



## NEW JERSEY LAW REVISION COMMISSION

### Revised Tentative Report Concerning the Interpretation Of New Jersey's Receivership Act (N.J.S. 2A:42-117)

**May 19, 2022**

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **July 19, 2022**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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## Project Summary<sup>1</sup>

In New Jersey, the Multifamily Housing Preservation and Receivership Act (the Act or Receivership Act),<sup>2</sup> governs the grounds, procedures, and requirements for appointing a receiver to rehabilitate multifamily buildings that have fallen into disrepair. N.J.S. 2A:42-117 provides that when one of two statutory conditions is met, “a building shall be eligible for receivership,” and that a court “shall appoint a receiver.”<sup>3</sup>

In *Manufacturers and Traders Trust Company v. Marina Bay Towers Urban Renewal II, LP*,<sup>4</sup> the Appellate Division considered whether the trial court had discretion to deny the appointment of a receiver when the statutory conditions in N.J.S. 2A:42-117 were satisfied.<sup>5</sup> Finding the statutory language “susceptible to different interpretations,” the Court considered the Legislature’s intent in enacting the statute, its legislative history, and a related statute in the Act stating that a court “may appoint a receiver” if the grounds for relief are established.<sup>6</sup> The Court held that a trial court does have discretion to deny the appointment of a receiver despite the use of mandatory language in N.J.S. 2A:42-117.<sup>7</sup>

During the February 17, 2022 Commission meeting, the Commission also considered the meaning of additional statutory language in N.J.S. 2A:42-117.<sup>8</sup> The Commissioners discussed whether the trial court is required to consider evidence presented by both parties given the statutory instruction that the court determines whether conditions exist “based upon evidence provided by the plaintiff.”<sup>9</sup> The Commission authorized additional research on this issue.<sup>10</sup>

Consistent with the intent of the Legislature, it is proposed that the mandatory language concerning the appointment of a receiver in N.J.S. 2A:42-117 is replaced with permissive language. Additionally, it is proposed that the language regarding the evidence to be considered by the court in appointing a receiver is eliminated from N.J.S. 2A:42-117.

## Relevant Statute

N.J.S. 2A:42-117 states in relevant part:

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<sup>1</sup> Preliminary work on this project was conducted by Arshiya M. Fyazi during her tenure as Counsel with the NJLRC.

<sup>2</sup> N.J. STAT. ANN. §§ 2A:42-114 to -142 (West 2022).

<sup>3</sup> N.J.S. 2A:42-117 (“[a]ction to appoint receiver”) (emphasis added).

<sup>4</sup> 2019 WL 5395937 (N.J. Super. Ct. App. Div. Oct. 22, 2019).

<sup>5</sup> *Id.* at \*30.

<sup>6</sup> *Id.* (quoting N.J.S. 2A:42-123a. (West 2022)) (emphasis added).

<sup>7</sup> *Id.* at \*29 - \*30.

<sup>8</sup> N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at \*2, Feb. 17, 2022, www.njlrc.org (last visited Apr. 14, 2022).

<sup>9</sup> *Id.* (discussing whether the language “based upon evidence presented by the plaintiff” implies that “only the plaintiff’s proofs are considered in such situations”).

<sup>10</sup> *Id.*; N.J. Law Revision Comm’n, Draft Final Report Concerning the Interpretation of New Jersey’s Receivership Act (N.J.S. 2A:42-117) (Feb. 7, 2022), www.njlrc.org (last visited Apr. 14, 2022).

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A building shall be eligible for receivership if it meets one of the following criteria:

- a. The building is in violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants as of the date of the filing of the complaint with the court, and the violation or violations have persisted, unabated, for at least 90 days preceding the date of the filing of the complaint with the court; or
- b. The building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court and the owner has failed to take action as set forth in section 9 of P.L. 2003, c. 295 (C.2A:42-122).

A court, upon determining that the conditions set forth in subsection a. or b. of this section exist, based upon evidence provided by the plaintiff, shall appoint a receiver, with such powers as are herein authorized or which, in the court's determination, are necessary to remove or remedy the condition or conditions that are a serious threat to the life, health or safety of the building's tenants or occupants.<sup>11</sup>

### **The History of the Receivership Act**

Prior to the enactment of the current Receivership Act, three separate statutes governed receiverships of real property.<sup>12</sup> Only specified local officials were empowered, by two of the previous receiver statutes, to bring an action to appoint a “receiver ex officio of the rents and income” of property that was not in compliance with local ordinances or orders for repair.<sup>13</sup> Neither statute *required* the appointment of a receiver.<sup>14</sup> Furthermore, the statutes “provided no direction to either the receiver or to the courts,” and as a result, “the underlying financial and physical circumstances of the property as well as those of the landlord [we]re not materially changed” by receivership.<sup>15</sup>

To address this, legislators sought to “make receivership a more workable tool for the

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<sup>11</sup> N.J.S. 2A:42-117 (emphasis added).

