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Introduction to California Receivership Law

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The appointment of a receiver is an often overlooked but exceedingly useful remedy available under California law. In challenging economic times, familiarity with receivership is a requirement for any attorney practicing in the commercial, creditors' rights, or financial services fields.

Definition of "Receiver"

What (or who) is a "receiver"? Under California law, a receiver is a court officer or representative appointed to take over control and management of property that is the subject of litigation before the court, to preserve the property, and ultimately to dispose of it in accordance with the court's final judgment. See CCP §564. As set forth in Cal Rules of Ct 3.1179(a), the receiver is a neutral, disinterested agent who acts for the benefit of all who may have an interest in the property for which a receiver is requested. The receiver holds assets specifically for the court, *not* for the plaintiff or defendant in any action. Although there are no specific

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statutory eligibility requirements for receivers, certain persons may not serve as a receiver in a given case. Ineligible persons include a party, a party's attorney, an interested person, or a relative of the judge assigned the action in which the receiver's appointment arose. See CCP §566(a).

COURT-APPOINTED "NEUTRAL"

To preserve neutrality before the court, the receiver may not, without the court's permission, enter into any contracts that make arrangements, or set forth an understanding about the receiver's role, with respect to the subject property following its liquidation or the receivership's termination. To further ensure neutrality, the receiver may not enter into contracts regarding (1) how the receiver will administer the receivership, or how much the receiver will charge or pay for services related to administration of the receivership property; (2) whom the receiver will hire to assist with administration of the estate; or (3) what capital expenditures the receiver will make related to the receivership property. See Cal Rules of Ct 3.1179(b).

TRIAL COURT'S DISCRETION TO APPOINT RECEIVER

In California, the appointment of a receiver rests in large measure in the discretion of the *trial court* to which the application is made. See generally *Barber v Lewis & Kaufman, Inc.* (1954) 125 CA2d 95, 99, 269 P2d 929 (trial courts have "wide and broad discretion" in appointment of receivers); *Alhambra-Shumway Mines, Inc. v Alhambra Gold Mine Corp.* (1953) 116 CA2d 869, 873, 254 P2d 599. Only a court with jurisdiction over the proceedings at issue has the discretion to appoint a receiver. See *Mines v Superior Court* (1932) 216 C 776, 778, 16 P2d 732 (consent of parties is insufficient to confer court with jurisdiction to appoint receiver).

When the evidence is conflicting or the propriety of the requested appointment on uncontradicted evidence is doubtful, the court's sound discretion to appoint a receiver should be exercised on a review of all of the facts. *Moore v Oberg* (1943) 61 CA2d 216, 221, 142 P2d 443 (trial judge's discretion is so "broad" that order to appoint receiver should not be reversed even if order is based on facts concerning which reasonable minds might differ with respect to need for receivership).

Because the appointment of a receiver rests largely in the discretion of the trial court, the court's

action in appointing or refusing to appoint a receiver will not be disturbed in the absence of a showing that the court has abused its discretion. *Alderson v Alderson* (1986) 180 CA3d 450, 467, 225 CR 610. The mere fact that the party requesting a receiver's appointment may have other remedies available to it does not, in and of itself, preclude use of a receivership. *City & County of San Francisco v Daley* (1993) 16 CA4th 734, 745, 20 CR2d 256. In such a situation, the court is called on to consider the "availability and efficacy" of those other remedies in exercising its discretion to grant the "extraordinary" remedy of receivership. 16 CA4th at 745.

[W]hen the receivership is commenced after judgment to carry a judgment into effect or to preserve certain property until the judgment can be executed, the receiver's function is limited to oversight or possession of only the property described in the judgment.

NATURE OF RECEIVERSHIP REMEDY

Receivership is often considered an "extraordinary" remedy, and some California courts have declined to appoint a receiver when an alternative remedy, such as an injunction, writ of attachment, or issuance of a *lis pendens*, may serve to protect whatever rights the parties assert in the property that is the subject of the litigation. See, e.g., *A.G. Col Co. v Superior Court* (1925) 196 C 604, 614, 238 P 926 (reversing trial court's *ex parte* order of receivership for corporation because parties' rights could be fully protected by injunction and other remedies). See also *Golden State Glass Corp. v Superior Court* (1939) 13 C2d 384, 393, 90 P2d 75 (due to the "drastic" nature of receivership, court's discretion to appoint receiver "is not an entirely uncontrolled one," and ordinarily, if there is any less severe remedy available to adequately protect parties' rights, "a court should not take property out of the hands of its owners"); *Elson v Nyhan* (1941) 45 CA2d 1, 5, 113 P2d 474 (noting that "[r]eceptors are often legal luxuries, frequently representing an extravagant cost to a losing litigant. When it appears that no reasonably certain benefit will result to one litigant, and a distinct disadvantage will result to another, courts should weigh carefully the propriety of appointing a receiver.").

