

Receiverships Amendment Act 2005

Public Act 2005 No 112
Date of assent 14 December 2005

Contents

	Page
1 Title	1
2 Commencement	2
3 Extinguishment of subordinate security interests	2
4 New sections 30B to 30D inserted	2
30B Priorities on distribution by receiver of surplus representing proceeds of personal property	2
30C Surplus may be paid into court	3
30D Meaning of surplus and net proceeds	3
5 Transitional provision for sections 30A(2) and 30B to 30D of principal Act	4

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Receiverships Amendment Act 2005.
- (2) In this Act, the Receiverships Act 1993 is called “the principal Act”.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Extinguishment of subordinate security interests

Section 30A of the principal Act is amended by adding, as subsection (2), the following subsection:

- “(2) If there is a surplus left after the receiver has disposed of personal property, that surplus must be distributed according to the priorities set out in section 30B(1) and (2) unless otherwise required by any other law.”

4 New sections 30B to 30D inserted

The principal Act is amended by inserting, after section 30A, the following sections:

“30B Priorities on distribution by receiver of surplus representing proceeds of personal property

- “(1) A surplus representing the proceeds of personal property must be distributed in the following order:
- “(a) to any person who has registered a financing statement under the Personal Property Securities Act 1999, or a security interest under any other Act, in the name of the grantor over the property, if—
 - “(i) the registration was effective immediately before the receiver disposed of the property; and
 - “(ii) the security interest relating to that registration was subordinate to the security interest of the person in whose interests the receiver was appointed:
 - “(b) to any other person (A), if the receiver has notice that A had an interest in the property when it was disposed of, and the receiver is satisfied that A’s interest was legally enforceable:
 - “(c) to the grantor.
- “(2) Priority as between persons referred to in subsection (1)(a), and as between persons referred to in subsection (1)(b), must be determined according to the applicable law (including Part 7 or Part 8 of the Personal Property Securities Act 1999) as

if, in the case of persons referred to in subsection (1)(a), their security interests had not been extinguished.

- “(3) If, in the case of a distribution of the surplus to a grantor, the grantor cannot be found after reasonable inquiry by the receiver, the provisions of section 102A(2) to (5) of the Property Law Act 1952 apply with all necessary modifications as if references in that section to ‘the mortgagee’ and ‘the mortgagor’ were references to ‘the receiver’ and ‘the grantor’ respectively.

“30C Surplus may be paid into court

- “(1) A receiver may pay a surplus referred to in section 30A(2) into court if there is a question as to who is entitled to receive payment according to the priorities in section 30B(1) or (2).
- “(2) The surplus may only be paid out on an application by the receiver or by a person claiming an entitlement to the surplus.

“30D Meaning of surplus and net proceeds

- “(1) For the purposes of sections 30A to 30C, there is a surplus if the receiver has disposed of personal property in receivership, and the net proceeds exceed—
- “(a) the amount of the debt owed by the grantor to the person in whose interests the receiver was appointed (where the property secures payment of that debt); or
 - “(b) the monetary value of the obligation owed by the grantor to the person in whose interests the receiver was appointed (where the property secures performance of that obligation).
- “(2) In subsection (1), net proceeds, in relation to the disposal of personal property in receivership, means the net proceeds of the disposal after deducting—
- “(a) the receiver’s expenses and remuneration; and
 - “(b) any amount or the monetary value of any obligation, as the case may be, secured by any security interest that ranks in priority to the security interest granted to the person in whose interests the receiver was appointed; and
 - “(c) any other preferential claims or priority claims according to law.”

5 Transitional provision for sections 30A(2) and 30B to 30D of principal Act

Sections 30A(2) and 30B to 30D of the principal Act (as added and inserted by sections 3 and 4 of the Receiverships Amendment Act 2005) apply to any surplus referred to in those provisions that has not been distributed on the date when those provisions come into force.

Legislative history

8 December 2005

Divided from Statutes Amendment Bill (No 5)
(Bill 249-2), third reading