<sup>12</sup> N.J. STAT. ANN. § 2A:42-79 (West 2004); N.J. STAT. ANN. § 40:48-2.12h (West 2004); N.J. STAT. ANN. § 54:5-53.1 (West 2022) (the Receivership Act did not amend or repeal N.J.S. 54:5-53.1, which applies only when a municipality has purchased property at a tax sale).

<sup>13</sup> N.J. STAT. ANN. § 2A:42-79 (only allowing actions to be brought by the “public officer, . . . by and with the approval of the governing body of the municipality”); N.J. STAT. ANN. § 40:48-2.12h. (only allowing actions to be brought by the “municipal officer . . . by and with the approval of the governing body of [the] municipality”).

<sup>14</sup> *Id.*

<sup>15</sup> Sponsor’s Statements to A.B. 2539, 210<sup>th</sup> Leg., 2003 Sess. (2003) (identical to S.B. 1676), later codified as L. 2003, c. 295.

improvement and preservation of affordable housing and the elimination of neighborhood blight,” by revising and consolidating the prior statutes into the Act.<sup>16</sup> The Act vests a court with “broad discretion to appoint the most appropriate entity to act as receiver” based on the circumstances that gave rise to the receivership action.<sup>17</sup> The Act also provides a court with “broad discretion to act to further the purposes of the statute, where necessary.”<sup>18</sup>

The legislative findings and declarations contained in N.J.S. 2A:42-115 incorporate the goals set forth in the Sponsors’ Statements.<sup>19</sup> That section provides that “[i]n order to ensure that the interests of all parties are adequately protected, it is essential that State law provide clear standards and direction to guide the parties with respect to all aspects of receivership.”<sup>20</sup>

### **Background**

In *Manufacturers*, the Appellate Division considered, for the first time, a statutory inconsistency found in the Act – one provision that mandates the appointment of a receiver and another that affords the trial court discretion to appoint a receiver under the same circumstances.<sup>21</sup>

In the City of North Wildwood, the State of New Jersey and two of its agencies were parties to a suit that involved an income-restricted senior citizen housing project that suffered significant damage as a result of Superstorm Sandy.<sup>22</sup> During the litigation, a group of tenants in the building (Litigating Tenants) filed a “Petition for Receivership, Verified Complaint for Specific Performance and for Declaratory and Injunctive Relief,” alleging habitability problems and repeated code violations.<sup>23</sup> In addition to other relief, the Litigating Tenants “sought the appointment of a receiver, pursuant to the Act.”<sup>24</sup>

The Chancery Division approved a plan to “restructure and rehabilitate” the housing project and denied the appointment of a receiver.<sup>25</sup> The trial court’s determination that it had the discretion to deny the appointment of a receiver raised the issue of apparent inconsistencies in the language of the Receivership Act.<sup>26</sup>

### **Analysis**

The Appellate Division determined the statutory language in N.J.S. 2A:42-117 was “internally inconsistent” and looked “for guidance to a separate portion of the Receivership Act,

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> N.J. STAT. ANN. § 2A:42-115 (West 2022).

<sup>20</sup> N.J. STAT. ANN. § 2A:42-115h.

<sup>21</sup> *Mfrs. and Traders Tr. Co.*, 2019 WL 5395937 at \*29.

<sup>22</sup> *Id.* at \*7. The details of the financing at the center of the litigation exceed the scope of this Memorandum. The Appellate Division noted that, “this case is one of novelty and complexity, involving fourteen days of abstruse financial detail and literally dozens of motions, conferences and meetings with the parties over more than two years.” (Internal quotation marks omitted). *Id.* at \*3.

<sup>23</sup> *Id.* at \*7.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at \*1.

