



# Role of Accountants in Receiverships

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# Definitions

## Receiver

A disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims.

Black's Law Dictionary (2000)



# Definitions (Continued)

## Receivership

1. The state of condition of being in the control of a receiver. 2. The position or function of being a receiver appointed by a court or under a statute. 3. A proceeding in which a court appoints a receiver.

Black's Law Dictionary (2000)



# Who May Be A Receiver?

- No statutory requirement
- Independent/No conflict of interests
- Ethical
- Resourceful and solution oriented
  - Experienced professionals
- Experience as a turnaround consultant
- Good business judgment
- Experience, experience, experience



# Types of Appointments

- Private
- By a regulator pursuant to state or federal statute
  - Insurance
  - Healthcare
  - Banking
- Court-appointed



# Circumstances for Appointment of Receiver

- Receivers are usually appointed in connection with existing civil litigation.
- The party seeking the appointment of a receiver needs to demonstrate the need to appoint the receiver and that is the only legal remedy and without the appointment they will suffer irreparable harm.



# Circumstances for Appointment of Receiver (Continued)

Some instances in which a receivership may be a remedy are :

- A troubled company that does not want to enter into a bankruptcy proceeding but needs to have a formal controlled process in place.
  - The creditors are maintained on an even playing field and have confidence that the assets (collateral) are protected from the danger of being lost or removed ( fixed assets, accounts receivables).



# Circumstances for Appointment of Receiver (Continued)

- In litigation it can be used to enforce the equitable rights and powers of the litigants.
- Corporate or partnership dissolution.
- Marital dissolution.
- Safeguard property.
- Safeguard the public interest – SEC, FTC



# Circumstances for Appointment of Receiver (Continued)

- Receivers may be appointed due to allegations of fraud (embezzlement, fraudulent transfers) and doubt as to whether the business will continue to operate.
- A receiver could continue the operating business.



# Authority

The court will enter an order which outlines the authority; power and responsibilities of the receiver. In a private receivership the underlying financing or security document will provide specific details as to these issues.

- Retain professionals (legal, accounting, appraisers and other specialists) with court approval.



# Authority (Continued)

- Assume control and be named as authorized signatory on all accounts (bank, brokerage firm, financial institution) that has possession, custody or control of any of the receivership estates' assets or funds.
- Make or authorize payments.
- Obtain and maintain access to the receivership estates assets, books, and records.
- Approve and renew leases.



# Fiduciary Responsibilities

- The receiver is an agent of the court, and is a fiduciary responsible to the court for the receivership assets as soon as he or she becomes aware of the appointment.
- The receiver's good faith decisions in his/her capacity as a fiduciary will usually be sustained and confirmed by the court, if they are consistent with the court's order.



# Role

- Marshall the assets
  - Post signs
  - Change locks/passwords/passes
  - Redirect mail
  - Set up website (effective)



# Role (Continued)

- Take possession of electronic files.
  - Remove access, if necessary.
- Communicate with employees, suppliers, creditors, unions, tenants and other stakeholders.



# Role (Continued)

- Discuss the reason for the appointment and the effect that it will have on the employees (manage rumors).
- Ask for the employees cooperation as you do your investigation/analysis.



## Role (Continued)

- Identify all assets
  - Bank accounts (freeze accounts), vehicles, inventory,
  - Prepare/obtain an inventory of assets; description, serial/ID numbers, physical location, use, leased or sublet and value.
  - Assets with third parties
  - Third party assets



# Role (Continued)

- Open new bank accounts for the receivership (Account Name = ABC Inc, John Smith, Receiver).



# Role (Continued)

- Establish cutoff to account for inventory (pre & post)
- Secure essential services(utilities)
- Notify (landlord, taxing authorities, judgment creditors)



## Role (Continued)

- Identify location of all books and records.
  - Accounting records
  - Contracts with vendors, customers, contractors, and employees.
  - Insurance policies
  - Deeds
  - Vehicle registrations
  - Share Certificates (related companies)
  - Other negotiable instruments



# Role (Continued)

- Review insurance policies to determine whether the assets are properly insured (may identify undisclosed assets).



# Role (Continued)

- Identify liabilities – current and long term liabilities including identification of investors and other creditors.
- Set up accounting records for the receivership.
- Set up investor files (contact/investment information).



# Role (Continued)

- Collect accounts receivable, rents, fees, royalties and other revenue.
- Filing of tax returns.
- Verify compliance with industry specific regulators.



# Role (Continued)

- Dispose of property in a manner that maximizes value (cost-benefit) with court approval .
- Determine whether there are potential causes of actions (fraudulent transfers, professional malpractice).



# Operating Business

Operating the business in the short term may allow the receiver to maximize value of assets such as work in progress, inventories, and accounts receivable. The receiver then needs to determine the best option in the long term.



# Operating Business (Continued)

- Segregate the goods that are received after the appointment of the receiver. This is necessary to maintain pre and post receivership accounting records but the receiver is also not bound to accept goods prior to his or her appointment.
- Establish controls for goods leaving/entering.
- Hire/Supervise personnel directly or indirectly.
- Prepare budgets, forecasts and cash flow analyses.



# Claims and Distributions

- Administer a claims process to determine the claims of the receivership estate.
  - Provide notice to the known claimants.
  - Place announcements in the media to identify unknown potential claimants.
- Determine the investor losses.
- Prepare an equitable distribution plan.



# Claims and Distributions (Continued)

- Obtain court approval for the distribution plan.
- Provide notice to investors of the distribution plan.
- Make distributions to claimants (creditors, investors)



# Reporting

- Initial report to the court (creditors) as requested in the court's order. The report will provide the receiver's initial findings and observations. The report may include:
  - Schedule of assets and liabilities (including values from appraisals).
  - Schedules of cash requirements.



# Reporting (Continued)

- Periodic reports as agreed to.
- Final report with a summary of the receivership estate including a request to be discharged as receiver.



# How is the Receiver Paid?

- From the property over which he/she is receiver.
  - Fees are paid out of corporate income.
  - In some cases the secured lender will pay the fees and add it to the claim if there is insufficient cash flow.