

RECEIVERSHIP  
MANUAL  
FOR THE  
UTAH JUDICIARY



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# RECEIVERSHIP MANUAL FOR THE UTAH JUDICIARY

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## **Introduction<sup>1</sup>**

State courts in Utah regularly appoint Receivers, as officers and arms of the Court, to assist in resolving complex problems, often with instructions to preserve, protect, maintain, manage, and safeguard the assets of the Receivership entity. Funds, assets, and property of the Receivership entity are safeguarded until a subsequent disposition of these assets, under the supervision of the Court.

However, there is no readily-accessible body of law or reference material to provide an overview of the many practical and legal issues that a court must address in considering the appointment of a Receiver and the administration of a Receivership estate. This manual is not intended to be an exhaustive treatment of the subject nor a treatise expounding upon the many distinctions in the law and cases. Rather, it is designed to provide a judiciary-friendly guide, distilled from decades of experience by Receivers and their counsel.

Because Receivership administration is dynamic and fluid, those judges and professionals involved – legal, accounting, and business – must, of necessity, rely less on legal precedence and more on common-sense judgments.

Wayne Klein  
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<sup>1</sup> This manual is modeled after the Receivership Manual for the Florida Judiciary (drafted in 1999 and updated in 2008), with permission of authors of the Florida Manual. Copyright 2008 by Lewis B. Freeman & Partners, Inc.

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# **I. SETTINGS WHERE RECEIVERS MIGHT BE APPOINTED**

## **Real Estate**

- In aid of actions to quiet title to real property;
- To secure possession of premises and maintain security;
- To preserve the security of equity for mortgagees by collecting and applying rents and profits to mortgage debt;
- To prevent waste and impairment of a mortgagee's security by making repairs to property;
- To protect a remainder interest in property where a life tenant commits waste by nonpayment of taxes or causes other impairments;
- In aid of enforcing lease agreement and recovering leased premises upon lessee's default;
- For management of the affairs of condominium, cooperative, or timeshare estates, or homeowners associations;
- To protect a co-tenant, partner, shareholder, owner, or other person's interest in commonly-held property;
- To protect purchasers and sellers of real property against violations by real estate brokers;
- To protect purchasers and sellers of real property against violations related to finance and lending practices;
- To marshal fraudulently transferred property or to take charge of a transferee's real property.

## **Public Welfare and Safety**

- To protect against imminent danger to health, safety, and welfare of residents in assisted living facilities, alcohol, drug abuse, and mental health facilities, and institutions caring for developmentally-disabled persons;
- To protect the public against conversion of funds by real estate brokers and mortgage brokers;
- To protect from harm where monies paid for funeral and cemetery services and products are not set aside for future use as intended by purchasers;
- For rehabilitation or liquidation of insolvent financial institutions or insurance companies;

- To take custody over, and compel a county to collect, delinquent tax receivables;
- To continue operations of an emergency medical services provider that has become insolvent or ceased operations;
- To take custody over illegally-obtained oil, gas, or similar products;
- To liquidate agricultural cooperative associations.

### **Business Entities**

- To manage or operate a business when fraud or mismanagement threatens imminent danger of loss, destruction, or misuse of corporate or partnership property;
- To aid in wind-up or liquidation of a dissolved business entity;
- To sequester business property in aid of execution to satisfy a judgment against a business entity;
- To manage, operate, or preserve assets when a business is insolvent or in imminent danger of insolvency or has forfeited its corporate rights.

### **Consumer Protection<sup>2</sup>**

- For the protection of consumers and legitimate businesses from deceptive and unfair trade practices;
- For the protection of investors from violations of laws governing the offer, sale, or distribution of securities;
- For violations of the laws governing consumer finance and lending practices.

### **Claims/Collateral Protection**

- To enforce contractual rights to obtain a receiver to manage or preserve property or business;
- To preserve collateral of creditor when property is in danger of being lost, removed, damaged, or impaired.

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<sup>2</sup> The Office of the Attorney General and the Department of Commerce are the state agencies most likely to seek the appointment of Receivers in state court. While the Utah Code specifically authorizes certain state agencies to seek the appointment of Receivers, individual victims may also ask the court to use its equitable powers to appoint a Receiver.

### **Domestic Relations**

- To protect spouses and children from diversion or concealment of assets obligated for payment of alimony or child support.

### **In Aid of Retrieving Fraudulently Transferred Property**

- To marshal fraudulently-transferred property or to take charge of the transferee's property.