<sup>26</sup> *Id.* at \*27 - \*28.

section 123.”<sup>27</sup> The Court also reviewed the legislative history of the Act to resolve the statutory ambiguity.<sup>28</sup>

The statutory inconsistency identified by the *Manufacturers* Court arose from the use of both mandatory and permissive language.<sup>29</sup> Specifically, N.J.S. 2A:42-117 provides “that a building ‘shall be eligible for receivership’ if either of the two criteria are met, but then provides that if a court determines that either of the conditions exist, it ‘shall appoint a receiver.’”<sup>30</sup> The Court noted that another statute in the Act grants a court discretion to deny or appoint a receiver, stating “[i]f . . . the grounds for relief . . . have been established, the court may appoint a receiver.”<sup>31</sup>

The mandatory language of a portion of N.J.S. 2A:42-117, and the permissive language found in that same statute and in N.J.S. 2A:42-123, led the Court to examine the legislative history of the Act.<sup>32</sup> The Court found “nothing in the legislative history . . . that suggests an intent by the Legislature to require appointment of a receiver.”<sup>33</sup> The Sponsors’ Statements also “indicate that the Act was intended to give broad discretion to trial judges” and finally, the previous receivership statutes “did not mandate the appointment of a receiver.”<sup>34</sup> The Court concluded that it makes “eminent sense that trial judges should be given discretion to determine if the appointment of a receiver would serve the interests” of the parties involved.<sup>35</sup>

The Court held “[i]n sum, given the contradictory language contained within the statute, the legislative history favors reading N.J.S. 2A:42-117 as permissive rather than mandatory” and, therefore, the trial court did not abuse its discretion in denying a receiver.<sup>36</sup>

### **The Court’s Discretion to Appoint a Receiver**

In the absence of any further case law addressing the institution of a receivership under N.J.S. 2A:42-117, the remaining language in the Act was reviewed for indicia of the Legislature’s intent. The statutes in the Act provide additional guidance on the issue raised by the Appellate Division in *Manufacturers*.

- *Remaining Language in the Receivership Act*

Throughout the Act, a court’s powers to institute, manage, alter, and terminate a receivership are described permissively, with very few exceptions. The statute that directly addresses a court’s power to appoint a receiver, N.J.S. 2A:42-123, provides that a court “may appoint a receiver and grant such other relief as may be determined to be necessary and

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<sup>27</sup> *Id.* at \*28.

<sup>28</sup> *Id.* at \*29.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at \*28.

<sup>31</sup> *Id.* (quoting N.J. STAT. ANN. § 2A:42-123a.).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at \*29.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

appropriate” if it finds, after a summary hearing, that grounds for such relief were established.<sup>37</sup>

- Other Instances of Permissive Language

Most of the statutes that make up the Receivership Act provide a court with broad discretion to fashion relief as it finds appropriate. Even N.J.S. 2A:42-117, which contains mandatory language, authorizes a court to grant the receiver any powers “which, in the court’s determination, are necessary” to accomplish the purpose of the receivership.<sup>38</sup> The provision setting forth the grounds for dismissing a receivership action states that “the court may dismiss the complaint” if it finds certain facts.<sup>39</sup> Similarly, a court “may remove[]” a receiver “at any time upon the request” of an interested party or the receiver, and “may hold a hearing prior to removal.”<sup>40</sup> A court “may terminate the receivership” if certain facts are established, and “impose such conditions on the owner or other entity taking control of the building. . . that the court deems necessary and desirable.”<sup>41</sup> The court “may order the sale of the building” if certain conditions are satisfied.<sup>42</sup>

In addition to substantive receivership determinations, the Act also provides the judiciary with discretion to manage several procedural and technical aspects of receivership.<sup>43</sup> For example, it is only “[a]t the discretion of the court” that a “party in interest may intervene in the proceeding and be heard.”<sup>44</sup> Further, many of the receiver’s powers are subject to court approval, such as incurring certain types of indebtedness.<sup>45</sup> Other aspects of the receivership must be determined by the court, like the submission of “such reports as the court may direct”<sup>46</sup> or the reimbursement of expenses.<sup>47</sup> Finally, the receiver must have court authorization to take certain actions, like selling the building free and clear of encumbrances.<sup>48</sup>

- Instances of Mandatory Language

In the Act there are instances in which the power of the court to administer the receivership

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<sup>37</sup> N.J. STAT. ANN. § 2A:42-123a. (emphasis added).

<sup>38</sup> N.J.S. 2A:42-117.

<sup>39</sup> N.J. STAT. ANN. §§ 2A:42-122a. – c. (West 2022) (emphasis added).

<sup>40</sup> N.J. STAT. ANN. § 2A:42-126 (West 2022) (emphasis added).

