

# Receiverships: Arizona

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A Q&A guide to receiverships in Arizona. This Q&A addresses the process by which receiverships are generally administered in Arizona, including the commencement and administration of the receiverships, the duties and actions of receivers, creditor claims, and the jurisdiction of the court.

## Commencing a Receivership

### 1. What are the applicable statutes for receiverships in your jurisdiction?

In Arizona, the receivership statutes are relatively comprehensive and provide rules for:

- **General receiverships.** A superior court or a judge may appoint a receiver to protect and preserve property or the rights of parties even if the action includes no other claim for relief (A.R.S. §§ 12-1241 and 12-1242).
- **Real estate receiverships.** Arizona enacted the Uniform Commercial Real Estate Receivership Act, which provides a statutory framework for the appointment of a receiver for commercial real property (A.R.S. §§ 33-2601 to 33-2626).
- **Corporate dissolution.** A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind-up, liquidate, or manage the business and affairs of the corporation. The court must hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all its property wherever located. (A.R.S. § 10-1432.)

There are also specific types of receiverships that governmental agencies may put in place. For example:

- The director of the Arizona Department of Insurance and Financial Institutions may:
  - apply to the court for the appointment of a receiver over an insurer (A.R.S. § 20-172); and
  - appoint a deputy (A.R.S. § 20-648).

- The Arizona Corporation Commission may apply to the court to appoint a receiver to prevent or remedy a person's actual or threatened violation of Arizona's securities laws.

### 2. Please identify and describe the different types of receiverships available in your jurisdiction (for example, general receiver, special receiver, regulatory receiver, etc.) and their specific purposes. List any common law receiverships available in your jurisdiction.

In Arizona, while not explicitly provided in the statutes, courts may appoint:

- General receivers, which are given broad, generalized powers over the debtor.
- Special or specific receivers, which are given powers only over a specific piece of property, for example, a bank's collateral.
- Receiver pendente lite, which is a receiver appointed over a person or entity pending the outcome of litigation.
- Liquidation receivers, which are receivers appointed to sell property or wind-down a business entity,
- Regulatory receivers, for example, the director of the Department of Insurance and Finance that may seek the appointment of a receiver over a failing insurance company.

### 3. Generally, in which court must a receivership be commenced? Please explain for each type of receiver.



In Arizona, a judge of the Superior Court generally appoints all types of receivers.

#### 4. Please identify who has the authority to seek appointment of a receiver in your jurisdiction.

In Arizona, any party with an interest in property in need of protection has standing to seek appointment of a receiver over that property (A.R.S. § 12-1241). For example:

- A creditor with a lien against collateral can seek appointment of a receiver over its collateral when the borrower defaults on its loan or otherwise jeopardizes the security of the collateral.
- A partner in a business may seek the appointment of a receiver over the business if the partnership interest is in jeopardy or when there is a dispute over the management of the company (*Gravel Resources of Arizona v. Hills*, 217 Ariz. 33, 170 P.3d 282 (Ct. App. 2007)).
- Certain regulatory agencies have the power to seek appointment of a receiver over regulated entities. For example, the Department of Insurance and Financial Institutions may seek the appointment of a receiver over an insolvent insurance company.

#### 5. What circumstances must exist for a receiver to be appointed in your jurisdiction? Please address whether the company must be insolvent and what insolvency means in your jurisdiction.

Under the Arizona Statutes, receivers may be appointed:

- At any time to protect and preserve property or the rights of parties in the property.
- Before judgment, to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, if the property or its rents and profits:
  - is being subjected to or is in danger of waste, loss, dissipation, or impairment;
  - has been or is about to be the subject of a voidable transaction; or
  - must be protected and preserved or the rights of the parties must be protected and preserved.

(A.R.S. § 33-2605(A)(1).)

- After judgment, to:
  - carry the judgment into effect;
  - dispose of property according to the judgment;
  - preserve the property pending an appeal; or
  - when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(A.R.S. § 33-2605(A)(2).)

