

Overview

Receiverships

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What are receiverships?

A receivership is a provisional and equitable remedy in which a neutral person called a receiver takes control of property—typically a business, business assets, or real property—that is the subject of litigation. The receiver is a fiduciary charged with the responsibility of preserving the property pending the court's determination of how to dispose of the property or resolve claims relating to the property. [Court Opinions](#). All the property, rights, and interests over which the receiver has control are known collectively as the “receivership estate.”

Receivers perform their duties under the control and supervision of the court. They act for the benefit of all parties who have an interest in the receivership estate—not just the plaintiff or the person who moved for their appointment. [Court Opinions](#). The receiver is, for all intents and purposes, considered an officer (or extension) of the court. To help ensure the receiver's neutrality, prior to appointment, the receiver cannot enter into agreements concerning how the receiver will administer the receivership estate, including whom the receiver will hire to help in administering the receivership estate or what capital expenditures the receiver will make. As a court-appointed official, a receiver typically may not be sued without the permission of the court. Likewise, the receiver estate is generally protected from any kind of enforcement action absent court order.

Historically, receiverships arose out of state courts' equitable powers to manage the property interests at issue in lawsuits before them during the administration of the lawsuit. States have enacted statutes codifying this power and setting forth often loose parameters for the appointment of a receivership. See [State Statutory Search](#). Since receiverships are based on state law, their features differ from state to state. This article provides an overview of some of the most common characteristics of receiverships. One should be familiar with the law of the relevant state concerning receiverships before taking any such action.

When should one seek a receivership?

Receivers can be appointed for a variety of different purposes. Since receiverships typically are appointed to preserve interests in property, they are commonly sought by secured lenders or other persons with security interests in, or liens against, property. They are often pursued by secured lenders where the borrower fails to make payments under the secured loan or otherwise fails to meet its legal obligations. They are also often sought where a debtor is insolvent and its assets are being dissipated, misappropriated, or wasted—whether by fraud, mismanagement, or otherwise. Other contexts include where a receiver is needed to assist the winding down of a business' affairs or to protect a business against waste or abuse by one or more business partners, officers, or other actors.

Broadly, there are two categories of receiverships: (1) special or limited receiverships (also known as rents and profits receiverships), and (2) general or equity receiverships. [Court Opinions](#).

In a special or limited receivership, a receiver is generally appointed to take possession only of the specific property serving as collateral for a secured lender under a deed of trust, security agreement, or other pledge. A special receiver has no right to possess all the debtor's property or property other than the collateral. The special receiver is appointed, often pending a foreclosure, to protect the collateral against damage or waste, secure rents generated by the collateral, and help reduce the risk of rent skimming or other loss of value.

In contrast, general receiverships are broader and typically allow the receiver to take control of all assets of the defendant for the benefit of all creditors. In this way, a general receiver is comparable to a bankruptcy trustee. In a typical general receivership case, a receiver is charged with taking possession of and protecting property, operating the debtor's business, bringing or defending actions, collecting rent or debts owed, and taking all other actions in furtherance of the court's directives. General receiverships are often sought by secured creditors holding a blanket security interest in all real and personal property of a debtor business.

Some other forms of receiverships are as follows:

- *Federal Securities and Exchange Commission (SEC) Receiverships*: Receivers can be appointed over property controlled by a person or entity sued by the SEC—most often for fraud. See [Court Opinions](#). The SEC often seeks the appointment of a receiver where it believes a company or individual may dissipate or waste property or assets. In an SEC receivership, the receiver's powers generally include taking legal control of and protecting assets, filing claims on behalf of an entity placed into a receivership, and, ultimately, distributing assets to defrauded investors, claimants or creditors through a court-approved plan.
- *Health and Safety Receiverships*: Receivers can be appointed at the request of state or local health officials under public health laws. See [Court Opinions](#). Such receiverships are often appropriate where, among other things, real property has become blighted by accumulation of junk and debris, hoarding, structural inadequacy or failure, fire, hillside, or seismic danger. The receiver takes control of the property to rehabilitate, vacate, liquidate, or demolish it for the health and safety of the public. The receiver's duties may entail managing and operating the property, relocating tenants, collecting rents, obtaining cost estimates for necessary repairs, and entering into contracts for the necessary repairs, rehabilitation or demolition of the property.
- *Corporate Dissolution Receiverships*: State statutes often authorize receiverships to assist with the winding up of a corporation's business. See [State Statutory Search](#); [Court Opinions](#). A post-dissolution receiver commonly oversees the dissolution process, including the liquidation of all corporate assets for the benefit of all creditors.
- *Judgment Enforcement Receiverships*: Many states authorize the appointment of a receiver after judgment to aid in collection efforts. See [State Statutory Search](#); [Court Opinions](#). These statutes may permit the appointment of a receiver to carry a judgment into effect, to dispose of property according to judgment, or to liquidate assets to pay a judgment. Since the appointment of a receiver is a drastic remedy, the movant often must show that other forms of judgment enforcement are not effective. [Court Opinions](#).

What is the legal standard for receiverships?

The appointment of a receiver often is justified where a party has agreed (e.g., in a loan agreement) to the appointment of a receiver after default or other circumstances. See [Example Appointment of Receiver Clauses](#) in publicly filed agreements. In addition, the appointment of a receivership also may be appropriate where the movant establishes it has a right to property that is in the possession of the defendant and that such property is in danger of being lost, transferred beyond the court's jurisdiction, harmed, or destroyed. E.g., [Point of Law \(POL\) Search](#). If the request is made on an ex parte or emergency basis, the movant must typically establish the nature of the emergency and the reasons why "irreparable injury" would be suffered if a receiver is not appointed on an ex parte basis. [Court Opinions](#). Courts may also appoint receivers sua sponte where a receivership is in the best interests of all parties. [Court Opinions](#).

Courts typically view appointment of a receiver as an extraordinary or drastic remedy, and movants often must establish that no less drastic remedy will be effective in providing the relief sought. [Court Opinions](#). However, the mere fact that the movant has other remedies available to it typically does not, in and of itself, preclude appointment of a receiver. E.g., [POL](#) (noting federal courts consider numerous factors). Where other remedies are available, courts generally consider the availability and efficacy of other remedies before granting a receivership. While the availability of other remedies does not preclude appointment of a receiver, courts have refused to appoint receivers when a less severe remedy is available and is determined likely to be effective.

Courts have broad discretion in appointing receiverships. [POL Search](#). The decision to appoint or refuse to appoint a receiver usually will not be disturbed on appeal unless the trial court committed an abuse of discretion. [Court Opinions](#).

How does one seek a receivership?

Typically, a receivership is a remedy and not a standalone, substantive cause of action. Accordingly, a claimant may obtain appointment of a receiver by filing a complaint asserting a valid cause of action (e.g., breach of contract, statutory claim entitled to receivership) against the owner or person in control of the property and requesting, as part of the relief or remedy requested, appointment of a receiver.

A claimant can then move separately for appointment of a receiver. Typically, such a motion must be accompanied by a declaration or affidavit of the moving party setting forth facts necessary for the appointment of a receiver. The qualifications of the nominated receiver are also typically filed with the motion. Motions for appointment of receivers can often be made on an ex parte and/or emergency basis upon a showing of irreparable harm.

A receivership is granted by a court order or similar document (Appointment Order), which generally defines the scope of the receivership estate and sets forth the rights and responsibilities of the receiver. Appointment Orders are discussed in greater detail below.

Many states require that the receiver post a bond with the court in an amount decided by the court. The amount of the bond is usually based on the value of the receivership estate and the rent or income generated from the property. The purpose of the bond is to provide the defendant with a source of recovery in the event of any harm caused by the wrongful appointment of a receiver.