<sup>41</sup> N.J. STAT. ANN. § 2A:42-140 (West 2022) (emphasis added); *see also* N.J. STAT. ANN. §§ 2A:42-138 and -138h (when an owner petitions for termination of the receivership, “the court may grant the owner’s petition,” “may waive the requirement for a bond or other security for good cause,” and “may establish additional requirements as conditions of reinstatement) (emphasis added).

<sup>42</sup> N.J. STAT. ANN. § 2A:42-133 (West 2022).

<sup>43</sup> *See e.g.* N.J. STAT. ANN. § 2A:42-123b. (West 2022) (court “may require the owner to post a bond”); *see also* N.J. STAT. ANN. § 2A:42-124 (West 2022) (court “may in its discretion deny a lienholder or mortgage holder of any or all rights or remedies” if it finds a special relationship with the building owner).

<sup>44</sup> N.J. STAT. ANN. § 2A:42-121b. (West 2022).

<sup>45</sup> N.J. STAT. ANN. § 2A:42-130b. (West 2022).

<sup>46</sup> N.J. STAT. ANN. § 2A:42-129d. (West 2022).

<sup>47</sup> N.J. STAT. ANN. § 2A:42-131a. (West 2022).

<sup>48</sup> N.J. STAT. ANN. § 2A:42-135b. (West 2022).

is curtailed.<sup>49</sup> The Act mandates that a court “shall act upon any complaint. . . in a summary manner.”<sup>50</sup> In addition, a court “shall” seek the recommendation of the receiver and “shall schedule a hearing,” when considering whether to reinstate a building owner’s rights and the conditions of reinstatement.<sup>51</sup> Additionally, the court “shall” adhere to the order of priority for distributing the proceeds of the sale of the property.<sup>52</sup>

- Instances of Mandatory Language that Do Not Restrict the Court’s Discretion

Finally, there are three statutes within the Receivership Act which contain mandatory language (“shall”) that, when read in conjunction with qualifying phrases, does not actually restrict the court’s discretion.<sup>53</sup> For instance, when a court considers a plan submitted by the receiver, N.J.S. 2A:42-125 provides that it “shall approve or disapprove the plan with or without modifications.”<sup>54</sup> Notwithstanding the use of mandatory language, the Act does not impose any limits on the court’s discretion to accept, reject or modify the receiver’s plan.<sup>55</sup>

Therefore, a review of the statutes in the Act revealed not only a preference for language that preserves and expands the court’s discretion, but also that the Legislature sometimes used mandatory language despite a clear intent to permit the court to exercise its discretion. The remaining statutes in the Receivership Act reinforce the holding in *Manufacturers* that the Legislature intended to allow the court discretion to grant or deny the appointment of a receiver.

### **Evidence Considered When Determining Whether to Institute a Receivership**

The Commission discussed whether the phrase “based upon evidence provided by the plaintiff” in N.J.S. 2A:42-117 might cause confusion regarding the evidence a court is permitted to consider when determining whether to appoint a receiver.<sup>56</sup> The Commission authorized additional research to clarify the scope of the court’s consideration of evidence when making this determination.<sup>57</sup>

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<sup>49</sup> See e.g. N.J. STAT. ANN. § 2A:42-118c. (West 2022) (court “shall exclude” certain facilities from the scope of the receivership “absent[t] . . . justification”); see also N.J. STAT. ANN. § 2A:42-137 (West 2022) (if the court chooses to fix a minimum duration for the receivership, it “shall not exceed one year”).

<sup>50</sup> N.J. STAT. ANN. § 2A:42-121a.

<sup>51</sup> N.J. STAT. ANN. § 2A:42-137.

<sup>52</sup> N.J. STAT. ANN. § 2A:42-136 (West 2022).

<sup>53</sup> See e.g. N.J. STAT. ANN. § 2A:42-123a. (directing that the court “shall select as the receiver the mortgage holder, lienholder or a qualified entity,” unless a receiver cannot be identified, and then, “the court may appoint any party who, in the judgment of the court” is otherwise qualified) (emphasis added); see also N.J. STAT. ANN. § 2A:42-138i. (West 2022) (instructing that new owners “shall be subject” to all the statute’s provisions “unless the court finds compelling grounds that the public interest will be better served by a modification of any of these provisions”) (emphasis added).

<sup>54</sup> N.J. STAT. ANN. § 2A:42-125 (West 2022) (emphasis added).

<sup>55</sup> *Id.*

<sup>56</sup> N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at \*2, Feb. 17, 2022, www.njlrc.org (last visited Apr. 14, 2022).