In a foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property if:

- It is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.
- The mortgagor agreed in a signed record to appointment of a receiver when the debtor is in default.
- The property owner agreed, after default and in a signed record, to appointment of a receiver.
- The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation.
- The owner fails to turn over proceeds or rents to the mortgagee.
- The holder of a subordinate lien obtains appointment of a receiver for the property.
- The property or the rights of the parties must be protected and preserved, even if the action does not include any other claim for relief.

(A.R.S. § 33-2605(B).)

There is no insolvency requirement for the appointment of a receiver in Arizona.

Per Rule 66(a)(5), Ariz. R. Civ. P., the court may not appoint a receiver if Rule 65 (injunctions) applies to the situation.

Receivers are also typically appointed:

- At the request of a lender secured with a lien against real or personal property. The lender must only show that the property needs protection. While not required, a showing of waste, loss, fraud, impairment also strengthens the request for a receiver.
- In a business dispute between two or more of the partners or equity holders. A court may choose to appoint a receiver when a company cannot function because of:

- a deadlock; or
- a toxic atmosphere.
- Post-judgment when the judgment debtor is hiding or dissipating assets.

With the passage of the Uniform Commercial Real Estate Receivers Act in Arizona, a deed of trust containing a provision agreeing to appointment of a receiver on default is typically sufficient grounds for the appointment of a receiver (A.R.S. § 33-2605(B)(2)).

### **6. What is required to file a receivership in your jurisdiction. Please include information on:**

- Documents, including any official forms and a description of the operative document.
- Filing requirements (including what needs to be filed and where, timing, electronic versus paper, and any fees that must be filed).

### **Documents**

In Arizona, there are no official forms specific to appointing a receiver. A form summons and civil coversheets must be filed with a receivership complaint, as they must be with any other type of action in Arizona.

Corporate actions or approval are not required for seeking appointment of a receiver.

The party seeking appointment of the receiver must file:

- A complaint, often one that is verified.
- An application for the appointment of a receiver or, in the alternative, an order to show cause why a receiver should not be appointed.
- An affidavit in support of the application attesting to the facts supporting the application,
- A proposed order to show cause.
- A proposed order appointing a receiver.

(Ariz. R. Civ. P. 66(1).)

The filing is also accompanied by the typical fee for filing a complaint.

Unless the court orders otherwise, within ten days after being served, the adverse party may file a response accompanied by one or more affidavits attesting to facts relevant to the application.

After the documents are all filed with the court, the court must hold a hearing on the application. Absent

an emergency, the initial hearing is typically a non-evidentiary order to show cause hearing (a return hearing) that requires the parties to appear to discuss the dispute and determine if an evidentiary hearing is necessary. If an evidentiary hearing proves necessary, the initial hearing is treated as a scheduling conference to set the evidentiary hearing date. Counsel often call chambers after filing the documents to request that the initial hearing be set in the near term.

Electronic filing is not available in every county in Arizona. Counsel should, therefore, call the clerk of the relevant county court to determine whether e-filing is available or if there are ways to expedite the assignment of a receivership complaint to a specific judicial division.

### **Notice**

Notice of service must be made on the adverse party in the same manner that a summons and pleading are served under Ariz. R. Civ. P. 4, 4.1, or 4.2, as applicable. The court may not consider an application where notice was not provided to the adverse party unless the applicant either:

- Files an affidavit at least ten days after filing the application demonstrating that:
  - all reasonable efforts have been made to serve the adverse party; and
  - personal service on the party cannot be made within Arizona or by direct service outside of Arizona.
- Demonstrates that that substantial cause exists for appointing a receiver before serving the adverse party.

(Ariz. R. Civ. P. 66(1)(2).)

If a party applies for appointment of a receiver without notice, the court may:

- Grant the application.
- If service on the adverse party is possible, order the applicant to serve the adverse party and set a hearing on the application within ten days after the order's entry.

(Ariz. R. Civ. P. 66(1)(3).)