DEFINING PROPERTY OF RECEIVERSHIP ESTATE

Code of Civil Procedure §564 confers the superior court with jurisdiction to appoint a receiver. See *John H. Spohn Co. v Bender* (1937) 18 CA2d 447, 450, 64 P2d 152. Notably, however, the court does not have jurisdiction over property that is not the subject of the litigation before it. The court's power to authorize a receiver to take possession of certain collateral or run a company's business operations is therefore limited to authorizing action against property of the receivership estate. *Steinberg v Goldstein* (1954) 129 CA2d 682, 686, 278 P2d 22. Moreover, when the receivership is commenced after judgment to carry a judgment into effect or to preserve certain property until the judgment can be executed, the receiver's function is limited to oversight or possession of only the property described in the judgment. *Kreling v Kreling* (1897) 118 C 421, 423, 50 P 549. Regardless, the extent of the property subject to a receivership is a question that the court appointing the receiver has the power and jurisdiction to determine. Only the court with jurisdiction over the instant case has the authority to determine whether any particular property is or is not involved in the action and the receivership proceeding. *Steinberg*, 129 CA2d at 686.

RECEIVERSHIP: AN ANCILLARY REMEDY

Receivership is an *ancillary* or provisional remedy under California law. *Associated Creditors' Agency v Wong* (1963) 216 CA2d 61, 66, 30 CR 705 (no such thing as "independent suit" for receivership). The ancillary remedy of appointing a receiver to protect, collect, or otherwise preserve the property of the receivership estate is especially concerned with preservation of the subject property until the property is ultimately disposed of by the court's final judgment. See *Maggiore v Palo Alto Inn, Inc.* (1967) 249 CA2d 706, 711, 57 CR 787. See also *In re Stein* (1936) 14 CA2d 303, 305, 58 P2d 175 (no action can be brought for mere appointment of receiver, because California statutes authorizing appointment "[do] not purport to create rights where there was no prior right of action," and merely provide "a remedy for the existing conditions.").

WHEN IS RECEIVER'S APPOINTMENT APPROPRIATE?

There are many different types of receivers, and various grounds may justify a party's request for

one's appointment. Receivership is both a prejudgment and postjudgment collection remedy and is typically sought in these situations. Parties to contentious partnership or corporate dissolutions also may consider seeking a receiver.

The most common circumstances in which a receiver's appointment is sought are (1) when a lender requests a "rents, issues and profits" receiver following a borrower's default under a real estate loan, or (2) when it is intended to ensure the orderly winding down of a business following a party's inability, unwillingness, or unsuitability to continue the business operations. Broadly speaking, these two scenarios reflect the most common types of receivers appointed in California: (1) rents and profits receivers and (2) equity receivers. Each type is discussed further below.

The broadest California statute addressing the appointment of receivers is CCP §564, which specifically provides that when an action or proceeding is pending, California superior courts may appoint receivers in the following circumstances:

- In an action (1) by a vendor to vacate a fraudulent purchase of property; (2) by a creditor to subject any property or fund to the creditor's claim; or (3) between partners or others jointly owning or holding interests in any property or fund, or the proceeds thereof, when the vendor, creditor, partners, or any other parties with a probable interest in the subject property can show that the property or fund is in danger of being lost, removed, or materially damaged. CCP §564(b)(1).
- In an action by a secured lender for foreclosure of its deed of trust or mortgage and sale of the subject property, when it appears that (1) the property is in danger of being lost, removed, or materially damaged; or (2) the terms of the deed of trust or mortgage have not been performed and the property value is likely insufficient to discharge the underlying debt. CCP §564(b)(2).
- In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. (This type of receivership may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage, or to collect rents therefrom while a nonjudicial foreclosure sale is pending.) CCP §564(b)(11).
- In an action by a secured lender to enter and inspect its real property collateral for the presence of hazardous materials. CCP §564(c).

- In an action by an assignee under an assignment of leases, rents, issues, or profits under CC §2938(g). CCP §564(b)(12).
- At the request of the Office of Statewide Health Planning and Development or the Attorney General, under Health & S C §129173. CCP §564(b)(10).
- At the request of the Public Utilities Commission under Pub Util C §855 or §5259.5. CCP §564(b)(8).