Once the receiver has accomplished the purpose of the receivership (e.g., disposition of property), then the receiver files the final report, requests a final compensation award, and requests closure of the receivership estate, including the termination of the bond.

States have varying rules concerning the appealability of orders appointing receiverships. In most states, orders appointing receiverships are immediately appealable. If the appointment is made in an interim, ex parte basis, then the party seeking to appeal may need to wait until a final order confirming the appointment of a receiver is entered, which is sometimes weeks after the interim order.

If applying for a receiver, it is important to understand your state's substantive laws and procedures so that you can comply with them and avoid potentially costly issues.

What provisions should the Appointment Order contain?

The Appointment Order is a critically important document because it alone defines the precise scope of the receivership estate and the receiver's powers and obligations. For this reason, the Appointment Order should be carefully crafted with the input of the potential receiver so as to help ensure the receiver has the authority to take all actions necessary to maximize the value of the specific receivership estate at issue. Appointment Orders commonly include provisions doing the following:

- Setting forth findings of fact and conclusions of law supporting appointment of a receiver.
- Appointing the receiver and directing and empowering the receiver to take into custody all assets within the receivership estate, to manage, repair, and lease the property, to protect rents and profits from the property, and to pay real property taxes, insurance premiums, assessments, and senior liens.
- Permitting the receiver the power to sell receivership assets free and clear of liens (usually subject to court approval after balance of equities).
- Allowing the receiver to sue or defend lawsuits relating to receivership property, including suing to avoid fraudulent transfers.
- Granting the receiver those powers "traditionally and customarily" held by receivers.
- Enjoining the target of the receivership and other parties to the case and interested parties from interfering with the receivership, committing or permitting any waste of the property, or doing anything that will impair the preservation of the property.
- Ordering the debtor to turnover possession of all receivership assets, to produce documents relevant to the receivership, and to give testimony relating to the receivership estate.
- Empowering the receiver to assume or reject executory contracts.
- Setting the receiver's compensation and detailing the priority in which bills are to be paid. (Often the receiver's fees and costs are paid first.)

- Allowing the receiver to borrow money or sell receiver certificates to raise funds for administration of the receivership estate. See *How are receiverships funded?*, below.
- Allowing the receiver to hire professionals (e.g., lawyers, accountants, brokers, etc.) as necessary to administer the receivership estate.
- Directing how often the receiver must file reports (typically no more frequently than monthly).
- If the receiver is appointed over a business, enjoining ownership, management or others from filing a voluntary or involuntary petition for relief under the Bankruptcy Code for the business. (This provision is discussed in greater detail below.)

For example Appointment Orders, see this [Federal Dockets Search](#).

Provisions Enjoining Bankruptcy Filings

In some jurisdictions, courts have enforced provisions in orders appointing equity receivers enjoining anyone but the receiver from filing a voluntary petition for relief under the Bankruptcy Code with respect to the debtor. For example, some courts have found that state law, and by extension the appointment order, controlled as to the question of who may file a bankruptcy petition on behalf of the company. E.g., [Court Opinions](#). However, other courts have declined to dismiss a bankruptcy filed by debtor's management and rejected the receiver's argument that the appointment order divested debtor's management of authority to file bankruptcy on behalf of debtor. E.g., [Court Opinions](#).

With respect to whether an appointment order may enjoin creditors from filing an involuntary bankruptcy petition against a debtor, such provisions have been enforced where the debtor is the subject of a federal receivership. E.g., [POL](#). Where the receivership is appointed by a state court rather than a federal court, however, the involuntary bankruptcy petition typically ousts the receiver unless the bankruptcy court rules otherwise.

How are receiverships funded?

Receivers typically charge an hourly fee plus costs for their work in connection with the receivership. Thus, a potential receiver must conduct an appropriate level of due diligence before taking on the assignment to ensure there are sufficient assets or income to pay the receiver for the requisite work. A receivership assignment can be similar to a chapter 7 bankruptcy trustee in the sense that the receiver may not receive any compensation for their work in the case if there are inadequate assets or income to pay the receiver's invoices.