<sup>57</sup> *Id.*

- *Remaining Language in the Receivership Act*

The statutes that precede and follow N.J.S. 2A:42-117 contain language that suggests that the court may consider more than the plaintiff's evidence when determining whether to appoint a receiver. The legislative findings and declarations set forth in N.J.S. 2A:42-115 explicitly state that the Legislature intended that the revised receivership procedures would “ensure that the interests of all parties are adequately protected” at every stage of receivership.<sup>58</sup>

First, the Act sets forth procedures for providing notice of the receivership action to “parties in interest,” including the property owner and any mortgage or lienholders of record.<sup>59</sup> In addition, the complaint must set forth “[e]vidence that the owner received notice of the conditions that form the basis of the complaint” and failed to remedy them.<sup>60</sup>

Additional statutes set forth specific procedures for allowing parties to present arguments and evidence for or against receivership. The court is authorized pursuant to N.J.S. 2A:42-121 to allow intervention by “any party in interest . . . with regard to the complaint, the requested relief or any other matter” connected to the proceedings.<sup>61</sup> Further, “[a]ny party in interest may present evidence to support or contest the complaint at the hearing.”<sup>62</sup> Pursuant to N.J.S. 2A:42-122, the court is empowered to dismiss the complaint “if the owner opposes the relief sought” and demonstrates the defenses set forth in the statute by a preponderance of the evidence.<sup>63</sup> Finally, N.J.S. 2A:42-123 also directs that the determination be made “after [a] summary hearing.”<sup>64</sup>

Given the strict notice requirements and detailed procedures governing the presentation of evidence in support and opposition to a receivership, the Act does not explicitly limit the court's consideration of evidence on the issue of appointing a receiver. However, N.J.S. 2A:42-117 does permit a summary action, and in N.J.S. 2A:42-121a., mandates that “[t]he court shall act upon any complaint submitted pursuant to [Section 117] in a summary manner.”<sup>65</sup>

- *Other New Jersey Statutes*

The phrase “based upon evidence provided by the plaintiff” is not used in any other New Jersey statutes. Even statutes that require the court to proceed in a summary manner do not employ this language. For instance, N.J.S. 2A:42-92 directs that actions to have rent diverted to the court to pay overdue utilities or fix dangerous building conditions “shall proceed in a summary manner.”<sup>66</sup> When determining whether to grant relief, a court is instructed to “render a judgment .

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<sup>58</sup> N.J. STAT. ANN. § 2A:42-115h.; *see also supra* “The History of the Receivership Act.”

<sup>59</sup> N.J. STAT. ANN. § 2A:42-119 (West 2022) (additionally requiring the plaintiff to “mail notification to the public officer and the agency . . . of its intent to initiate action under [the Receivership Act] . . . [or i]f no municipal officer has been designated by the municipality . . . the plaintiff shall mail the notice to the municipal clerk”).

<sup>60</sup> N.J. STAT. ANN. § 2A:42-118 (West 2022).

<sup>61</sup> N.J. STAT. ANN. § 2A:42-121b. (West 2022).

<sup>62</sup> N.J. STAT. ANN. § 2A:42-121c. (West 2022).

<sup>63</sup> N.J. STAT. ANN. § 2A:42-122a. – c.

<sup>64</sup> N.J. STAT. ANN. § 2A:42-123a. (West 2022) (“[i]f the court determines, after its summary hearing, that the grounds for relief . . . have been established, the court may appoint a receiver and grant such other relief as may be determined to be necessary and appropriate”).

<sup>65</sup> N.J. Stat. Ann. § 2A:42-121a. (West 2022).

<sup>66</sup> N.J. STAT. ANN. § 2A:42-92 (West 2022).



. . . [d]ismissing the petition for failure to affirmatively establish the allegations . . . or because of the affirmative establishment by [an opposing party] of a defense or defenses specified in this act.”<sup>67</sup> Similarly, N.J.S. 54:4-63.14 provides that “upon proof of the service of the notice, the county board of taxation shall hear [a complaint regarding property omitted from an assessment] in a summary manner and shall render judgment as shall be proper upon the proofs presented.”<sup>68</sup>

Furthermore, statutes that simply *permit* summary actions, like N.J.S. 2A:42-117, also do not use this language. In N.J.S. 46:7-1, the court is authorized to proceed in a “summary manner or otherwise” in an action to correct an error in a deed or conveyance of real estate, and “may, if convinced of the merit of the action, direct the proper person to execute and acknowledge the confirmatory deed.”<sup>69</sup>

Based on its absence from other New Jersey statutes, even those that authorize or require a summary action, the phrase “based upon evidence provided by the plaintiff” is not necessary to convey the Legislature’s intention that a receivership action be handled in a summary manner.