Code of Civil Procedure §564 also provides that superior courts may appoint receivers *after judgment, and* in the following additional circumstances:

- To carry the court's judgment into effect. CCP §564(b)(3).
- To dispose of property according to judgment or to preserve it pending appeal. CCP §564(b)(4).
- In accordance with California's Enforcement of Judgments Law (CCP §§680.010–724.260). CCP §564(b)(4).
- After sale of real property under execution of judgment or in accordance with a foreclosure, to collect rents on the receivership property during the redemption period of the sale and to expend and disburse the rents as may be directed by the court or applicable law. CCP §564(b)(4).
- When a corporation has been dissolved, in accordance with CCP §565. CCP §564(b)(5).
- When a corporation is insolvent, in imminent danger of insolvency, or has forfeited its corporate rights. CCP §564(b)(6).
- In unlawful detainer actions. CCP §564(b)(7).

Finally, CCP §564 gives superior courts broad authority to appoint receivers “[i]n all other cases where necessary to preserve the property or rights of any party.” CCP §564(b)(9). For example, in *Hillman v Stults* (1968) 263 CA2d 848, 875, 70 CR 295, the appeals court affirmed the trial court's appointment of a receiver to protect certain tenant-parties' rights in perishable receivership property while the case proceeded to final judgment, notwithstanding that conservators had already been put in place to care for the property that was the subject of the litigation. The court highlighted the distinction between a “receiver” (a neutral court official) and a “conservator” (a representative of a party).

Although the power to appoint a receiver is inherent in a court of equity (*Hillman v Stults, supra*), additional statutory authority for the court's appointment of a receiver is found scattered throughout the California codes. The statutory references occur in various statutory contexts. For instance, the Corporations Code provides that the state Attorney

General may bring an action against any domestic corporation or purported domestic corporation to obtain a judgment dissolving and annulling its corporate existence on certain specified grounds. Further, it provides that one may seek appointment of a receiver to assist with winding up a defendant corporation's business. See Corp C §1801(a)–(c).

On an application for receivership, the trial court is not required to make a determination on the ultimate issues present in the case. Instead, the court makes the sole determination of whether appointment of a receiver, either to operate the business or to take control of the company's assets, is warranted on the showing made by the applicant.

Similarly, the Business and Professions Code provides that the state Commissioner of Real Estate may bring an action against any defendant who has violated or is about to violate certain provisions of that code. The Commissioner may also seek appointment of a receiver to manage the defendant's business if the Commissioner believes that the violations or threatened violations jeopardize funds and properties of others in the custody, or under the control, of the defendant. See Bus & P C §§10081, 10081.5. Further, the Corporations Code grants the state Commissioner of Corporations authority to seek appointment of a receiver to take possession of or to operate a defendant's assets when the Commissioner has brought an action against that defendant to enforce compliance with the Corporations Code. See Corp C §29540(a).

SHOWING OF GROUNDS

Generally, an applicant may offer proof in support of the requested appointment by verified complaint or affidavits. See, e.g., *McNeil v Graner* (1949) 92 CA2d 371, 373, 206 P2d 1120. The applicant's showing, whether by verified complaint or affidavit, must be factual and direct. See, e.g., *Copper Hill Mining Co. v Spencer* (1864) 25 C 11, 16 (before receiver is appointed, applicant must make out prima facie case); *Alhambra-Shumway Mines, Inc. v Alhambra Gold Mine Corp.* (1953) 116 CA2d 869, 874, 254 P2d 599 (reversing order appointing receiver because applicant failed to meet its burden of showing danger of loss or injury, and therefore failed to justify appointment of receiver);

McCaslin v Kenney (1950) 100 CA2d 87, 94, 223 P2d 94 (in action for dissolution of partnership, “mere fact” that partner requested receiver’s appointment was not sufficient basis to justify appointment; lower court’s order appointing receiver reversed for lack of proof). See also *Frick v Calmin Mortgage Corp.* (1934) 220 C 746, 747, 32 P2d 619 (when complaint fails to state a cause of action to which receivership might be incidental, order confirming receiver lacks validity despite fact that corporation at issue consented to appointment).