### **Post-Judgment Enforcement**

- In aid of enforcing a final judgment and/or in connection with supplementary proceedings, including when a judgment debtor refuses to apply property in satisfaction of a judgment;
- To carry a judgment into effect, dispose of property according to a judgment, and to preserve property during the pendency of an appeal;
- To prevent the loss, removal, or damage to property available to satisfy a judgment or where property is insufficient to satisfy a judgment, order, or claim.

### **Accounting Actions**

- To receive and manage funds and records and provide accurate information.

### **Probate**

- To conserve and manage an estate when the personal representative of the estate is found guilty of waste, misuse of assets, or mismanagement.

### **Trusts**

- To protect beneficiaries where the interests of a trustee are adverse to those of the beneficiaries;
- To preserve and manage trust funds for government-issued bond projects.



## II. INITIAL CONSIDERATIONS FOR THE COURT

The Court must determine the expertise required of the Receiver in administering the Receivership entity within business, accounting, legal, and public interest environments – a critical decision inasmuch as the Court will rely on the Receiver to assess the:

- Business of the entity;
- Character, location, and retrievability of the entity’s assets;
- Cash flow available to operate or liquidate the entity;
- Creditors of the entity;
- Interested parties, including state or federal regulatory and law enforcement agencies;
- Nature and scope of potential litigation to recover assets of the entity and to resolve claim disputes;
- Probability of full or partial restitution to interested parties;
- Professionals (and related costs) needed to assist the Receiver;
- Availability of resources to cover costs of the Receivership.

### Maximizing Payments to Creditors and Satisfying Interested Parties

INQUIRY	CONSIDERATIONS
<p>What disposition of the entity (continued operation, liquidation, or liquidation while within a Receivership – a hybrid option) will maximize payment to creditors, increase restitution to victims, and satisfy government agencies and other interested parties?</p>	<p>Depending on whether the entity will be operated or liquidated and the extent and makeup of creditors, victims, and other interested parties, the Court must fashion a detailed Receivership Order setting forth a) specific responsibilities and duties of the Receiver, b) a timetable for and contents of reports to be filed by the Receiver, c) the Receiver’s bond, d) the Receiver’s authority to hire professionals, and e) other provisions tailored to the particular case.</p>

### Selecting the Right Receiver

INQUIRY	CONSIDERATIONS
Does the Receiver have the experience and time necessary to administer the Receivership estate and is the proposed Receiver free of potential conflicts of interest?	A frank discussion between the Court and a proposed Receiver before his or her appointment should be conducted. If a Receiver is suggested by an agency, that agency should provide the Court with a detailed resume of the proposed Receiver. The Court should discuss with the proposed Receiver (telephonically, in chambers, or in open court) any questions the Court may feel are appropriate to the particular case.

### Judicial Time and Resources

INQUIRY	CONSIDERATIONS
How much judicial time and resources will be required?	In the case of large Receiverships, the Court may need to accommodate standby hearings during the early days of the Receivership and perhaps some time one day each month thereafter. The Court will also want to evaluate the appropriateness of permitting <i>ex-parte</i> communications between the Receiver and the Court, depending on the nature and extent of matters for the Court's attention and decision.

### Effects of a Bankruptcy Filing on the Receivership

INQUIRY	CONSIDERATIONS
<p>How would a bankruptcy filing impact the Receiver and the Receivership estate?</p>	<p>Upon the filing of a bankruptcy, state Receivership law will be preempted by federal bankruptcy law. The Receivership estate must relinquish the entity's assets to the bankruptcy estate.</p> <p><i>Special Notes:</i></p> <ul style="list-style-type: none"> <li>• <i>The filing of a bankruptcy will not stay a state agency's investigation of a person or entity because the filing of a bankruptcy petition does not stay the State agency's exercise of its police and regulatory powers. See 11 U.S.C. §362(b)(4) and (5).</i></li> <li>• <i>The petition will not automatically stay the case against defendants not in bankruptcy.</i></li> <li>• <i>Fees and costs of the Receiver, the Receiver's staff, and hired professionals may be relegated to unsecured claims in Bankruptcy Court if their services did not result in benefit or value to the subsequent bankruptcy estate. See 11 U.S.C. §543(c). A state court's prior award of fees and costs to a Receiver and its agents is not binding on the Bankruptcy Court.</i></li> </ul>

