

# Rhode Island Business Recovery Plan: A Reference Guide



A Pandemic Resource from NCSC

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## Overview

The economic impact of the COVID-19 pandemic, especially from stay-at-home orders implemented in many states, has been devastating to small businesses across the country. Nearly 66,000 businesses have folded since March 1, according to data from Yelp, which provides a platform for local businesses to advertise their services.<sup>1</sup> Researchers estimate that nearly 110,000 small businesses have closed permanently between early March and early May.<sup>2</sup> Small businesses account for 44 percent of all economic activity, according to the Small Business Administration, so business closures will necessarily have a significant impact on economic recovery.

To mitigate the impact on state and local businesses, the Rhode Island Superior Court created the COVID-19 Business Recovery Plan (BRP),<sup>3</sup> featuring the appointment of a non-liquidating receiver to assist businesses that experienced financial disruption from the COVID-19 pandemic. As a practical matter, the BRP was designed to assist small to medium-sized businesses organized and operating primarily within Rhode Island. Assistance includes court-supervised protections from debt collection or asset forfeiture while businesses develop operating plans to secure working capital and resume regular business operations.

## BRP Program Organization within the RI Judicial Branch

The BRP is housed within the Business Calendar of the RI Superior Court, a specialized court docket established in 2001 that focuses exclusively on litigation involving commercial entities, including business insolvencies and receiverships.<sup>4</sup> Three superior court justices are currently assigned to the Business Calendar, who sit in Providence County (serving Providence and Bristol County) and Kent County (serving Kent, Newport, and Washington Counties).

## Legal Authority for Non-Liquidating Receiverships

The appointment of a receiver is an equitable remedy under common law in which an indifferent person is appointed to collect and receive rents, issues, and profits when the interested parties are incompetent to do so or have such a conflict of interest that they should not be empowered to do so.<sup>5</sup> Most states, including Rhode Island, authorize the appointment of a receiver to preserve the assets of

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<sup>1</sup> Emily Flitter, "I Can't Keep Doing This:" Small-Business Owners Are Giving Up, NEW YORK TIMES (July 13, 2020) (available at <https://www.nytimes.com/2020/07/13/business/small-businesses-coronavirus.html>).

<sup>2</sup> Alexander W. Bartak et al., How Are Small Businesses Adjusting to COVID-19? Early Evidence from a Survey (Working Paper # 96989, Nat'l Bureau of Economic Research, April 2020) (available at <https://www.nber.org/papers/w26989.pdf>).

<sup>3</sup> Rhode Island Superior Court ADMINISTRATIVE ORDER 2020-04 (March 31, 2020) (available at <https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorAdmOrders/20-04.pdf>).

<sup>4</sup> Rhode Island Superior Court ADMINISTRATIVE ORDER 2001-9 (April 17, 2001) (available at <https://www.courts.ri.gov/Courts/DecisionsOrders/AdministrativeOrders/2001-9.pdf>); see also Rhode Island Superior Court ADMINISTRATIVE ORDER 2011-10 (July 29, 2011) (available at <https://www.courts.ri.gov/Courts/DecisionsOrders/AdministrativeOrders/2011-10.pdf>) (expanding the Business Calendar statewide).

<sup>5</sup> BLACK'S LAW DICTIONARY.

an insolvent business pursuant to petition from the business or creditors.<sup>6</sup> In Rhode Island, business insolvencies and receiverships have routinely been assigned to the Business Calendar<sup>7</sup> since it was first established in the Counties of Providence and Bristol in 2001.<sup>8</sup>