The strict requirements of pleading and proof in proceedings involving a determination on the merits of a case are not fully applicable in proceedings appointing a receiver. See generally *Ribero v Callaway* (1948) 87 CA2d 135, 139, 196 P2d 109. On an application for receivership, the trial court is not required to make a determination on the ultimate issues present in the case. Instead, the court makes the sole determination of whether appointment of a receiver, either to operate the business or to take control of the company’s assets, is warranted on the showing made by the applicant. The appointment of a receiver in most instances works a change in possession of the property over which the receiver is appointed, but does not change title to that property. A receiver appointed pre-judgment is most often charged with preservation of the property pending a determination of the creditors’ claims.

PROCEDURAL CONSIDERATIONS REGARDING APPOINTMENT OF RECEIVERS

Who May (And May Not) Serve as a Receiver?

The California Code of Civil Procedure and California Rules of Court govern the procedures for appointing receivers in this state; they provide that a receiver may be appointed either ex parte or on noticed motion. The code and rules also grant certain rights and safeguards to the parties involved in receivership proceedings concerning who may and may not be appointed a receiver in any given action. For example, Cal Rules of Ct 3.1177 provides that, at the hearing to confirm a receiver appointed ex parte or on noticed motion to appoint a receiver, each appearing party may nominate one or more persons for the appointment, without prejudice to that party’s objection to the appointment or confirmation of a receiver. Additionally, under CCP §566(a), no party, no attorney for a party, and no person interested in an action or related to any judge

of the court by blood relationship or “affinity within the third degree” can be appointed without written consent of the parties filed with the court. In this manner, the code and rules are drafted to minimize prejudice or unfair advantage in the receivership and to afford the parties the opportunity to nominate the most appropriate and disinterested receiver for the assets at issue in the litigation.

Appointment Ex Parte

California courts are loathe to appoint receivers on an ex parte application unless the “due administration of justice clearly requires it.” *Cohen v Herbert* (1960) 186 CA2d 488, 495, 8 CR 922 (court’s denial of defendant’s request to continue hearing on applicant’s application for 1 week to allow time to prepare for hearing constituted reversible abuse of discretion). Hence, except in circumstances of the “greatest emergency,” when “irreparable injury will unquestionably result” unless a receiver is appointed, notice of an application to appoint a receiver should be given to those persons who are necessary or proper parties to the action in which a receiver is sought. *A.G. Col Co. v Superior Court* (1925) 196 C 604, 613, 238 P 926.

As set forth in Cal Rules of Ct 3.1175, to justify the appointment of a receiver on an ex parte basis, the applicant must show in detail (1) that the applicant will suffer irreparable injury during the time necessary for a noticed hearing on the application to appoint a receiver; (2) the names, addresses, and telephone numbers of those persons in actual possession of the property for which a receiver is requested, or the principal agents of any corporation(s) in possession of the property; (3) the use being made of the property for which a receiver is requested; and (4) if the property is used in the trade of any business, information about the size and nature of the business and facts sufficient to show whether the taking of the property by the requested receiver would curtail, or seriously interfere with, the business’s operation. If any of this information is unknown to the applicant at the time of the ex parte application, the applicant’s declaration or verified complaint must describe the unknown matters and the applicant’s efforts to acquire the unknown information.

Whenever a receiver is appointed without a noticed hearing, the court must issue an order to show cause why the appointment should not be confirmed. California Rules of Court 3.1176 requires that the order to show cause be made returnable no later than 15 days after its issuance. If the court finds good cause, the order to show cause may be made return-

able no later than 22 days after issuance. Cal Rules of Ct 3.1176(a). In addition, no later than 5 days after issuance of the order to show cause, the applicant must serve on all adverse parties a copy of the complaint (if not already served), the order showing cause stating the date, time, and place of the hearing, and all memoranda and declarations in support of the application to appoint receiver. Cal Rules of Ct 3.1176(b).

California courts are loathe to appoint receivers on an ex parte application unless the “due administration of justice clearly requires it.”

Finally, if a receiver is appointed ex parte, the applicant must furnish, *before* entry of the court’s order, an undertaking in an amount to be determined by the court. See CCP §566(b). The undertaking should be sufficient to pay to defendants all damages that they might sustain as a result of the receiver’s appointment if the applicant is determined to have obtained the receiver’s appointment “wrongfully, maliciously, or without sufficient cause.” CCP §566(b). This undertaking requirement runs to *all* defendants, so that any defendant will have a right of action on the undertaking if that defendant is damaged by the appointment. *Title Ins. & Trust Co. v California Development Co.* (1912) 164 C 58, 65, 127 P 502.