### State Court Considerations Prior to Appointment of a Receiver in Light of Potential Bankruptcy

INQUIRY	CONSIDERATIONS
<p>Given the potential for a bankruptcy filing in reaction to the appointment of a Receiver, what should the state Court consider prior to ordering a Receivership?</p>	<p>To reduce the likelihood of the Court wasting time and judicial resources in commencing and administering a Receivership, the state Court should inquire whether creditors or management are threatening to file a bankruptcy petition.</p>

## Receivership vs. Bankruptcy Proceedings

INQUIRY	CONSIDERATIONS
<p>Do bankruptcy proceedings provide a better means of resolving problems sought to be addressed in the Receivership?</p>	<p>Factors a Court should be aware of in addressing whether bankruptcy proceedings may be imminent, which may be factored into whether a receiver should be appointed and whether a bankruptcy proceeding may be more appropriate than a Receivership:</p> <ul style="list-style-type: none"><li data-bbox="824 590 1433 877">• Whether the entity has assets in multiple jurisdictions. If so, administering those assets in bankruptcy may be easier, given the Bankruptcy Court's nationwide jurisdiction and in light of procedural difficulties faced in appointing foreign Receivers to administer property outside the appointing Court's jurisdiction.</li><li data-bbox="824 919 1433 1056">• If there are numerous creditors or victims seeking restitution, the Bankruptcy Court may be better prepared than the Court clerk's office to handle high claim volumes.</li><li data-bbox="824 1098 1433 1234">• If the case involves the need for a wholesale restructuring of a business, rather than a liquidation or temporary operation of the business.</li></ul>

### **III. AUTHORITY FOR AND PURPOSE OF A RECEIVERSHIP**

#### **Authority**

- The Court's authority to appoint a Receiver derives from specific state laws authorizing the appointment of Receivers and from the inherent equitable powers of the Court. *See* Appendix A for a discussion of controlling legal authority.

#### **Jurisdiction and Venues**

- Jurisdiction to appoint a Receiver lies within the District Court in the nature of an ancillary proceeding to the main action, if the Court has personal and subject matter jurisdiction in the main action and over the property;
- The power to appoint a Receiver may be given or removed by statute;
- When property is located in more than one district in Utah, the application for a Receiver should be made in the District Court where the defendant's principal place of business, residence, or office is located.

#### **Judicial Ethics**

- A judge should not make unnecessary appointments and must exercise the power to appoint a Receiver impartially and on the basis of merit, avoiding favoritism and nepotism;<sup>3</sup>
- A judge has the responsibility to ensure that a Receiver appointed by his or her Court adheres to appropriate ethical standards;
- A judge should only approve compensation to a Receiver according to the fair value of services rendered;
- Consent, by the parties, for the appointment of, or for an award of compensation to, a Receiver, does not relieve the judge of the obligation to ensure compensation does not exceed fair value.

#### **Legal Tests for Receiverships**

- Insolvency;
- Fraud (as defined by common law or by statute);
- Gross mismanagement or ownership dispute;
- Imminent danger of loss of property or assets;

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<sup>3</sup> *See* Utah Code of Judicial Conduct, Canon 3(d). *See also* Commentary to Canon 3(c)(4) of the ABA Model Code of Judicial Conduct.

- Destruction, waste, or misuse of property or other assets;
- Danger of removal of property from jurisdiction of the Court;
- As otherwise or additionally provided by Utah statute.

## **IV. APPLICATION FOR APPOINTMENT OF RECEIVER**

### **Application for Receivership is Applied for in Court Where Main Action is Pending**

- When the complaint is filed;
- By motion after the action commences; or
- By the Court on its own motion.

### **Court Will Consider:**

- Complaint;
- Motion for appointment of Receiver, memorandum of law, and supporting affidavits;
- Testimony, if a hearing is granted or the motion is *ex parte*;
- Argument of counsel.

### **Applicant for Receivership Must Introduce Evidence Establishing:**

- Insolvency, fraud, gross mismanagement, imminent danger of loss of property or assets, destruction, waste or misuse of assets, or danger of removal of property from jurisdiction. (See legal authority and case law at Appendix A);
- Legal or equitable right for relief;
- Title, lien, or right to possession of the property or entity;
- Proof of notice to the adverse party, unless notification would result in immediate and irreparable injury, loss or damage. See Utah R. Civ. P. 64A(i), 65A(b)(1);
- The ability to post a bond to cover the costs and damages of the other party if it is later determined that the Receiver's appointment was improper.

### **Standards for Appointment and Appellate Review**

- Trial Court: The appointment of a Receiver is discretionary and should be ordered by the Court only when there is no other adequate remedy available to protect the applicant;
- Appellate Court: The applicable standard of review is for abuse of discretion.

