempt from execution, be and remain a part of the assets and estate of the debtor and shall pass to the debtor's receiver or assignee, whose duty it shall be to recover and retain the same for the benefit of the creditors.

(5m) All conveyances, transfers or encumbrances of a debtor's property made by the debtor at any time within 4 months prior to the filing of a petition or assignment hereunder, and while insolvent, which are null and void as against creditors by the laws of this state, shall pass to the receiver or assignee and be by him or her recovered for the benefit of the creditors.

(6) All levies, judgments, attachments or other liens obtained through legal proceedings against a person who is insolvent at any time within 4 months prior to the filing of a petition or assignment under this chapter are void in case a receiver is appointed or an assignee qualifies. The property affected by the levy, judgment, attachment or other lien shall be wholly discharged and released from the levy, judgment, attachment or lien, and shall pass to the receiver or assignee as a part of the estate of the debtor unless the court shall, on due notice, order that the right under the levy, judgment, attachment or lien shall be preserved for the benefit of the estate. In that case, the right under the levy, judgment, attachment or lien may pass to and shall be preserved by the receiver or assignee for the benefit of the estate.

History: 1993 a. 492; 1995 a. 225; 1997 a. 253.

128.19 Title to property. (1) The receiver or assignee upon qualifying shall be vested by operation of law with the title of the debtor as of the date of the filing of the petition or assignment hereunder, except so far as it is property which is exempt, including:

(a) Property transferred by the debtor in fraud of the debtor's creditors.

(b) Property which prior to the filing of the petition or assignment the debtor could by any means have transferred or which might have been levied upon and sold under judicial process against the debtor.

(c) Rights of action arising upon contracts or from the unlawful taking or detention of or injury to the debtor's property.

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

History: 1993 a. 492; 1995 a. 225.

128.20 Settlement of receiver's or assignee's accounts. (1) (a) Every receiver or assignee shall, within 6 months after the time limited for filing claims or within any further time that the court allows, file with the clerk of circuit court a full and itemized statement, verified by the receiver's or assignee's oath, showing all of the following in regard to the receivership or assignment:

1. The property received by the receiver or assignee.

2. The manner of the receiver's or assignee's dealing with the property received.

3. The amount of money realized by the receiver or assignee.

4. The condition of the property and funds in the receiver's or assignee's possession.

5. The names and residences of the debtor's creditors.

6. The dividends paid to the debtor's creditors.

7. The receiver's or assignee's receipts and disbursements.

8. The receiver's or assignee's claim for compensation and administration expenses.

(b) If any receiver or assignee neglects to apply promptly for a settlement of his or her account, the court may, upon application of any creditor, compel the making and filing of the account or settlement of the account and in that case the receiver or assignee may be denied compensation.

(2) Upon filing the report described in sub. (1) (a), the receiver or assignee may apply to the court upon not less than 10 days' notice by mail to the respective creditors named in the report, for a final settlement of the account. The court shall fix a time and place for the hearing of objections or taking of evidence and by order settle and adjust the accounts and the compensation and expenses of the receiver or assignee, regardless of whether objection is made. The order shall be conclusive upon all parties including the sureties of the receiver or assignee. The receiver or assignee or any creditor may appeal from the order in the manner prescribed for appeals in civil actions except that the receiver or assignee may file a notice and undertaking with the clerk without other service of the notice and undertaking. The receiver or assignee shall be discharged of the trust and the bond canceled upon compliance with the final order of the court.

History: 1983 a. 219; 1993 a. 492; 1997 a. 253.

Judicial Council Note, 1983: Sub. (2) is amended by repealing the appeal deadline of 30 days from entry for greater uniformity. An appeal must be initiated within the time specified in s. 808.04 (1), stats. [Bill 151-S]

128.21 Voluntary proceedings by wage earners for amortization of debts. (1) Any person whose principal source of income consists of wages or salary may file a verified petition with the circuit court in the county of his or her residence stating that the person is unable to meet current debts as they mature, but is able to make regular future payments on account sufficient to amortize the debts over a period of not more than 3

years, and that he or she desires the aid of the court to effectuate the amortization. The petition shall also set forth the names and addresses of any creditors who have levied any executions, attachments or garnishments, and of any garnishees, and the court shall forthwith, by order, require that proceedings for the enforcement of the executions, attachments or garnishments be stayed during the pendency of proceedings under this section. The petition shall be accompanied by the fee prescribed in s. 814.62 (2).