Appointment in Accordance With Applicant’s Noticed Motion

Code of Civil Procedure §564 does not provide specific guidance regarding the procedures for requesting the appointment of a receiver on a noticed motion. The statute merely states that appointment may be made when the applicant proves to the court that certain conditions exist that warrant the appointment of a receiver in a given case. The usual procedure for a party seeking appointment of a receiver on the basis of a noticed motion is to file and serve an application or motion to appoint receiver. The court also may appoint a receiver on its own motion. *Venza v Venza* (1949) 94 CA2d 878, 882, 211 P2d 913 (court with jurisdiction may appoint receiver whenever proper case is made, even though no party asked for receivership remedy). Often, a receiver’s appointment is sought when the lawsuit is filed, but a party can move for appointment of a receiver at any point during the lawsuit.

Receiver’s Duties and Responsibilities to the Court

Code of Civil Procedure §§568–570 set forth the receiver’s limited general powers, and the court order appointing the receiver will further describe the receiver’s specific duties and responsibilities to the court. As discussed further below, the order appointing receiver is the roadmap describing the scope of the receiver’s powers; special care should therefore be given to its preparation. Although Judicial Council Forms RC-310 (after hearing) and RC-200 (ex parte) exist for this purpose, local practice tends to govern whether the judicial form, or an alternative individually prepared form of order, should be proposed.

Oath and Undertakings

Before the receiver may commence his or her work as the court’s appointed “neutral,” the receiver or the party requesting appointment of the receiver must file certain items with the court. As a first step, the receiver must be sworn to perform his or her duties faithfully; his or her sworn statement to that effect is known as the receiver’s “oath.” The receiver also is required to execute an undertaking in such sum as the court may direct, to the effect that he or she will faithfully discharge his or her duties to the court and obey the orders entered by the court in the receivership proceedings. The statute confirms that the court is required to allow the cost of this undertaking to the receiver as a reimbursable item. CCP §567.

If the court issues injunctive relief in, or with, the order confirming appointment of the receiver, the applicant must execute an additional undertaking to the effect that the applicant will pay “to the party enjoined” any damages (not exceeding an amount to be specified) that the party may sustain by reason of the injunction. CCP §529.

All parties to the lawsuit have the opportunity to weigh in on the amount of the undertakings. Under Cal Rules of Ct 3.1178, at either the ex parte or noticed hearing for appointment of receiver, the party requesting appointment must, and other parties may, propose and set forth reasons for the amount of (1) the applicant’s CCP §566(b) undertaking (only applicable in ex parte appointments); (2) the applicant’s CCP §529 injunction undertaking; and (3) the receiver’s CCP §567(b) bond, which supports his or her oath to perform all duties faithfully and to adhere to the court’s orders.

Order Appointing Receiver

The order appointing receiver should define the scope of the receivership because the receiver has only those powers conferred by the court or the statute under which he or she was appointed. Moreover, because the receiver has limited statutory powers, the appointment order also should be detailed enough to list (1) the specific duties that the receiver owes to the court, and (2) which actions the court specifically authorizes the receiver to take to perform those tasks. See *Ryan v Murphy* (1919) 39 CA 640, 642, 179 P 517 (order appointing receiver was erroneous because it failed to define scope of receiver's duties and obligations to court). If at all possible, the proposed receiver should be asked to review the proposed order before its submission, to ensure that the party drafting the order included all powers and instructions that the receiver anticipates he or she may require in the situation presented.

In addition, the order appointing receiver should be detailed enough to identify all property that constitutes the receivership estate. A specific description of the property may not be necessary. Nonetheless, the order should identify the property with as much specificity as possible, particularly when the litigation concerns a specific property described in the pleadings. See *People v Cole Check Serv., Inc.* (1959) 175 CA2d 777, 780, 346 P2d 838 (order appointing receiver is sufficient if it mentions generally all assets of corporation for which receiver is appointed; order need not describe specific property unless that property is involved in litigation).

The court may vacate the order appointing receiver on motion of a party, on its own motion, or on no application at all. See, e.g., *Wiencke v Bibby* (1910) 15 CA 50, 53, 113 P 876 ("The court has full power to vacate such action on its own motion and without application on the part of anyone"). See also *Haines v Commercial Mortgage Co.* (1928) 206 C 10, 12, 273 P 35 (order vacating receivership may be made by superior court judge other than judge who created receivership). Should the receiver's powers need supplementation or clarification after appointment, the receiver may petition the appointing court for further instructions and seek another order authorizing specific contemplated actions.