- *The New Jersey Court Rules Governing Summary Actions*

Since the Receivership Act<sup>70</sup> “permit[s a court] by statute to proceed in a summary manner,”<sup>71</sup> a summary proceeding under that section is governed by New Jersey Court Rules 4:67, et seq.<sup>72</sup> The Appellate Division has described a summary action under R. 4:67-2 as “provid[ing] interim relief to plaintiff while at the same time affording proper notice to defendant and a

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<sup>67</sup> N.J. STAT. ANN. § 2A:42-93a. (West 2022) (emphasis added).

<sup>68</sup> N.J. STAT. ANN. § 54:4-63.14 (West 2022) (emphasis added).

<sup>69</sup> N.J. STAT. ANN. § 46:7-1 (West 2022).

<sup>70</sup> N.J.S. 2A:42-117 (“[a] summary action or otherwise to appoint a receiver to take charge and manage a building may be brought by a party in interest or qualified entity in the Superior Court in the county in which the building is situated”) (emphasis added).

<sup>71</sup> N.J. Ct. R. 4:67-1(a) (“[t]his rule is applicable (a) to all actions in which the court is permitted by rule or by statute to proceed in a summary manner”).

<sup>72</sup> Another section in Part IV of the New Jersey Court Rules, N.J. Ct. R. 4:53, et seq., is entitled “Receivers and Liquidating Trustees.” The language employed throughout these rules strongly indicates that section applies exclusively to custodial and statutory receivers for a corporation or partnership. *See e.g.* N.J. Ct. R. 4:53-1 (“shall direct a corporation or a partnership for whom a custodial receiver has been appointed to show cause”); N.J. Ct. R. 4:53-2 (“venue in actions in the Superior Court for the appointment of a receiver of a corporation or partnership shall be . . . ”); *see also Kaufman v. 53 Duncan Invs., L.P.*, 368 N.J. Super. 501, 507 & 509 (App. Div. 2004) (“a consideration of R. 4:53 as a harmonious collection of working parts, gathering meaning and purpose from each neighboring provision, . . . mandates our determination that these rules were intended to apply only to custodial or statutory receivers for troubled business entities” and additionally noting that because “R. 4:54 . . . directs that the practice governing assignees for the benefit of creditors ‘shall conform as nearly as practicable to the procedure relating to insolvent corporations,’ an obvious reference to R. 4:53[,] . . . [t]he presence of R. 4:54 demonstrates the limited scope of R. 4:53”).

However, even if R. 4:53, et seq., is applicable to proceedings to appoint a receiver under the Receivership Act, the notice requirements to an adverse party and that party’s opportunity to be heard under R. 4:53-1 are stricter than in R. 4:67, et seq. *See* N.J. Ct. R. 4:53-1 (“[n]o order appointing a custodial receiver under the general equity power of the court shall be granted without the consent of or notice to the adverse party [absent a clear and specific showing] that immediate and irreparable damage” will otherwise occur and “an order granted without notice shall give the adverse party leave to move for the discharge of the receiver”).

meaningful opportunity to be heard.”<sup>73</sup>

In proceedings governed by R. 4:67-1(a), a verified complaint “may be presented to the court *ex parte* and service . . . made pursuant to R. 4:52-1(b),” which addresses “Order[s] to Show Cause as Process.”<sup>74</sup> The Rules provide that “[t]he court, if satisfied with the sufficiency of the application, shall order the defendant to show cause why final judgment should not be rendered for the relief sought.”<sup>75</sup>

R. 4:67-3 and -4 describe the manner of serving the Order to Show Cause and the required time period in which the defendant must respond, as well as the fact that “in default thereof, the action may proceed *ex parte*.”<sup>76</sup> Additionally, in R. 4:67-5, the court is instructed that “[i]f no objection is made by any party, or [defendants] have defaulted . . . , or the affidavits show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon.”<sup>77</sup>

Since N.J.S. 2A:42-117 authorizes courts to proceed summarily in a receivership action, the language identified by the Commission may reflect the directive in R. 4:67-2(a) that an order to show cause shall be issued if the court “is satisfied with the sufficiency of the application” of the plaintiff.<sup>78</sup> Alternatively, the language may refer to R. 4:67-4(a), wherein a court is authorized to proceed *ex parte* in certain circumstances, which would necessarily generate a determination “based upon evidence provided by the plaintiff.”<sup>79</sup>