Where the receivership is generating regular income, the receiver may be permitted to be compensated periodically from the receivership estate to pay the receiver's fees and operating expenses (as well as those of the receiver's counsel). If allowed in the Appointment Order, the receiver need not obtain prior court approval of each periodic payment.

If the receivership is not generating regular income and periodic payment of the receiver is not possible, the receiver may be required to wait for an income-generating event, such as a sale of property, to request and receive a disbursement. In seeking disbursements for compensation, receivers typically are required to detail for the court and parties what services have been provided and whether previous allowances have been made.

Receivers are usually funded from the proceeds of the receivership estate (e.g., income generated by a business subject to the receivership or from the sale proceeds of receivership property upon disposition). Notwithstanding, the court has broad discretion in determining who will pay receivership expenses. Some courts have imposed these fees and costs on the party requesting the receivership.

Depending on the expected value of the receivership estate, receivers may demand that the moving party agree to "backstop" any of the receiver's fees and expenses not covered by the proceeds of the receivership estate. Such a provision would typically be included in the Appointment Order. This issue is often the subject of negotiation between the plaintiff and the potential receiver before the receiver agrees to serve as receiver and before the motion for the appointment of a receiver is filed.

If permitted by the Appointment Order, receivers may raise funds for the receivership by selling "receivership certificates," which are essentially short-term, secured debt instruments. A lender pays the receiver a sum of money and, in exchange, receives a certificate by the receiver promising to repay the lender the principal amount of the certificate (typically with

interest) and granting the lender a first priority, priming lien against the assets in the receivership estate. See this [Dockets Search](#) for examples of Appointment Orders discussing receivership certificates.

How do receiverships compare to bankruptcy?

From the creditor's perspective, a receivership can be preferable to bankruptcy for a number of reasons. First, receiverships are generally more time- and cost-effective than bankruptcies. Second, they allow for greater flexibility. For instance, while ultimately the court must approve the receiver, creditors in most states are free to nominate a receiver of their own choosing. A bankruptcy trustee, on the other hand, is appointed by the court from the limited pool of empaneled trustees with effectively no input from creditors (other than through a rarely used objection process). Further, the Appointment Order can be more closely tailored to maximize the value of the defendant's property than a bankruptcy. Bankruptcies, on the other hand, are all invariably governed by the same statutes and rules.

Receivers may also share some of the same powers as bankruptcy trustees, such as selling assets free and clear of liens with court approval, assuming and rejecting contracts with court approval, suing third parties, and setting aside fraudulent transfers.

Furthermore, seeking a receivership does not typically pose the same risks on the plaintiff creditor as those accompanying the filing of an involuntary bankruptcy petition against a party. Section 303(i) of the Bankruptcy Code provides that where an involuntary petition is dismissed, the petitioning creditors may be liable for reasonable attorneys' fees and costs and, where the involuntary petition is determined to have been filed in bad faith, for punitive and consequential damages.

On the other hand, receiverships have some disadvantages as compared to bankruptcy. Bankruptcies are governed by established, federal bankruptcy law, which can be more predictable than applicable state law (and case-specific court orders) governing receiverships. Further, the filing of a bankruptcy petition immediately triggers the automatic stay, which is a powerful injunction prohibiting parties from taking any act or maintaining any proceeding against the bankruptcy estate. In a receivership, additional court orders may be necessary to prevent certain conduct. For instance, proceedings against property of the receivership estate typically are not stayed automatically upon the appointment of a receivership.

Where a bankruptcy is filed after a receivership has taken custody of the debtor's property, litigation can ensue over whether the receiver must turn over assets of the receivership estate to the bankruptcy trustee. Disputes between a receiver and a bankruptcy trustee can be costly not only in terms of litigation costs, but also in terms of undoing progress made by the receiver in administering the receivership estate.