RECEIVER'S STATUTORY POWERS

Code of Civil Procedure §§568–570 describe the receiver's general powers and provide that the receiver has the power (1) to bring and defend actions in his or her own name as receiver; (2) to take and keep possession of the property of the receivership

estate; (3) to receive rents, collect debts, to compound for and compromise the same, to make transfers; and generally (4) to do such acts respecting the property as the court may authorize. *Steinberg v Goldstein* (1954) 129 CA2d 682, 685, 278 P2d 22 (receiver is agent and officer of court, and property in his or her hands is under "the control and continuous supervision of the court"). See also *Free Gold Mining Co. v Spiers* (1902) 136 C 484, 486, 69 P 143 (court may give instructions to receiver in accordance with receiver's ex parte request for instructions and without notice to other parties).

[B]ecause the receiver has limited statutory powers, the appointment order ... should be detailed enough to list (1) the specific duties that the receiver owes to the court, and (2) which actions the court specifically authorizes the receiver to take to perform those tasks. In addition, the order appointing receiver should be detailed enough to identify all property that constitutes the receivership estate.

Significantly, a receiver may sue or be sued only with the court's permission. See *Ostrowski v Miller* (1964) 226 CA2d 79, 84, 37 CR 790 (noting that the receiver is thus protected from unnecessary litigation). See also *Vitug v Griffin* (1989) 214 CA3d 488, 493, 262 CR 588. It also is noteworthy that the receiver is not personally liable for torts that he or she may commit in the performance of his or her receivership duties. Rather, any liability the receiver may face arises from his or her official role as receiver in any given case, and therefore damages may only be paid from the assets of the receivership estate. *Chiesur v Superior Court* (1946) 76 CA2d 198, 201, 172 P2d 763.

The court-appointed receiver has the right to take and keep possession of all receivership property. CCP §568. See also CCP §568.1 (authorizing receiver to deposit securities into a securities depository). The receiver is subject to the court's direction, and may dispose of receivership property only by order, and according to the directions, of the court. See generally *Helvey v U.S. Bldg. & Loan Ass'n* (1947) 81 CA2d 647, 650, 184 P2d 919. See also *Tapscott v Lyon* (1894) 103 C 297, 306, 37 P 225 (noting that adverse claimants may not take possession of property held by receiver without court's order); *In re Estevez* (2008) 165 CA4th 1445, 1459, 83 CR3d 479 (equity receiver does not merely in-

herit owner's rights to property; rather, receiver is officer of court entrusted with administration of property and receiver's possession of property is that of court). By court order, an equity receiver may liquidate receivership property in his or her possession, but such a sale is not final until confirmed by the court. CCP §568.5.

General (Equity) Receivers Versus Custodial Receivers: Right to Possession of Property

There is an important distinction between the powers and duties of a *general or equity receiver*, who is appointed to take possession of and satisfy creditors from all of the debtor's assets, and those of a "*custodial*" or *rents and profits receiver*, who is appointed to take possession of only the property that serves as a secured lender's collateral under a deed of trust, mortgage, or related assignment. A rents and profits receiver has no right to possession of all of a debtor's property. Courts have vacated or amended orders appointing custodial receivers when the orders authorized the receiver to take possession of and use property not covered by the security instrument. See, e.g., *Turner v Superior Court* (1977) 72 CA3d 804, 812, 140 CR 475. See also *Locke v Klunker* (1898) 123 C 231, 237, 55 P 993 (custodial receiver appointed under mortgage that does not contain assignment of rents and profits as part of security has no authority to take possession of and collect rents and profits); *California Title Ins. & Trust Co. v Consolidated Piedmont Cable Co.* (1897) 117 C 237, 240, 49 P 1 (limiting custodial receiver's possession to only the property specifically referred to in mortgage).

RECEIVER'S DUTIES TO THE COURT

California Rules of Ct 3.1181 requires that the receiver must, within 30 days of appointment or such other time as the court may order, file an inventory containing a complete and detailed list of all property of which the receiver has taken possession by virtue of his or her appointment. The receiver must also file timely supplemental inventories when appropriate. In addition, under Cal Rules of Ct 3.1182, the receiver must provide monthly reports to all parties in the litigation and, on request, to nonparty lienholders. This rule further requires that the receiver's monthly reports contain certain specific information, including (1) a narrative report of events; (2) a financial report; and (3) a statement of all fees paid to the receiver and to his or her employees and professionals, broken down to show (a)

itemized services, (b) hours billed by tenths-of-an-hour increments, and (c) the fees on the basis billed, whether hourly or otherwise.