However, the language in N.J.S. 2A:42-117 does not clearly incorporate the standard in R. 4:67-2(a), as it states that “[a] court . . . shall *appoint a receiver*,” not that a court “shall” issue an order to show cause why relief should not be granted.<sup>80</sup> It is similarly unclear whether the language intended to reference the possibility of proceeding on the plaintiff’s evidence alone, which is permitted *only* in the narrow circumstances articulated in the Rule.<sup>81</sup>

Additionally, by its own terms, N.J.S. 2A:42-117 applies to a “summary action or otherwise.”<sup>82</sup> Absent any indication in the statute that the language is relevant only to summary actions, its presence increases the potential for confusion as to what evidence a court may consider when determining whether to appoint a receiver. Therefore, the implication arising from the language in N.J.S. 2A:42-117 - that the court’s determination is “based upon evidence provided by the plaintiff” *alone* - is overly broad given the narrow and specific circumstances in which the court is permitted to proceed *ex parte* under the statute and New Jersey Court Rules.

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<sup>73</sup> *Thomas v. Monmouth Properties, LLC*, 2011 WL 2410301, at \*3 (N.J. Super. Ct. App. Div. June 15, 2011) (addressing an action pursuant to “N.J.S.A. 2A:39-6 [which] permits the court to proceed in a summary manner in lockout proceedings”).

<sup>74</sup> N.J. Ct. R. 4:67-2(a).

<sup>75</sup> *Id.*

<sup>76</sup> N.J. Ct. R. 4:67-4(a).

<sup>77</sup> N.J. Ct. R. 4:67-5 (alternatively empowering the court to “order the action to proceed as in a plenary action wherein a summons has been issued” if good cause has been shown).

<sup>78</sup> N.J. Ct. R. 4:67-2(a).

<sup>79</sup> N.J. Ct. R. 4:67-4(a).

<sup>80</sup> N.J.S. 2A:42-117.

<sup>81</sup> N.J. Ct. R. 4:67-4(a).

<sup>82</sup> N.J.S. 2A:42-117.

Accordingly, to clarify that the statutes governing receivership actions authorize and entitle an adverse party to present arguments and evidence in opposition to the appointment of a receiver, even in a summary proceeding, it is proposed that the phrase “based upon the evidence provided by the plaintiff” is eliminated from N.J.S. 2A:42-117 entirely.

### **Initial Outreach**

In connection with this project, Staff sought comments on the October 21, 2021, Tentative Report<sup>83</sup> from knowledgeable individuals and organizations including: South Jersey Legal Services, who represented the Litigating Tenants in *Manufacturers*; New Jersey Department of Community Affairs; Housing and Community Development Network of New Jersey; New Jersey State Bar Association, Real Property/Trust and Estate Section; Professor David Listokin, Director of the Center for Urban Policy Research at Rutgers University; Professor Paula Franzese of Seton Hall University School of Law; and several private practitioners, including the plaintiff’s attorney in another New Jersey receivership case, *City of Union City v. Tadros*.<sup>84</sup>

To this time, there has been no response to the outreach conducted in connection with the Tentative Report.

### **Legislation**

Currently, there are no bills pending that address N.J.S. 2A:42-117, with respect to either the issue addressed by the Court in *Manufacturers and Traders Trust Company v. Marina Bay Towers Urban Renewal II, LP*,<sup>85</sup> or the language flagged by the Commission at the February 2022 meeting.<sup>86</sup>

### **Conclusion**

N.J.S. 2A:42-117 directs that a court “shall appoint a receiver” if certain conditions listed in the statute are found to exist. The Appellate Division in *Manufacturers* held that the legislative history of the Act, and its remaining statutory language, support a permissive reading of N.J.S. 2A:42-117.<sup>87</sup>

Additionally, additional research was conducted regarding the purpose of the language “based upon evidence provided by the plaintiff” in N.J.S. 2A:42-117. Given that the remaining statutes in the Act and the applicable New Jersey Court Rules authorize the consideration of evidence presented by parties other than the plaintiff, the removal of this language is proposed to

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<sup>83</sup> N.J. Law Revision Comm’n, Tentative Report Concerning the Interpretation of New Jersey’s Receivership Act (N.J.S. 2A:42-117) (Oct. 21, 2021), [www.njlrc.org](http://www.njlrc.org) (last visited Apr. 14, 2022).

<sup>84</sup> 2020 WL 3055641 (N.J. Super. Ct. App. Div. June 9, 2020).