While a liquidating receivership typically results in the business being sold for the benefit of its creditors, either as a going concern or through an asset sale, the law also allows for a non-liquidating receivership in cases where the business is ongoing and solvent.<sup>9</sup> Although equity courts lack inherent power to appoint a receiver for the purpose of dissolution, “they do have such power in a variety of cases such as fraud or mismanagement, deadlock, or lack of governing officers.”<sup>10</sup> According to the Rhode Island Supreme Court, the appointment of a non-liquidating receiver is “an extraordinary remedy that should be reserved for extraordinary situations.”<sup>11</sup> The appointment of a non-liquidating receiver is particularly valuable in cases when no other relief for shareholders and interested parties would be adequate, when allowing the business to continue operating would benefit most interested parties, or when company assets are in imminent danger of further loss or waste.<sup>12</sup> The COVID-19 Non-Liquidating Receivership Program under the BRP “recognizes the Superior Court’s inherent equitable authority to supervise entities who, but for the COVID-19 Pandemic, were paying their debts as they became due in the usual course of business.”<sup>13</sup> A non-liquidating receivership under this program allows the receiver to monitor the business under a court-approved Operating Plan; during this time, the business is protected from legal action by creditors while it seeks disaster relief and attempts to be restored to solvency.<sup>14</sup>

Because a non-liquidating receivership typically includes an injunction or stay on debt collection during the receivership period, it is important to consider whether the BRP complies with the Contracts Clause of the U.S and Rhode Island Constitutions.<sup>15</sup> Contracts Clause questions involve a three-part analysis: 1) a court first must determine whether a contract exists; 2) if a contract exists, the court then must determine whether the modification results in a substantial impairment of that contract; 3) if it is determined that the impairment is substantial, the court then must inquire whether the impairment,

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<sup>6</sup> R.I. Gen. Laws § 7-1.2-1314; see also *Peck v. Jonathan Michael Builders, Inc.*, 2006 R.I. Super. LEXIS 145, \*15-16 (“While the courts of Rhode Island do have “the full powers of a court of equity,” § 1323, those inherent powers are not unlimited. Most notably, an equity court has no inherent power to *dissolve* a corporation, since the creation and dissolution of a corporation is governed by statute. ... The grounds described in the relevant statutes are the sole grounds for appointing a receiver in order to dissolve a corporation.”).

<sup>7</sup> John Dorsey & Mark Russo, COVID-19 Business Calendar Receivership Program, MEMORANDUM (March 20, 2020).

<sup>8</sup> Rhode Island Superior Court ADMINISTRATIVE ORDER 2001-9 (April 17, 2001) (available at <https://www.courts.ri.gov/Courts/DecisionsOrders/AdministrativeOrders/2001-9.pdf>).

<sup>9</sup> *Levine v. Bess Eaton Donut Flour Co.*, 705 A.2d 980, 982-983 (R.I. 1998).

<sup>10</sup> *Peck v. Jonathan Michael Builders*, *supra* note 6, at \*18.

<sup>11</sup> *Levine v. Bess Eaton*, *supra* note 9, at 983 (citing *Prassas v. Nicholas W. Prassas & Co.*, 430 N.E.2d 28, 30 (Ill. Ct. App. 1981) (existence of dissension, fraud, misconduct, or mismanagement); *Crippin Printing Corp. v. Abel*, 441 N.E.2d 1002, 1007 (Ind. Ct. App. 1982) (imminent danger of corporate assets being dissipated); *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 273 S.E.2d 247, 256 (1981) (fraud or gross misconduct in the management of corporation)); see also *Newport Harbor Associates v. Market Square Corp.*, 1984 WL 559254 (R.I. Super. Ct.).

<sup>12</sup> *Id.*

<sup>13</sup> ADMINISTRATIVE ORDER 2020-04, *supra* note 3.

<sup>14</sup> Dorsey & Russo, *supra* note 7.