(2) After the filing of a petition under this section and until the dismissal of the proceedings, no execution, attachment or garnishment may be levied or enforced by any creditor seeking the collection of any claim which arose prior to the proceedings, unless such claim is not included by the debtor in the claims to be amortized pursuant to sub. (3r). With respect to the claims to be amortized the time between the filing of the petition and the dismissal of the proceedings shall not be counted as a part of the period of any statute of limitation.

(3) On the filing of the petition the court shall appoint a disinterested trustee. The trustee shall forthwith meet with the debtor; make a list of the debtor's creditors, with their addresses and the amounts owing to each, which the debtor shall sign and verify; and send notices to each of the amount claimed to be due that creditor, and of a meeting to be held in the trustee's office not less than 5 nor more than 10 days thereafter, for the purpose of considering an amortization plan and of determining the claims to be covered by the plan. Upon conclusion of the meeting the trustee shall do either of the following:

(a) Report to the court that no equitable plan of amortization is feasible or needed in which case the court may forthwith dismiss the proceedings.

(b) Recommend to the court a plan of amortization calculated by weekly or monthly payments, to discharge in full the claims of the creditors listed in the plan within a period of not exceeding 3 years.

(3g) The trustee shall attach to a plan recommended under sub. (3) (b) the written consents and objections, if any, of the creditors present or represented at the meeting, and an analysis, with the trustee's recommendations regarding the disposition, of any claim whose amount is in dispute or appears to be uncertain.

(3r) The court shall forthwith enter an order approving the plan recommended under sub. (3) (b) and determining, for the purposes of the plan, the amounts of the claims, unless in any such written objection included under sub. (3g) a creditor asks for a hearing respecting the plan or the amount of the creditor's claim, or the person to be trustee, in which case the court shall set a date for a hearing as soon as may be, on notice of the debtor, the trustee and creditors. At the hearing the court shall enter an order either approving the plan, if satisfied that it is feasible and equitable, and determining, for the purposes of the plan, the amounts of the claims, or dismissing the proceedings, or modifying and approving the plan as the court considers just; and the court may appoint a different trustee if the one appointed is objected to.

(4) If the plan recommended under sub. (3) (b) or a modification of the plan is approved under sub. (3r), the debtor shall make the periodic payments provided for in the plan to the trustee, and may make additional payments from time to time to the trustee, and the trustee shall distribute the payments proportionally among the creditors listed in the plan, less all of the following:

(a) A deduction for the trustee's compensation to be fixed by the court at the time of approving the plan in an amount not exceeding 7 percent of each distribution, if the payments are made through an assignment to the trustee of a portion of the debtor's wages or salary, and not exceeding 10 percent if no such assignment is made.

(b) A deduction equal to the amount of the postage necessary for the mailing of payments and of the notices of the meeting provided for in sub. (3), and of any correspondence with creditors.

(4m) If any payment under sub. (4) is so small as to make its immediate distribution impractical or needlessly expensive, the trustee shall deposit it in a special trustee account, and may make additional deposits until the amount is large enough for distribution, but no payments shall remain undistributed for longer than 90 days.

(5) If the debtor defaults in any payment provided for under the plan for a period of more than 30 days the trustee shall, and before the end of the 30-day period may, report the matter to the court with the trustee's recommendations. The court shall either dismiss the proceedings or, if satisfied from the trustee's report that the debtor is in good faith and should be able to make good the default, extend the period of grace for not to exceed 30 days. At the end of the grace period, the trustee shall again report to the court and if all defaults have not then been cured the court shall immediately dismiss the proceedings. If the debtor makes preferential payments to creditors during the pendency of the proceedings, or appears for any reason to be abusing the privileges of this section, the trustee shall promptly report the matter to the court and the court may dismiss the proceedings. If the claims of all creditors as listed in the plan are satisfied in full, the trustee shall, upon completion of the final distribution, report to the court and the court shall dismiss the proceedings.

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

(8) Any secured creditor who wishes to realize on his or her security shall give the trustee at least 5 days' notice in writing of the time, place and manner of the proposed realization, and shall notify the trustee of the amount realized, by which amount the creditor's claim as listed under the plan shall be reduced.

(10) The supreme court may from time to time promulgate rules and forms, not inconsistent with this section, to carry out the intent of this section and to promote its effectiveness, and may cause forms of petitions to be printed and distributed to the clerks of the circuit courts who shall, upon request, and without charge, assist debtors in the preparation of their petitions.

(11) The court in its discretion upon application, may amend or modify the plan of amortization and may make such other orders relating to the proceedings or the plan of amortization as are required.

History: 1979 c. 110 s. 60 (12); 1981 c. 317; 1993 a. 492; 1997 a. 253.