<sup>85</sup> 2019 WL 5395937 (N.J. Super. Ct. App. Div. Oct. 22, 2019).

<sup>86</sup> N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, at \*2, Feb. 17, 2022, [www.njlrc.org](http://www.njlrc.org) (last visited Apr. 14, 2022).

<sup>87</sup> *Id.* at \*28.

clarify that the determination whether to appoint a receiver is not made based solely on the plaintiff's evidence.<sup>88</sup>

Accordingly, the Appendix that follows sets forth these proposed modifications changing the language in N.J.S. 2A:42-117 from mandatory to permissive, and eliminating the phrase "based upon evidence provided by the plaintiff" from the statute.<sup>89</sup>

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<sup>88</sup> See *supra* at "*The New Jersey Court Rules Governing Summary Actions*" (excepting the specific circumstances of defaulted summary action not articulated in the statute).

<sup>89</sup> The Appendix also sets forth a non-substantive updating of the statute's format to improve accessibility.

## Appendix

The proposed modifications to N.J.S. 2A:42-117 (shown with ~~strikethrough~~, and underlining), follow:

- a. A summary action or otherwise to appoint a receiver to take charge and manage a building may be brought by a party in interest or qualified entity in the Superior Court in the county in which the building is situated. Any receiver so appointed shall be under the direction and control of the court and shall have full power over the property and may, upon appointment and subject to the provisions of P.L.2003, c. 295 (C.2A:42-114 et al.), commence and maintain proceedings for the conservation, protection or disposal of the building, or any part thereof, as the court may deem proper.
- b. A building shall be eligible for receivership if it meets one of the following criteria:
  - ~~a.~~(1) The building is in violation of any State or municipal code to such an extent as to endanger the health and safety of the tenants as of the date of the filing of the complaint with the court, and the violation or violations have persisted, unabated, for at least 90 days preceding the date of the filing of the complaint with the court; or
  - ~~b.~~(2) The building is the site of a clear and convincing pattern of recurrent code violations, which may be shown by proofs that the building has been cited for such violations at least four separate times within the 12 months preceding the date of the filing of the complaint with the court, or six separate times in the two years prior to the date of the filing of the complaint with the court and the owner has failed to take action as set forth in section 9 of P.L. 2003, c. 295 (C.2A:42-122).
- c. A court, upon determining that the conditions set forth in subsection ~~a.~~ b.(1) or ~~b.~~ b.(2) of this section exist, ~~based upon evidence provided by the plaintiff, shall~~ may appoint a receiver, with such powers as are herein authorized or which, in the court's determination, are necessary to remove or remedy the condition or conditions that are a serious threat to the life, health or safety of the building's tenants or occupants.

### COMMENT

First, the proposed modifications divide the text into lettered and numbered sections and subsections to improve accessibility. With respect to the proposed modifications in newly modified subsection c., the statute as written states that the court “shall” appoint a receiver if either condition in the statute is determined to exist, “based upon evidence provided by the plaintiff.”

The proposed modifications change the mandatory “shall” contained in new subsection c. to the permissive “may” for consistency within this statute and the Receivership Act as a whole, in keeping with the Act’s legislative history and the Legislature’s intent. The language is also consistent with the Appellate Division’s finding in *Mfrs. and Traders Tr. Co. v. Marina Bay Towers Urban Renewal II, LP*, that the Legislature did not intend to “require [the] appointment of a receiver if certain conditions were met.”<sup>90</sup>

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<sup>90</sup> *Mfrs. and Traders Tr. Co.*, 2019 WL 5395937, at \*30.

In addition, the proposed modifications eliminate the phrase “based upon evidence provided by the plaintiff,” to clarify that the court is not restricted to considering only the plaintiff’s evidence when determining whether to appoint a receiver. This modification is consistent with the remaining statutes in the Receivership Act, which set forth procedures contemplating the participation and presentation of evidence by the defendant and any “party in interest,” as well as the applicable New Jersey Court Rules, which allow for a determination to be made *ex parte* in very narrow circumstances not articulated in N.J.S. 2A:42-117.<sup>91</sup>

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<sup>91</sup> Although further clarification could be made by adding a cross-reference to R. 4:67, et seq., other statutes which authorize summary actions in the same manner as N.J.S. 2A:42-117 do not include a cross-reference to the applicable New Jersey Court Rule. *See e.g.* § 80:2. Summary proceedings by statute, 4A N.J. Prac., Civil Practice Forms § 80:2 (6th ed.) (listing statutes “which provide for summary proceedings”).