## **Selecting a Receiver**

### **7. Please explain how a receiver is selected in your jurisdiction and whether there are any statutory requirements or qualifications to be appointed as receiver.**

In Arizona, receivers are typically professionals, for example, attorneys, accountants, or property managers. The requesting party typically nominates a receiver, which may be an individual or an entity.

The receiver may not be:

- A party interested in the action.
- An officer or employee of a party in the action.
- An attorney for a party.
- A person interested in the action.

(Ariz. R. Civ. P. 66 (b)(1).)

The court, however, may appoint a receiver that is:

- An employee of a party.
- An officer of a corporate party.
- A person otherwise interested in the action if the court finds that:
  - the property is abandoned, or the receiver’s duties consist primarily of physically preserving the property, collecting rents, or maturing, harvesting, and disposing of crops growing on it;
  - the parties received adequate notice; and
  - no party objects.

(Ariz. R. Civ. P. 66 (b)(1).)

For receivers involving commercial real estate, the court may not appoint a person as receiver if that person is disqualified. A person is disqualified if:

- It is an affiliate of a party.
- Holds an interest materially adverse to an interest of a party.
- Has a material financial interest in the outcome of the action.
- Has a debtor-creditor relationship with a party.
- Holds an equity interest in a party.

The proposed receiver must sign a declaration confirming that the receiver is not disqualified (A.R.S. § 33-2606).

### **8. Please explain what is required to obtain court approval of a selected receiver in your jurisdiction.**

In Arizona, the requesting party typically nominates a proposed receiver. However, any party may make a nomination. The requesting party often attaches the receiver’s qualifications to the application.

After appointment, the receiver must post a bond and sign an oath of receiver. The amount of the bond must be provided in the receiver’s order of appointment and be conditioned on the receiver faithfully discharging its duties and obeying the court’s orders. The oath must be endorsed on the bond (Ariz. R. Civ. P. 66(b)(2); see Question 11).

After the court approves the bond and the receiver makes the oath, the clerk must deliver a certificate of appointment to the receiver containing a description of the property involved in the action (Ariz. R. Civ. P. 66(b)(2); see Question 23).

If the court grants an application for appointment of a receiver without notice, it must require a bond in an amount fixed by the court, with a surety on court approval. The bond must also be conditioned to indemnify the adverse party for costs and damages occasioned by the seizure, taking, and detention of the adverse party’s property (Ariz. R. Civ. P. 66(a)(4)).

### **Qualification Criteria**

In determining whether a proposed receiver is qualified to serve as receiver and as an officer of the court, the discretion lies entirely with the court.

For receivers involving commercial real estate, the court may not appoint a person as receiver if that person is disqualified. A person is disqualified if:

- It is an affiliate of a party.
- Holds an interest materially adverse to an interest of a party.
- Has a material financial interest in the outcome of the action.
- Has a debtor-creditor relationship with a party.
- Holds an equity interest in a party.

The proposed receiver must sign a declaration confirming that the receiver is not disqualified (A.R.S. § 33-2606).

### Duties and Actions of the Receiver

#### 9. Please identify and describe the main statutory duties and responsibilities for each type of receiver, as applicable, in your jurisdiction (for example, providing notice to creditors, holding meetings of creditors, etc.)

In Arizona, a general receiver appointed over property under A.R.S. § 12-1241, has the statutory duty to protect and preserve property and the rights of the parties' interests. All other rights, duties, responsibilities, and obligations are contained in the receivership order. The proposed receivership order is typically lengthy and imposes other obligations on the receiver that vary from case to case. For example, the order may require the receiver to:

- Market the property for sale.
- Ensure the property is adequately insured.
- Provide notice to interested parties.

There is greater statutory guidance regarding a receiver's duties in a receivership involving commercial real property appointed under the Uniform Commercial Real Estate Receiver Act (UCRERA) (A.R.S. §§ 33-2601 through 33-2626). Under A.R.S. § 33-2611, without court approval, a receiver may:

- Collect, control, manage, and conserve receivership property.
- Operate a business in the ordinary course.
- Assert the owners' rights in the receivership property.