A rents and profits receiver has no right to possession of all of a debtor's property.

As noted in Cal Rules of Ct 3.1182, a receiver may employ an attorney or other professionals (such as accountants or brokers) to assist with the performance of his or her duties to the court. However, a receiver may not employ an attorney without court approval. The written application for employment of an attorney must state the reason employment is needed and the name of the proposed counsel, and must affirm that the proposed counsel is neither associated with nor employed by an attorney for another party in the litigation. See Cal Rules of Ct 3.1180.

TERMINATION OF RECEIVERSHIP

A receivership is not an open-ended construct; the court may not arbitrarily withhold property from its owner's control or enjoyment for an "indefinite and unnecessary period." *Fairbank v Superior Court* (1917) 34 CA 66, 73, 166 P 864. To be discharged from performing further duties for any receivership estate, the receiver must file and serve, by noticed motion or stipulation of all parties (1) a final account and report, (2) a request for formal "discharge," and (3) a request for exoneration of the receiver's CCP §566(b) undertaking. Cal Rules of Ct 3.1184(a). The receiver must give notice of the final account and report to any person or entity known by the receiver to have a substantial, unsatisfied claim that will be affected by the proposed order or stipulation approving the final account and report, whether or not such person or entity is a party to, or has appeared in, the litigation in which the receiver was appointed. Cal Rules of Ct 3.1184(b).

COMPENSATION

California Rules of Court 3.1184(d) provides that the final account and report may include claims for allowance of compensation for the receiver and his or her attorneys. The amount of compensation allowed to the receiver and his or her counsel is within the discretion of the trial court. *People v Riverside Univ.* (1973) 35 CA3d 572, 587, 111 CR 68 (amount of fees awarded to receiver is "in the sound discretion of the trial court and in the absence

of a clear showing of an abuse of discretion, a reviewing court is not justified in setting aside an order fixing fees"). See also *Venza v Venza* (1951) 101 CA2d 678, 680, 226 P2d 60 (trial court has discretion to determine compensation for receiver and his or her counsel because trial court can assess need for services performed by receiver and his or her attorney and reasonable value of such services). The court also has the power to reimburse a receiver's costs if they are approved by the court. *Hozz v Varga* (1958) 166 CA2d 539, 542, 333 P2d 113.

Federal receivers, unlike those appointed by California superior courts, may exercise control over property located in other states.

Generally, compensation for the receiver and his or her professionals is paid from receivership property. See *McCarthy v Poulsen* (1985) 173 CA3d 1212, 1219, 219 CR 375 (only receivership property would be available to defray costs of receivership, when it would not have been appropriate to impose liability on litigants who did not seek receivership, did not create situation that gave rise to need for receivership, and were not "parties" in ordinary sense in that they were designated successor trustees who refused to accept tender of trusteeship). Courts also have discretion, however, to allocate payment of receivership expenses to the applicant for the receivership or the party whose conduct made the receivership necessary, or to apportion the costs among the parties. *Baldwin v Baldwin* (1947) 82 CA2d 851, 855, 187 P2d 429.

CERTIFICATES OF INDEBTEDNESS

In addition to these sources of funding, the court also may grant the receiver the authority to issue "certificates of indebtedness" to raise the money necessary to preserve, protect, and otherwise administer the receivership estate. See CCP §568 (providing that receiver generally may "do such acts respecting the property as the court may authorize"). This procedure allows the receiver to borrow the funds necessary to administer the illiquid estate and, in turn, to provide a priority claim to the lender or other holder of the certificate, payable after satisfying the administrative costs of the estate. The certificates are interest-bearing and have priority over other nonadministrative debts of the receivership estate. Ideally, in pursuing the issuance of receiver's

certificates, the receiver should (1) anticipate the funding needs for administration of any given estate (*i.e.*, assess the costs to fulfill the receiver's duties); (2) educate the court and all interested parties about the estate's illiquid status and the anticipated costs of administration; and then (3) seek court authority to issue only those certificates necessary to preserve the estate and fulfill the receiver's duties.

FEDERAL RECEIVERSHIPS

The federal courts, as courts of equity, also have jurisdiction and authority to appoint a receiver. It should be noted, however, that what would constitute grounds for appointment of a receiver under California law may not involve a federal question. As a result, as set forth in 28 USC §1332, diversity and the minimum amount in controversy must exist to establish the federal court's jurisdiction.