<sup>15</sup> Rhode Island Const. art. 1, sec. 12 and the U.S. Const. art. I, sec. 10 provide that “no law impairing the obligation of contracts shall be passed.”

nonetheless, is reasonable and necessary to fulfill an important public purpose.<sup>16</sup> In the analysis of the third part of the test, the government has the burden to demonstrate that the impairment was reasonable and necessary to support a legitimate public purpose, and the government “is afforded a limited amount of deference as to that showing.”<sup>17</sup> Although Rhode Island courts have not specifically determined whether a non-liquidating receivership under the BRP meets this standard, they have affirmed the constitutionality of similar practices, particularly in times of financial crisis.<sup>18</sup>

## Eligibility Criteria for Petitioners

Under the BRP, a business entity may voluntarily file a petition to be placed into a non-liquidating receivership, and is eligible to be considered for the COVID-19 Non-Liquidating Receivership Program, if it can allege the following in a verified petition:

- 1) the Receivership Business was not in default of its financial obligations as of January 15, 2020; and
- 2) the Receivership Business experienced a reduction in gross revenue of at least twenty percent during any sixty-day operating period beginning January 15, 2020, as compared to a similar operational period prior to January 15, 2020; or
- 3) the Receivership Business was forced to cease a substantial portion of its operations due to any governmental or regulatory order at some time after January 15, 2020; or
- 4) the Petitioner can certify or otherwise sufficiently demonstrate to the Court’s satisfaction, that the COVID-19 Pandemic created an adverse impact on the Receivership Business’ operations resulting from either a government and/or regulatory mandated partial or complete closure, or a substantial interruption of cashflow occurring after January 15, 2020, attributable to the COVID-19 Pandemic, which would have been utilized to fund ongoing business operations and, as a result, the Receivership Business cannot continue and/or resume operations and pay its debts as they become due in the usual course of business.<sup>19</sup>

The Order defines “default” for the purposes of Part 1 as including any of the following:

- 1) a noticed and uncured default on the payment of any installment of the principal of, or fees or interest on, any secured obligation of the Receivership Business after the date when the same was due and payable;

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<sup>16</sup> *Nonnenmacher v. City of Warwick*, 722 A.2d 1199, 1202 (R.I. 1999) (citing *General Motors Corporation v. Romein*, 503 U.S. 181, 186 (1992)).

<sup>17</sup> *Hebert v. City of Woonsocket by & through Baldelli-Hunt*, 213 A.3d 1065, 1086–87 (R.I. 2019).

<sup>18</sup> *Id.* (City of Woonsocket responded to a financial crisis by altering health benefits for retired police officers); *Cranston Police Retirees Action Committee v. City of Cranston*, 208 A.3d 557 (City of Cranston responded to a financial crisis by passing two ordinances resulting in a suspension of health benefits for police officers and firefighters); *Rhode Island Depositors Econ. Prot. Corp. v. Brown*, 659 A.2d 95 (R.I. 1995) (Rhode Island General Assembly responded to a financial crisis by enacting emergency legislation establishing the Depositors Economic Protection Corporation, a public corporation obligated to repay depositors whose deposits had been frozen in failed banking institutions).

<sup>19</sup> ADMINISTRATIVE ORDER 2020-04, *supra* note 3.

- 2) a noticed and uncured default, after the expiration of any applicable grace periods, in the due observance or performance of any material covenant, condition or agreement contained in any loan agreement, mortgage deed or other security document relating to any secured debt obligation of the Receivership Business;
- 3) a noticed and uncured default, after the expiration of any applicable grace periods, in the payment of any installment of the principal of, or fees or interest on, any other debt of the Receivership Business to any unsecured creditor, after the date when the same was to become due and payable;
- 4) a noticed and uncured regulatory violation which substantially impacted the Receivership Business' ability to pay its debts as they became due in the usual course of business;
- 5) any final judgment for the payment of money in excess of an aggregate of Ten Thousand Dollars (\$10,000) which was rendered on or before January 15, 2020, against the Receivership Business for claims arising prior to January 15, 2020, and the same has remained undischarged for a period of thirty (30) consecutive days post-judgment, during which execution has not been effectively stayed; or
- 6) any other reason as determined in accord with the Court's discretion that would indicate that the Receivership Business was not paying its debts as they became due in the usual course of business prior to January 15, 2020. Conversely, the Court may exercise its discretion and for good cause waive these eligibility requirements as set forth in Sections 2(a)(1)(a)-(e).<sup>20</sup>