With court approval, the receiver may:

- Incur debt.
- Make improvements.
- Sell property.
- Assume or reject executory contracts.

UCRERA also requires the receiver to:

- Retain business records including records related to each receipt, disbursement, or disposition of receivership property.
- Account for the receivership property.
- Record the order appointing the receiver in the county recorder's office with the legal description of the real property.

- Disclose any disqualifications.
- Perform any other duty ordered by the court.

The court can also modify or expand the powers and duties of the receiver under court order.

It is discretionary for the receiver to file interim reports (A.R.S. § 33-2618). However, after completing its duties, the receiver must file a final report including:

- A description of the receiver's activities in conducting the receivership.
- A list of receivership property from the commencement of the receivership and any receivership property received during the receivership.
- A list of disbursements, including payments to the receiver's professionals.
- A list of dispositions of receivership property.
- A list of distributions for creditor claims.
- If not filed separately, a request seeking approval of the receiver's fees and expenses.
- Any other information required by the court.

(A.R.S. § 33-2621.)

#### 10. In addition to statutory duties, please summarize any common law duties imposed on a receiver in your jurisdiction.

In Arizona, "[a] receiver is a ministerial officer of the court who acts under the appointing court's authority, and not to promote the interest of any specific party" (*Mashni v. Foster* 234 Ariz. 522, 527, 323 P.3d 1173, 1178 (Ct. App. 2014)). The receiver, like the court, acts as a neutral party "whose actions may redound to the benefit of some and the detriment of others" (*Mashni* 234 at 528, 323 P.3d at 1179).

The court may limit or expand the statutory powers and duties of a receiver.

#### 11. Please explain if the receiver must post a bond in your jurisdiction and take any actions before beginning its duties.

In Arizona, a receiver must post a bond in an amount ordered by the court. The receiver must also sign an oath confirming that the receiver intends to abide by the court's orders and applicable law (Ariz. R. Civ. P. 66(b)(2)).

The amount of the bond must be provided in the receiver's order of appointment and be conditioned on the receiver faithfully discharging its duties and obeying the court's orders (Ariz. R. Civ. P. 66(b)(2)).

In a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act, the receiver must record the receivership order with a legal description of the property in the county records (A.R.S. §§ 33-2601 through 33-2626).

If the court grants an application for appointment of a receiver without notice, it must require a bond in an amount fixed by the court, with a surety on court approval. The bond must also be conditioned to indemnify the adverse party for costs and damages occasioned by the seizure, taking, and detention of the adverse party's property (Ariz. R. Civ. P. 66(a)(4)).

### 12. Under what circumstances can a receiver be removed in your jurisdiction?

In Arizona, a receiver may resign at any time. A court may also:

- Suspend a receiver at any time.
- Remove a receiver and appoint another receiver after providing reasonable notice.

In a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act, the court:

- May remove a receiver for cause.
- Must replace a receiver that dies, resigns, or is removed.

(A.R.S. § 33-2620.)

### 13. Please explain the process for terminating or removing a receiver, including all relevant notice requirements.

In Arizona, any party may file a motion to terminate the receiver at any time. An initial hearing must be held on the motion within ten days. Unless the parties stipulate differently, the court must hold a hearing on the motion no earlier than ten days after service of the motion. In scheduling the hearing, the court may order the receiver to file and serve a final account and report and require any objecting party to file and serve written objections. At the hearing, the court may take evidence if appropriate and enter orders concerning the receivership's termination, including orders regarding the receiver's fees and costs (Ariz. R. Civ. P. 66(c)(3)).

## Administration of the Receivership

### 14. What are the key processes during the receivership in your jurisdiction? Please describe:

- Financing, including the ability of the receiver to obtain financing.
- Assets sales, including whether sales are held at private or public auction and the circumstances for each, as well as notice requirements.
- Avoidance powers, including the specific avoidance powers given to a receiver in your jurisdiction and the relevant time period for recovering preferences.
- Assumption or rejection of executory contracts, including what actions a receiver must take to assume or reject a contract in your jurisdiction.