The federal courts have determined that federal law governs the appointment of a receiver in a diversity action. See *National Partnership Inv. Corp. v National Hous. Dev. Corp.* (11th Cir 1998) 153 F3d 1289, 1291. See also *Canada Life Assur. Co. v LaPeter* (9th Cir 2009) 563 F3d 837, 842 (although state statute may provide vehicle for appointment of receiver, state law does not change nature of federal court's equitable power to appoint receiver); *Aviation Supply Corp. v R.S.B.I. Aerospace, Inc.* (8th Cir 1993) 999 F2d 314, 316 (appointment of receiver in diversity case is procedural matter governed by federal law and federal equitable principles).

Federal receivers, unlike those appointed by California superior courts, may exercise control over property located in other states. In particular, 28 USC §754 provides that a receiver appointed in the federal courts involving property situated in different districts shall, on posting the required bond, "be vested with complete jurisdiction and control of all such property with the right to take possession thereof." Title 28 USC §1692 then extends the territorial jurisdiction of the original court to include any district where the order was filed under §754. Compared with a federal receiver, a receiver appointed by state court may face considerable difficulty controlling and marshaling receivership property located in different states.

INTERSECTION OF RECEIVERSHIP AND BANKRUPTCY

It is not uncommon for a bankruptcy case to be filed after a receiver's appointment. In such a situation, it may be advantageous for interested parties to

allow the receiver to maintain custody of the assets that formerly comprised the receivership estate but that, after the bankruptcy filing, constitute assets of the bankruptcy estate.

Barring entry of an order granting relief from the automatic stay, the filing of a bankruptcy petition that involves property of the receivership estate automatically divests the state court of jurisdiction in the receivership proceeding.

Under the Bankruptcy Code (Title 11 USC), a bankruptcy petition, once filed, automatically stays any action involving the bankrupt debtor or its property. See 11 USC §362. Barring entry of an order granting relief from the automatic stay, the filing of a bankruptcy petition that involves property of the receivership estate automatically divests the state court of jurisdiction in the receivership proceeding. *In re J.C. Sparks Co.* (D SC 1929) 46 F2d 497, 500. Notably, a bankruptcy court may not appoint a receiver in a bankruptcy case. See 11 USC §105(b). Instead, under the Bankruptcy Code, the bankruptcy court's exclusive jurisdiction over property of the bankruptcy estate is protected by the requirement that the "custodian" of such property preserve and turn over the property to the bankruptcy trustee or debtor in possession. See 11 USC §543. See also 11 USC §101(11)(A) (defining "custodian" to include receiver over any property of debtor appointed in a case or proceeding not arising under Bankruptcy Code).

Importantly, once the custodian (or receiver) becomes aware of the commencement of the bankruptcy case, the receiver may not make any disbursements from, or administer any property of, the debtor or of the bankruptcy estate, except as necessary to preserve the property. 11 USC §543(a). The receiver also must file an accounting of any property of the debtor that comes into the receiver's posses-

sion, custody, or control. 11 USC §543(b)(2). Nonetheless, after notice and a hearing, the bankruptcy court may excuse the receiver of his or her duty to comply with the turnover and accounting requirements of §543(a) and (b) immediately following the commencement of a bankruptcy case, if the interests of creditors would be better served by permitting the receiver or custodian to remain in possession and control of the property. Bankruptcy Code §543(d)(1) authorizes a bankruptcy court to exercise its discretion to excuse a state court receiver or other custodian of estate property from turning it over to the bankruptcy estate. For a receiver to be excused from the turnover requirements of 11 USC §543, a party in interest must bring this request for hearing to the bankruptcy court either on noticed motion or by stipulation. Otherwise, as set forth above, the receiver is required to turn over access to, and control of, the property. Federal Rules of Bankruptcy Procedure 6002 confirms the nature and timing of the receiver's compliance with his or her accounting obligations, while §543 speaks to his or her compensation going forward.

CONCLUSION

California's statutory and case law reflect the varied scenarios in which a party to litigation may seek appointment of a receiver. As discussed above, the appointment of a custodial receiver may be the secured lender's best tool to ensure the protection and collection of its rents and profit collateral. A general or equity receiver may be the most efficient person to oversee the dissolution of a partnership when the partners are in contention with each other, and the appointment of a receiver may prevent a judgment debtor's dissipation of assets before a judgment creditor can satisfy its judgment. Although the reasons for the receiver's appointment will vary, a working familiarity with the statutes and case law governing receiverships will enable attorneys to counsel their clients effectively about the availability of, and relevant considerations regarding, this increasingly popular and useful remedy.