"Business entity" is defined broadly under the BRP and includes sole proprietorships and nonprofit organizations.<sup>21</sup>

Residency requirements for businesses under the BRP are not explicitly enumerated, but are presumptively the same as for traditional liquidating receiverships. Rhode Island courts have general equity jurisdiction over business entities that are organized or have operations within the state, and the receiver has authority to act on any of the business entity's assets, "wherever situated."<sup>22</sup> Business assets located out-of-state would involve creating an ancillary receivership in the relevant jurisdiction; this commonly occurs for liquidating receiverships, but it is unknown whether other state judicial branches will grant Full Faith and Credit to non-liquidating receiverships.<sup>23</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> R.I. Gen. Laws § 7-1.2-1316.

<sup>23</sup> See, e.g., *Clark v. Williard*, 292 U.S. 112, 122 (1934) ([W]e do not say that there is an invariable rule by which the title of a statutory liquidator must prevail over executions and attachments outside of the state of his appointment. The subject is involved in confusion, with decisions pro and con. There are cases which lay down the rule that the title of such a liquidator will have recognition and enforcement everywhere without affirming or denying the possibility of exceptions. ... Other cases add a dictum ... that the state in which the title is assailed may declare a contrary policy by statute or decision.); *Morris v. Jones*, 329 U.S. 545 (1947) (Missouri creditor's successful action against Iowa business was upheld as deserving Full Faith and Credit in Iowa, even though Missouri creditor had received notice of the appointment of a receiver in Iowa).

## Procedure

Under the BRP, a business entity may file a Verified Petition with the Superior Court; the Verified Petition is then referred to the appropriate Business Calendar.<sup>24</sup> Businesses located in Providence and Bristol counties should file with the Providence County Superior Court, which are referred to the Providence County Business Calendar. Businesses located in Kent, Washington, and Newport counties should file with the Superior Court in that county; these petitions are referred to the Out-County Business Calendar.

During the onset of the COVID-19 pandemic, the Rhode Island Supreme Court instituted procedures for filing petitions electronically and conducting hearings through the Webex conferencing system. Until further order of the Court, conferences and proceedings relative to the COVID-19 Receivership Program are conducted via Webex®.<sup>25</sup>

After the Verified Petition is referred to the appropriate Business Calendar, the petitioning business, if approved, is appointed a non-liquidating receiver. Within five days of the appointment, the receiver notifies the business' creditors of the appointment. The business is then required to submit a proposed Operating Plan to the non-liquidating receiver within ten days of the receiver's appointment. The non-liquidating receiver then distributes the proposed Operating Plan to the business' creditors and allows for a ten-day comment period, during which creditors may comment or object. The receiver also schedules a hearing before the court, to occur no later than fifteen days after the proposed Operating Plan was served on creditors. During this hearing, the court considers whether to approve the proposed Operating Plan.

Once the Operating Plan is approved by the court, the non-liquidating receiver oversees the businesses' operation in accordance with Plan. The Receiver also enforces any court-ordered protections for the benefit of the business. During this time, the business must operate in accordance with the Operating Plan; the business may not make expenditures, dispose of assets, or mortgage assets without the approval of the court. The receiver updates the Operating Plan through reports to the Superior Court on thirty-day intervals; there are provisions in place to update the Operating Plan, if needed.

The duration of the Non-Liquidating Receivership is monitored and determined by the court on a case-by-case basis. If the business succeeds in accessing new sources of working capital under the Operating Plan, it may present a plan to exit the program and pay its debts from the revenue generated from ongoing operations. If the business cannot operate in accord with the Operating Plan, the business runs the risk of being placed into a traditional receivership, whereby the business or its assets may be sold for the benefit of creditors. However, that cannot take place without a hearing before the court and a finding that the business is in default of the Operating Plan.