## Commercial Real Property Receivership

In a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act (UCRERA), with court approval a receiver may:

- Use receivership property other than in the ordinary course of business.
- May transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.

(A.R.S. § 33-2615.)

Unless the sale agreement provides differently, a sale subject to a senior lien, but is free and clear of the lien of:

- The person that obtained appointment of the receiver.
- Any subordinate lien.
- Any right of redemption.

(A.R.S. § 33-2615(B).)

Under the UCRERA, the court has discretion to determine whether the sale is conducted privately or at a public auction and the type of required notice for the sale (A.R.S. § 33-2615(D)).

A receiver over commercial real property may seek turnover of receivership property through the court's contempt power (A.R.S. § 33-2610).

The UCRERA permits a receiver to adopt or reject a debtor's executory contract relating to receivership

property. A receiver's rejection of a contract terminates the receiver's right to possess receivership property under that executory contract. Rejection is a breach of the contract effective immediately before the appointment of the receiver and provided the contract counter property the right to submit a claim in the receivership for the resulting damages caused by the breach.

The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances (A.R.S. § 33-2616). A provision in an executory contract that requires or permits for forfeiture, modification, or termination of an executory contract because of a receiver's appointment does not affect the receiver's power to adopt the executory contract. A receiver's performance under an executory contract before a court approves adoption of the contract also does not preclude the receiver from seeking to reject the contract later.

### General Receivership

In the case of a general receivership that does not involve commercial real property, there are no statutory requirements for sales, avoidance powers, or the assumption and rejection of executory contracts. If the receiver requires this type of relief, the receiver (or other party seeking the relief) typically files a motion requesting the court approve the relief.

A sale in a general receivership may be conducted in private or at a public auction. However, the best practice is for the receiver to obtain court approval of a contemplated action and, after consummating the action, obtain confirmation of the authorized action.

### Creditor Claims

**15. What is the procedure for notifying creditors of their rights to file claims in your jurisdiction? Please explain all notice requirements, including proof of claim requirements and deadlines. List all applicable statutes.**

#### Notice

In Arizona, there are no statutory requirements setting out the procedure for notifying creditors of their rights to file claims and the deadline for filing claims. The procedure is instead flexible, depends on each case, and is established by the court.

The receiver or party that obtained the receiver's appointment typically provides actual notice of the receivership to interested parties by delivering or mailing a copy of the receivership order. If special circumstances exist, the receiver should seek court approval of its contemplated notice procedures.

### Claims Process

In a general receivership and in a limited receivership if the circumstances require, the receiver must submit a recommendation concerning a claims process appropriate to the receivership with the court.

After the receiver submits a recommendation for the claims process, the court must then establish the claims process that should be followed, including:

- Whether proofs of claim must be submitted.
- The form of any proofs of claim.
- The place where the proofs of claim must be filed.
- The deadline or deadlines for filing the proofs of claim.
- Other matters bearing on the claims process.

The court may also authorize:

- Proofs of claim may be filed with the receiver or with the court, as the court determines is best.
- The receiver to treat accept submitted claims or object.

Creditors must submit a claim for rejection damages at a time determined by the court.

**16. Please explain the process for determining allowance and disallowance of claims in your jurisdiction, including the power and authority of the court regarding the process.**

In Arizona, there are no statutory requirements for determining allowance or disallowance of claims. The receiver instead typically decides whether a claim should or should not be allowed and then files a motion with the court seeking to affirmatively disallow or approve a claim.

**17. Please explain the priority scheme for the payment of creditors' claims in your jurisdiction and the applicable statutes.**

In Arizona, there is no statutory priority scheme for payment of creditor's claims. Creditors are paid according

to their priority. For example, secured creditors generally get paid first out of the sale proceeds of their collateral and then general unsecured creditors generally share pro rata in any excess sale proceeds.

When distributing proceeds from the receivership, the receiver typically files a motion seeking approval of the proposed distribution plan.