Personal Receivership: An Alternative to Bankruptcy. Johnson. Wis. Law. Sept. 1990.

128.25 Uniform act governing secured creditor's dividends in liquidation proceedings.

(1) DEFINITIONS. As used in this section, unless the context or subject matter requires otherwise:

(a) "Creditor's sale" includes any sale effected by the secured creditor by judicial process or otherwise under the terms of his or her contract or the applicable law for the purpose of realizing upon his or her security.

(b) "Liquidation proceeding" includes all assignments for the benefit of creditors, whether voluntary or by operation of law; administration of insolvent decedents' estates; liquidations of insolvent banks; equity receiverships where the subject under receivership is insolvent; and any other proceedings for distribution of assets of any insolvent debtor, whether a person, decedent's estate, partnership, corporation or business association.

(c) "Liquidator" means any person administering assets in any liquidation proceeding as defined in this section.

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

(e) "Secured creditor" means a creditor who has either legal or equitable security for his or her debt upon any property of the insolvent debtor of a nature to be liquidated and distributed in a liquidation proceeding, or a creditor to whom is owed a debt for which such security is possessed by some endorser, surety, or other person secondarily liable.

(2) SECURED CREDITOR'S CLAIM MUST DISCLOSE SECURITY. In a liquidation proceeding every secured creditor's claim against the general assets shall disclose the nature of the security. When a decedent's estate already in the course of administration is judicially declared insolvent or when in an equity receivership it is determined that the subject under receivership is insolvent, secured creditors having claims on file which do not comply with this subsection shall make disclosure within a time to be fixed by the court.

(3) EFFECT OF CONCEALMENT. Any secured creditor who with intent to evade the provisions of this section fails to disclose the existence of the security shall not be entitled to receive or retain dividends out of the general assets, unless the creditor thereafter releases or surrenders to the liquidator the security which the creditor has failed to disclose, or unless the creditor procures such release or surrender if the security is in the possession of an endorser, surety, or other person secondarily liable for the insolvent debtor.

(4) VALUE OF SECURITY CREDITED UPON CLAIMS. Dividends paid to secured creditors shall be computed only upon the balance due after the value of all security not exempt from the claims of unsecured creditors and not released or surrendered to the liquidator, is determined and credited upon the claim secured by it.

(5) DETERMINATION OF VALUE BY SECURED CREDITOR. (a) *By collection.* When the asset constituting the security is an obligation for the payment of money, the secured creditor may determine the security's value by collection or by exhausting his or her remedies against the security and then surrendering the obligation to the liquidator.

(b) *By creditor's sale.* When the asset constituting the security is something other than an obligation for the payment of money, the secured creditor may determine its value by creditor's sale.

(6) ALTERNATIVE DETERMINATIONS OF VALUE. Where valuation under sub. (5) is impracticable or would cause undue delay, the court, upon petition by either the secured creditor or the liquidator, may order the value of the security determined by any of the following methods:

(a) By compromise, if the secured creditor and the liquidator agree upon a value. The liquidator may redeem such assets by payment of the agreed value, if authorized by the court.

(b) By litigation, through proceedings in the liquidation proceeding. The liquidator may redeem such assets by paying the value so determined, if authorized by the court.

(c) By liquidator's sale of the assets which, when completed and approved by the court, shall pass to the purchaser good title, free and clear of all liens of the secured creditor, such liens to be transferred to the proceeds of the sale. The order of sale may be either conditional, requiring the sale to be made by the liquidator only if the secured creditor does not complete a determination by collection or creditor's sale as set forth in sub. (5) within a time fixed by the court; or absolute, requiring the sale to be made by the liquidator within a time fixed by the court. This paragraph shall not apply to security upon real estate of insolvent decedents' estates administered by the probate court.

(7) EXEMPT SECURITY NOT CREDITED. When any creditor has legal or equitable security upon assets which are exempt from process for the satisfaction of unsecured debt and are duly claimed as exempt by the insolvent debtor, the value of such security shall not be credited upon the claim. Amounts realized by the creditor from such security after liquidation proceedings are begun shall be disregarded in computing dividends, unless the dividend so computed exceeds the sum actually owing upon the claim, in which event only the amount owing shall be paid.

(9) UNIFORMITY OF INTERPRETATION. This section shall be so construed as to make uniform the law of those states which enact it.

(10) SHORT TITLE. This section may be cited as Uniform Act Governing Secured Creditors' Dividends in Liquidation Proceedings.

History: 1983 a. 189; 1993 a. 492; 1997 a. 253.