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<sup>24</sup> Rhode Island Superior Court, Frequently Asked Questions: COVID-19 Business Recovery Plan (available at <https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/BusinessRecoveryPlanFAQ.pdf>).

<sup>25</sup> ADMINISTRATIVE ORDER 2020-04, *supra* note 3.

## Anticipated Costs

The business must pay a \$160 filing fee to file the Verified Petition with the Superior Court.<sup>26</sup> The business is also responsible for the costs associated with hiring its own attorney (with very limited exceptions, a business is required to be represented by an attorney in court proceedings<sup>27</sup>), an accountant to assist in the preparation of the Operating Plan, and the costs associated with the court-appointed non-liquidating receiver. The cost of the non-liquidating receiver will vary from business to business, depending on its size and complexity; based on the types and size of businesses for which the BRP was designed, total fees are estimated at \$10,000. These costs and fees can be paid over time as part of the Operating Plan.<sup>28</sup> One potential approach for reducing costs may be to conduct outreach to attorneys or accountants who may be willing to offer pro bono assistance to small businesses.

## Considerations for the Appointment of Non-Liquidating Receivers

Attorneys can apply to be added to the panel of approved receivers in Rhode Island courts<sup>29</sup>; Business Calendar judges then appoint receivers from this list. The application form asks for relevant CLE hours, litigation experience, and other relevant experience.

Rhode Island law requires receivers to be practicing attorneys,<sup>30</sup> but not all states do. The position requires both legal and business acumen. In particular, the receiver's role is to manage and reorganize the business's finances, so experience with corporate bankruptcy, business organization, and accountancy is beneficial. It is also important to ensure that a receiver has no conflicts of interest with the small business itself or with its creditors.

## Implementation of the Program

The Rhode Island Superior Court appointed Mark Russo and John Dorsey as Program Coordinators.<sup>31</sup> Russo and Dorsey are attorneys who have substantial experience as receivers. They will administer the program, serve as a resource to non-liquidating receivers and to the court, educate business about recovery and legal strategy, and provide expertise on and coordination with loan and grant programs for businesses. These programs include the Paycheck Protection Program administered by the U.S. Small

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<sup>26</sup> Rhode Island Superior Court, Court Filing Fees (available at <https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/Fees.pdf>).

<sup>27</sup> Rhode Island Superior Court FAQ, *supra* at note 24.

<sup>28</sup> ADMINISTRATIVE ORDER 2020-04, *supra* note 3.

<sup>29</sup> See application form at <https://www.courts.ri.gov/PublicResources/forms/Supreme%20Court%20Forms/Court%20Appointment%20Certification%20Application.pdf>.

<sup>30</sup> ADMINISTRATIVE ORDER 2020-04, *supra* note 3.

<sup>31</sup> Rhode Island Superior Court Order, COVID-19 Business Recovery Plan – Program Coordinator (March 31, 2020) (available at [https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/Order-Covid\\_19\\_Business\\_Recovery\\_Plan-Program\\_Coordinators.pdf](https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/Order-Covid_19_Business_Recovery_Plan-Program_Coordinators.pdf)).

Business Administration,<sup>32</sup> the Microenterprise (MicroE) Stabilization Grant Program,<sup>33</sup> Restore RI,<sup>34</sup> and more.<sup>35</sup>

The Superior Court's rollout of the BRP has involved coordination with the other branches of the state government. The Program Coordinators exchanged communications about the BRP with the Governor's office, the Rhode Island Commerce Department, and the Rhode Island General Assembly. The General Assembly circulated some initial drafts of legislation relating to the BRP, but so far, it is comfortable allowing the Superior Court to operate the program under its administrative authority. It is possible that future legislation may broaden the BRP to address emergencies other than COVID-19.

