

## A Powerful Tool For Collecting Judgments

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What do you do if you receive a multimillion-dollar judgment in your favor but cannot enforce it against a foreign company? Or if you are a creditor and want to enforce your rights but you have no realistic chance of collecting a money judgment against the defendant? You petition the court to appoint a receiver.

Enforcing a judgment, particularly in foreign jurisdictions, is a complex and difficult endeavor, and filing lawsuits in foreign countries often proves ineffective and costly. These situations require specialization and expertise, and litigants are increasingly turning to court-appointed receivers as a solution to enforce and recover judgments. This article describes the court-appointed receivership model, the benefits receivers offer for litigants and clients, and best practices for a successful receivership.

### Defining Receivers

A receiver is an independent person appointed by the court to take possession and charge of designated assets or property. A receiver's authority and duties are typically stated in the court's appointment order and are further defined by additional orders of the court. The parameters of the appointment will depend on both the circumstances that occasioned it and the authority under which the appointment was made. Although the purpose of appointments may vary, most commonly, courts will appoint a receiver to aid in the enforcement of a judgment and to preserve or recover assets.

A receivership is also a remedy available to secured creditors to recover amounts outstanding under a secured loan in the event of default on loan payments, and may also be a remedy used to resolve a shareholder dispute or liquidate assets. A receiver can also assist lenders in the protection of assets involved in real estate foreclosure and bankruptcy actions.

Although courts generally have wide discretion in designating individuals to serve as receivers, the independence and neutrality of receivers are paramount. As an officer of the court, the receiver must act in good faith and perform his or her duties fairly, and must not have any relationship with the parties or own any interest in any corporation at issue. The role of receiver is typically assigned to attorneys and



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accountants, but also commonly includes banking experts, investigators and consultants, among others.

## **Benefits of Receivers**

Court judgments often obligate a defendant to pay substantial sums of money, and in many instances, the defendant may refuse to honor the judgment. In these situations, the appointment of a receiver to aid in the execution of a judgment can prove beneficial to litigants and clients. Receivers can be a valuable tool to judgment creditors seeking to collect on a judgment, and can often act more quickly than a judgment creditor acting alone. A receiver can act more efficiently in taking possession of a judgment debtor's assets by obtaining banking records and other financial data almost immediately. Moreover, when assets are located, a receiver will be able to quickly seize and secure those assets. Further, often the mere act of seeking the appointment of a receiver can provide a powerful incentive for the judgment debtor to satisfy the judgment. Accordingly, litigants should strongly consider seeking the appointment of a receiver to aid in the execution of a judgment.

## **How to Appoint Receivers**

Generally, the appointment of a receiver requires, among other things, the filing of a complaint along with supporting declarations regarding the need for a receiver and the proposed receiver's qualifications. Petitioners may also seek appointment of a receiver on an ex parte emergency basis. However, such appointment can be difficult because the petitioner must establish the probability of irreparable injury in the event that a receiver is not promptly appointed. Each state as well as the federal government has statutes or common law that provide their respective courts with the equitable power and authority to appoint a receiver over property. State and federal court rules and procedures may also delineate the powers of a receiver. Litigants are well-served to familiarize themselves with the specific law and rules governing receiverships in their respective jurisdictions.

## **Best Practices for a Successful Receivership**

In order to avoid missteps in the structuring and appointment of a receivership, parties should familiarize themselves with best practices before seeking the appointment of a receiver. Below are three tips for a successful receivership.

### ***1. Strategize with Legal Counsel Regarding Your Options***

The appointment of a receiver in a lawsuit may include a number of complex considerations. Retaining experienced legal counsel early in the process will allow parties to identify risks and opportunities and weigh their options. By devising a strategic plan with counsel, parties will be well-equipped to prepare the necessary paperwork to petition for a receiver and be ready for the receiver's appointment on short notice. This is critical because in many cases, parties seeking to appoint a receiver must petition for the appointment with little notice, typically due to circumstances that threaten or irreparably injure that party's position. Regardless of whether a party decides to seek the appointment of a receiver or pursue other legal remedies, it is essential that they consult with legal counsel to preserve their options.

### ***2. Find an Experienced Receiver***

Once there is a legal strategy in place, parties should research neutral, experienced receivers who specialize in the subject matter of the dispute. The appointment of a neutral and qualified receiver is important to maintain the integrity of the receivership process and to ensure a successful result.

Although courts have broad discretion in the selection of receivers, different jurisdictions may have specific requirements regarding the necessary qualifications of receivers seeking appointment. To ensure the least resistance from opposing counsel and the court, the petitioning party should find a receiver who is neutral and competent to handle the matter, and who has the most relevant skills and expertise with a proven history of success. An experienced receiver will have a better understanding of how to prioritize tasks and focus on the issues that require immediate attention. In addition, a receiver with specialized knowledge will be better-suited to understand the myriad complex legal, business and accounting concerns that typically have to be addressed in a timely manner. Other considerations that parties should consider include the temperament, rate of compensation, availability and geographic location of the receiver.

### ***3. Obtain a Clear, Complete Receivership Appointment Order, But be Prepared to Modify the Order as Needed***

After selecting a neutral and experienced receiver, the order appointing the receiver is the most critical component of a successful receivership. As described above, the order appointing the receiver defines the powers, duties and scope of the receiver's authority. Parties should participate in the drafting of the appointment order to ensure that the order addresses their concerns regarding the receiver's authority and responsibilities. When drafting an order appointing a receiver, counsel for the petitioning party should ensure that the order clearly and specifically sets forth the receiver's duties and authority to avoid potential confusion or disputes later in the receivership process.

In addition to clearly defining the duties and responsibilities of a receiver, parties should ensure that the order adequately addresses the basis of compensation for the receiver, funding of the costs and expenses incurred during the receivership process, reporting by the receiver regarding his or her activities, and any other specific concerns by the parties regarding the receivership. By clearly setting forth the receiver's compensation, the parties will be aware of the costs of pursuing various actions. In addition, by requiring the receiver to file regular reports with the court regarding the receiver's progress in carrying out his or her responsibilities, the court will be better equipped to oversee the receivership and the parties will be better appraised and informed about the status of the receivership.

At the court's discretion, supplemental orders may be entered to modify or expand the receiver's responsibilities and authority. Receiverships are dynamic and fluid, and the needs of the parties and the nature of the dispute may change as the receivership process progresses. Accordingly, the parties should periodically review and update the order as the litigation progresses. Such supplemental orders may include expansion of the receiver's activities depending on the receiver's progress or may, for example, grant the receiver authority to hire additional professionals to assist in his or her duties. However, when drafting subsequent orders regarding the receiver, counsel should be aware that additional requests and responsibilities of the receiver may substantially increase the charges by the receiver. Once the receiver's responsibilities are complete, the court will file a final order discharging the receiver from his or her duties in the case.

### **Conclusion**

A court-appointed receiver is a useful tool for aggrieved parties in litigation. Parties facing difficulty when enforcing judgments should consider petitioning a court to appoint a receiver to maintain and preserve assets and collect and enforce court-ordered money judgments. Occasionally, even the act of seeking appointment of a receiver will prompt the defendant to satisfy the judgment. When used properly, a receivership can become a flexible and creative avenue to assist parties in the swift

resolution of a matter. Although some parties may fear the potential cost of a receiver, in many instances, the cost of a receiver is outweighed by the advantages and protection a receiver offers. As such, litigants should consider the benefits and advantages of receiverships when facing resistance in attempting to collect on a judgment.

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