### Compensation of Receiver and Professionals

#### 18. Please explain how receivers are compensated in your jurisdiction, including:

- Whether there is a statutory or state law threshold compensation fee for receiver.
- Whether court approval is required for compensation.
- Whether parties must receive notice.

In Arizona, there is no statutory scheme or threshold for compensation of a receiver or its professionals in a general receivership or a corporate dissolution. However, the receiver should consider obtaining court approval and providing notice to interested parties of any professional compensation.

In the case of a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act, the court may:

- Authorize a receiver's reasonable and necessary fees and expenses from the receivership property for performing the receiver's duties and exercising its powers.
- Require one or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney fees and costs:
  - a person that sought appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses;
  - a person the conduct of which justified or would have justified the appointment of the receiver under A.R.S. § 33-2605, subsection A, paragraph 1; and
  - any other person as equity justifies.

(A.R.S. § 33-2619.)

#### 19. What professionals are receivers permitted to retain in your jurisdiction? Please explain how a receiver's professionals are compensated.

In Arizona, the statutes do not provide for the retention of professionals in a general receivership or a corporate dissolution. However, receivership orders in both cases typically authorize the receiver to hire professionals and the professionals are then hired without further court approval.

In the case of a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act (UCRERA), the receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing its duties. The receiver must disclose to the court:

- The professional's identity and qualifications.
- The proposed engagement's nature and scope.
- Any potential conflict of interest.
- The proposed compensation.

(A.R.S. § 33-2614 (A).)

Under UCRERA, the receiver may also serve as an attorney, accountant, auctioneer or broker when authorized by law (A.R.S. § 33-2614 (B)).

Receiver or professionals in a commercial real property receivership must file with the court:

- An itemized statement of the time spent, work performed and billing rate of each person that performed work.
- An itemized list of expenses.

If the receivership has sufficient assets, the receiver must pay the fees and expenses approved by the court (A.R.S. § 33-2614 (C)).

### Closing the Receivership

#### 20. What is the process for closing a receivership proceeding in your jurisdiction? Where a court order is required, please explain the key provisions of an order closing the case.



In Arizona, the statutes do not provide for a process for closing a general receivership or a receivership in a corporate dissolution. After administering the receivership assets, a receiver generally files a final report and accounting with the court and requests a discharge. An action where the court appointed a receiver may only be dismissed by court order (Ariz. R. Civ. P. 66(d)).

In the case of a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act, the receiver must file a final report with court on completion of its duties. The final report must contain:

- A description of the receiver's activities in conducting the receivership.
- A list of receivership property at the receivership's commencement and any receivership property received during the receivership.
- A list of disbursements, including payments to the receiver's professionals.
- A list of dispositions of receivership property.
- A list of distributions made or proposed to be made from receivership property to satisfy creditor claims.
- If not filed separately, a request for approval for payment of the receiver's fees and expenses.
- Any other information required by the court.

(A.R.S. § 33-2621(A).)

If the court approves the final report and the receiver distributes all receivership property, the receiver is discharged (A.R.S. § 33-2621(B)).

### 21. Is there a process in your jurisdiction for dissolving the receive company after the receivership concludes?

In Arizona, there is no statutory process for dissolving a debtor company after the receivership concludes.

When closing a receivership:

- The receiver may file articles of dissolution with the Arizona Corporation Commission before or during the closing of the receivership, but typically seeks court approval first.
- The debtor's officers or directors may file articles of dissolution with the Arizona Corporation Commission in the ordinary course after the receivership concludes.

Alternatively, the debtor company may be administratively dissolved by the Arizona Corporation Commission for

failure to file required annual reports or pay required annual fees.

## Jurisdiction and Power of the Court

### 22. What statutes, if any, confer powers on the court relating to the receivership, receiver, and creditors in your jurisdiction? Please explain those powers.