The program has also involved coordination with branches of the federal government, including conversations with U.S. Senators and the U.S. Small Business Administration. These conversations have primarily focused on whether the BRP should be considered as equivalent to federal bankruptcy proceedings for the purposes of PPP loan approvals; businesses involved in bankruptcy proceedings are not eligible for PPP loans.<sup>36</sup> THE SBA has not issued formal guidance concerning businesses under receivership, but discussions with SBA officials suggest that this factor would be considered by SBA underwriters considering a PPP loan application, but would not be disqualifying.

Finally, the Program Coordinators have engaged in outreach to the Rhode Island bar and business community (including local public accountants and the Providence Chamber of Commerce). They have relied heavily on subcommittees from Business Calendar for feedback and comments. They and the Lieutenant Governor have also worked with small businesses to provide education about the Coronavirus Aid, Relief, and Economic Security (CARES) Act.<sup>37</sup>

## Comparing the BRP to Alternative Programs and Procedures

One alternative to the BRP is a traditional liquidating receivership. Whereas the goal of a non-liquidating receivership under the BRP is to preserve the business's assets until the business can regain solvency, the goal of a liquidating receivership is to preserve the value of the business's assets until they can be sold for the benefit of creditors. A liquidating receivership is one of the final stages of the business's existence before it is dissolved. Under a liquidating receivership, the receiver takes over control of all business operations; under the BRP, in contrast, the business's owners and management continue their operations under the guidance of the receiver.

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<sup>32</sup> United States Small Business Administration, "Paycheck Protection Program," available at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

<sup>33</sup> Rhode Island Commerce, "Emergency Grants and Funding," available at <https://commerceri.com/emergency-grants-and-funding/>.

<sup>34</sup> Rhode Island Commerce, "Restore RI," available at <https://commerceri.com/about-us/restore-ri/>.

<sup>35</sup> Rhode Island Commerce, "Other COVID-19 SUPPORT Programs Announced by Governor Raimondo," available at <https://commerceri.com/business-funding-covid-19-other/>.

<sup>36</sup> Paycheck Protection Program Borrower Application Form (revised June 24, 2020), available at <https://www.sba.gov/sites/default/files/2020-07/PPP-Borrower-Application-Form-508.pdf>.

<sup>37</sup> Pub. L. No. 116-136 (March 27, 2020), available at <https://www.govinfo.gov/content/pkg/PLAW-116publ136/pdf/PLAW-116publ136.pdf>.



Another alternative to the BRP is Chapter 11 bankruptcy.<sup>38</sup> Subchapter V offers a form of bankruptcy protections designed for small businesses, involving lower costs and faster proceedings.<sup>39</sup> Eligibility for Subchapter V bankruptcy was previously capped at \$1 million in debt; however, the CARES Act has temporarily increased this maximum to \$7.5 million<sup>40</sup> (this provision expires March 27, 2021).<sup>41</sup> Businesses under Subchapter V bankruptcy are appointed a Trustee; procedural costs can be approximately \$50,000 to \$100,000 (considerably more than expected for the BRP for a small or medium-sized business). Unlike a receivership, bankruptcy allows a business to discharge its debts. However, this process offers a business entity less flexibility in making business decisions; it also places restrictions on the amount of the business's debts that can be discharged. In contrast to Subchapter V bankruptcy, the BRP provides businesses assistance in negotiating with creditors through the Program Coordinators, a clearinghouse for information about the local landscape, and injunctive relief from suits by creditors while recovering.

Finally, there are more informal alternatives to the BRP. Business can negotiate individually with their creditors to try to reduce or delay the payment of debts while they recover. Business can also assign their assets to a trustee for the benefits of their creditors.

