WEST VIRGINIA CODE: §55-21-17

§55-21-17. Executory contract.

(a) In this section, “executory contract” has the same meaning as “timesharing plan” as defined in §36-9-4 of this code.

(b) Except as otherwise provided in subsection (h) of this section, with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver’s adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver’s appointment, the receiver is deemed to have rejected the contract.

(c) A receiver’s performance of an executory contract before court approval under subsection (b) of this section of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.

(d) A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver’s power under subsection (b) of this section to adopt the contract.

(e) A receiver’s right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (b) of this section. Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of:

(1) The time set for submitting a claim in the receivership; or

(2) Thirty days after the court approves the rejection.

(f) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this article, the receiver may assign the contract with court approval.

(g) If a receiver rejects, under subsection (b) of this section, an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may:

(1) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

(2) Retain the purchaser’s right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset

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any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(h) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

(1) The tenant occupies the leased premises as the tenant's primary residence;

(2) The receiver was appointed at the request of a person other than a mortgagee; or

(3) The receiver was appointed at the request of a mortgagee and:

(A) The lease is superior to the lien of the mortgage;

(B) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease;

(C) The mortgagee has consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage; or

(D) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

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