In Arizona, the court has the power to appoint a general receiver (A.R.S. §§ 12-1241). Pending any hearing on a receiver's appointment, the court may restrain an adverse party from removing, secreting, or disposing of the property (A.R.S. §12-1242). The court's procedures regarding a general receivership are detailed in Ariz. R. Civ. P. 66.

In a receivership involving commercial real property under the Uniform Commercial Real Estate Receiver Act, the superior court has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership (A.R.S. § 33-2604).

In a judicial proceeding brought to dissolve a corporation, the court may appoint one or more receivers to wind up and liquidate or manage the business and affairs of the corporation. The court must describe the receiver's powers in the appointing order; however, the receiver must also exercise all the corporation's powers to carry on the ordinary and necessary business of the corporation (A.R.S. § 10-1432).

### 23. What responsibilities does the clerk of court in your jurisdiction have in relation to maintaining the records of the receivership?

In Arizona, after the receiver submits its bond and oath and receives the requisite court approval, the clerk of court must issue a certificate of appointment containing a description of the property (Ariz. R. Civ. P. 66(b)(2); Question 8).

## Bankruptcy Considerations

### 24. May a receiver commence a bankruptcy proceeding in your jurisdiction?

In Arizona, there is no statutory guidance or caselaw regarding a receiver's authority to file a bankruptcy case

under Title 11 of the US Code. A receiver seeking to file a bankruptcy case should seek court approval.

### **25. If an involuntary petition is filed during the course of the receivership in your jurisdiction, what action, if any, must the receiver take?**

An involuntary bankruptcy case may generally be filed by three creditors holding at least \$16,750 in liquidated unsecured claims, not subject to a bona fide dispute if they can show that the debtor is generally not paying its debts (§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process](#)).

An order appointing a receiver does not operate as a stay to the commencement of a bankruptcy case under federal bankruptcy laws.

If creditors file an involuntary petition during the receivership:

- The receiver must preserve and protect the assets of the receivership estate (§ 543(a), Bankruptcy Code).
- Unless otherwise ordered by the bankruptcy court, the receiver must turn over property of the receivership estate to the bankruptcy trustee (§ 543(b), Bankruptcy Code).
- The bankruptcy court may permit the receiver to continue to administer the debtor's assets if appointed or in possession of the assets more than 120 days before the bankruptcy, unless the assets must be returned to prevent fraud or injustice (§ 543(d), Bankruptcy Code). However, even if the receiver is appointed less than 120 days before bankruptcy, the bankruptcy court may exercise discretion in rare cases and allow the receiver, instead of the bankruptcy trustee, to administer the assets if:
  - it is in the best interest of the creditors; and,
  - the debtor is solvent, it is the best interest of equity holders.

(11 U.S.C. § 543(d).)

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### **26. May a receiver challenge an involuntary bankruptcy proceeding in your jurisdiction? Please explain.**

In Arizona, there is no specific statutory authority giving receivers authority to object to an involuntary bankruptcy petition.

A bankruptcy court may:

- Dismiss an involuntary bankruptcy proceeding on certain circumstances including the consent of the petitioner and the debtor (§ 303(j), Bankruptcy Code).
- Dismiss or abstain from hearing a bankruptcy case if it is in the best interest of creditors depending on the facts and circumstances of the case and the length of time that a receiver has been in place (§ 305(a)(1), Bankruptcy Code).

## Other Topics

### **27. Are there any statutes or case law in your jurisdiction that would prevent a business directly engaged in cannabis business (i.e. cultivators, dispensaries), or a business that provides ancillary services to a cannabis business (i.e. commercial landlords), from being placed into a receivership? If yes, please list and explain the statutes.**

Cannabis is legal in Arizona for recreational use and cannabis businesses have been placed into receiverships.

### **28. If the receivership statutes in your jurisdiction are unique in aspects not covered by the questions in this Q&A, please state so here.**

While the Uniform Commercial Real Estate Receivership Act provides a comprehensive framework for a commercial real property receivership, there is little guidance for general receivership proceedings under Arizona law. There is, therefore, significant flexibility when seeking relief in a general receivership proceeding.