## Performance Metrics

To evaluate the effectiveness of the BRP (or similar programs that may be developed in other jurisdictions), certain data need to be collected by the courts. Ideally, jurisdictions looking to implement and evaluate this type of program should collect the following information about each case:

- I. Case Information
  - a. Case number
  - b. Case name
  - c. Court or venue where case is filed
  - d. Judge assigned to the case
  - e. Non-liquidating receiver appointed to the case
- II. Petitioner Information
  - a. Business name
  - b. Business type (NAICS or SIC code)
  - c. Number of employees
  - d. Annual revenues (prior to the COVID-19 pandemic)
  - e. Monthly debts
  - f. Sources of debts (e.g., inventory and suppliers, mortgage or rent, payroll)
  - g. Assets
- III. Case Events
  - a. Filing date
  - b. Date of hearing for temporary non-liquidating receiver
  - c. Date when order for temporary non-liquidating receiver was entered
  - d. Date of hearing for permanent non-liquidating receiver

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<sup>38</sup> 11 U.S.C. §§ 101 et seq. (available at <https://www.law.cornell.edu/uscode/text/11>).

<sup>39</sup> 11 U.S.C. §§ 1181 – 1195 (available at <https://www.law.cornell.edu/uscode/text/11/chapter-11/subchapter-V>).

<sup>40</sup> Pub. L. No. 116-136, *supra* note 37, at § 1113.

<sup>41</sup> *Id.* at §1113(a)(5).

- e. Date when order for permanent non-liquidating receiver was entered
- f. Date of hearing to convert non-liquidating receivership to liquidating receivership
- g. Date of order converting non-liquidating receivership to liquidating receivership
- h. Date of dismissal of non-liquidating receiver
- i. Date of dismissal of liquidating receiver
- j. Final disposition date

## Conclusions

To date, the launch and implementation of the BRP has been successful; however, more time needs to elapse before it can be fully evaluated. The overall success of the program will depend on several external factors over which the court has no control, including COVID-19 infection rates within the state and the economic impact of those infections, as well as the availability of state and federal emergency funding for small businesses. One finding to note so far is that the program has received fewer filings than expected. Encouraging small business to take advantage of the program before they become irreversibly insolvent is important. This will require marketing to small business decision-makers (particularly accountants) and inspiring confidence that the new program offers better remedies than existing outcomes, despite that fact that it is new and, therefore, susceptible to legal challenges.

## Appendices

### Appendix A: Relevant Rules

Rhode Island Superior Court Administrative Order 2020-04 (COVID-19 Business Recovery Plan):

<https://www.courts.ri.gov/Courts/SuperiorCourt/SuperiorAdmOrders/20-04.pdf>

Pub. L. No. 116-136 (CARES Act): <https://www.govinfo.gov/content/pkg/PLAW-116publ136/pdf/PLAW-116publ136.pdf>

R.I. Gen. Laws § 7-1.2 (Rhode Island Business Corporation Act):

<http://webserver.rilin.state.ri.us/Statutes/TITLE7/7-1.2/INDEX.HTM>

11 U.S.C. §§ 101 et seq. (Chapter 11 Bankruptcy): <https://www.law.cornell.edu/uscode/text/11>

### Appendix B: Further Resources Relating to the Business Recovery Program

Web page for the Rhode Island Superior Court Business Recovery Plan:

<https://www.courts.ri.gov/Courts/SuperiorCourt/Pages/BusinessRecoveryPlan.aspx>

Frequently Asked Questions: COVID-19 Business Recovery Plan:

<https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/BusinessRecoveryPlanFAQ.pdf>

Application form for panel of approved court-appointed receivers:

<https://www.courts.ri.gov/PublicResources/forms/Supreme%20Court%20Forms/Court%20Appointment%20Certification%20Application.pdf>

Rhode Island Superior Court Filing Fees: <https://www.courts.ri.gov/Courts/SuperiorCourt/PDF/Fees.pdf>

### Appendix C: Relevant Caselaw

- I. Non-Liquidating Receiverships in Rhode Island
  - a. Gardner v. Larkin, 2020 U.S. Dist. LEXIS 29033, 2020 WL 831860 (note that this case took place in Federal court).
  - b. Procaccianti v. Baginski, 2016 R.I. Super. LEXIS 51.
  - c. Quinn v. Yip, 2015 R.I. Super. LEXIS 141.
  - d. Peck v. Jonathan Michael Builders, Inc., 2006 R.I. Super. LEXIS 145.
  - e. Levine v. Bess Eaton Donut Flour Co., 705 A.2d 980 (R.I. 1998).
  - f. Newport Harbor Associates v. Market Square Corp., 1984 WL 559254 (R.I. Super. Ct.).
- II. Liquidating Receiverships in Rhode Island
  - a. Alegria v. One Lot of Land Known as 592 Main Street, 2006 WL 3436046 (R.I. Super. Ct.).
  - b. Sitkin v. R-One Alloys, Inc., 2006 WL 625273 (R.I. Super. Ct.).
  - c. Rhode Island Depositors Econ. Prot. Corp. v. Procaccianti, 2002 WL 977496 (R.I. Super. Ct.).
  - d. Sharman v. S&S Realty Associates, 2004 WL 1541925 (R.I. Super. Ct.).
  - e. Tyler Finance, L.P. v. Worcester Co, 2001 WL 100403 (R.I. Super. Ct.).

- f. Broccoli v. Broccoli, 710 A.2d 669 (R.I. 1998).
  - g. Cambio v. G-7 Corp., 1998 WL 1472896 (R.I. Super. Ct. 1998).
  - h. Reynolds v. E & C Associates, 693 A.2d 278 (R.I. 1997).
  - i. King v. Viking Interiors II, Inc., 1995 WL 941460 (R.I. Super. Ct.).
  - j. Cerilli v. Newport Offshore, Ltd., 624 A.2d 835 (R.I. 1993).
  - k. DiStefano v. Capital Ventures, Ltd., 1983 WL 486853 (R.I. Super. Ct.).
  - l. Petrovics v. King Holdings, 56 R.I. 498 (1936).
  - m. Scott v. Economy Laundries, 179 A. 615 (R.I. 1935).
  - n. Leonard Levin Co. v. Star Jewelry Co., 54 R.I. 465 (1934).
  - o. Edwards v. Miller, 131 A. 554 (R.I. 1925).
  - p. Winsor v. Pilgrim Shoe Machinery Co., 42 R.I. 73 (1919).
- III. Receivership Cases Cited by Rhode Island Courts
- a. Modern Telecommunications, Inc. v. Dalessandro, 185 A.D.2d 218 (N.Y. App. Div. 1992).
  - b. Nelson v. Nelson, 99 A.D.2d 917 (N.Y. App. Div. 1984).
  - c. Crippin Printing Corp. v. Abel, 441 N.E.2d 1002 (Ind. Ct. App. 1982).
  - d. Prassas v. Nicholas W. Prassas & Co., 430 N.E.2d 28 (Ill. Ct. App. 1981).
  - e. Lowder v. All Star Mills, Inc., 273 S.E.2d 247 (N.C. 1981).
  - f. Guardian Financing Co. v. Davidson, 154 N.E. 743 (Ohio Ct. App. 1924).

## Appendix D: Additional Resources for Businesses Struggling Due to the COVID-19 Pandemic

United States Small Business Administration Paycheck Protection Program:

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

Paycheck Protection Program Borrower Application Form:

<https://www.sba.gov/sites/default/files/2020-07/PPP-Borrower-Application-Form-508.pdf>.

List of Emergency Grants and Funding from Rhode Island Commerce:

<https://commerceri.com/emergency-grants-and-funding/>.

Restore RI program: <https://commerceri.com/about-us/restore-ri/>.

Other COVID-19 Programs Announced by Governor Raimondo: <https://commerceri.com/business-funding-covid-19-other/>