## **V. LEGAL AND OTHER QUALIFICATIONS OF RECEIVER**

### **Legal Qualifications**

- Be impartial, independent, and without conflicts of interest (*see* Utah R. Civ. P. 66(b)), recognizing the Receiver is an officer of the Court;
- Cannot be a corporate entity, but may be a bank or trust company chartered by Utah banking officials or a national banking association in Utah that has trust powers;
- File an Oath of Acceptance of Receiver;
- Post a fidelity/surety bond which bears a reasonable relationship to the value of the property transferred into the Receiver's possession unless the court orders otherwise. The plaintiff or moving party may also be required to post a bond;
- Within twenty (20) days of appointment, file with the clerk of the Court an inventory of the Receivership property coming under the Receiver's control or possession and file an inventory and account every three (3) months thereafter, unless the Court orders otherwise;
- If the Receiver will hold real property, file a certified copy of the appointment order with the county recorder of the county in which the real property is located, before being vested with the real property. *See* Utah R. Civ. P. 66(g).

### **Other Qualifications of Receiver for Court to Consider**

- Experience as a Receiver and/or demonstrated experience or knowledge in the subject business;
- Expertise necessary to identify, evaluate, control, protect, and direct assets in the Receivership;
- Understanding the myriad complex legal, accounting, and business issues that must be timely addressed;
- Knowledge and access to legal, accounting, business, and other professionals with special knowledge or expertise to assist the Receiver in a timely and cost-effective manner;
- Ability to carry out the responsibilities of the Receiver (as detailed in Section VII) without scheduling conflicts or constraints.



## VI. ORDER APPOINTING RECEIVER

### Purposes of the Initial Order

- To confer authority upon the Receiver to take control over, protect, and temporarily ensure the *status quo* of the subject property;
- To confer authority upon the Receiver as an officer of the Court;
- To direct the Receiver to file with the Court an Oath and Acceptance of Receiver;
- To set the amount of the Receiver's bond or to exempt Receiver from posting bond, if appropriate;
- To specifically set forth duties, powers, and responsibilities of the Receiver;
- To describe the nature of the property over which the Receiver has authority;
- To direct the defendant – or those in possession of the property of the defendant – to deliver property to the Receiver;
- To restrain or enjoin the defendant or others from interfering with the Receiver or the subject property;
- To authorize the Receiver to employ counsel, accountants, agents, servants, or employees to assist the Receiver to carry out the terms of the Receivership orders of the Court;
- To permit the Receiver to rent facilities and equipment;
- To set procedures and deadlines for filing, allowing, and paying claims;
- To direct the Receiver to file periodic reports with the Court and establish the frequency and content of the reports;
- In some instances, to set the range of compensation for the Receiver;
- To establish single forum for filing suits against receivership estate, where appropriate.

### Subsequent Orders

At the Court's discretion, supplemental orders may be entered to direct or expand the activities and authority of the Receiver and protect property in dispute, including:

- Authority to commence litigation;
- Permission to hire professionals not authorized in original order;
- Approve fee arrangements with professionals;

- Sell or otherwise dispose of Receivership property;
- Approve claim form, form of notice, and claims procedure;
- Compromise and settle suits and claims;
- Authorize payout of approved claims.

## **VII. DUTIES AND RESPONSIBILITIES OF A RECEIVER**

### **Generally**

A Receiver has only such authority as is conferred by Court orders or Utah statutes. Listed below, however, are typical grants of authority and a range of possible duties and responsibilities.

### **Immediate Actions**

- File an Oath of Acceptance;
- Post a fidelity/surety/indemnity bond within reasonable time, in the amount directed by the Court to insure against malfeasance;
- Direct the plaintiff (or movant) to post a bond to cover the costs of the Receivership, if required by the Court.

### **From Receivership Inception**

To locate and evaluate the character and status of the Receivership's assets by:

- Reviewing corporate or other records to establish structure and ownership of assets;
- Reviewing accounting books and records and internal controls;
- Identifying banking relationships, domestic and foreign;
- Retrieving and analyzing data within information systems;
- Reviewing filed tax returns;
- Interviewing key personnel before they leave or are terminated and obtaining forwarding addresses and telephone numbers;
- Identifying and contacting attorneys, accountants, and other professionals who had been engaged by the entity;
- Assessing cash or asset inflows that may derive as a consequence of prior business activity;
- Establishing control over incoming mail and communications;
- Recording and/or mapping out floor plans of offices and operations;
- Establishing toll-free telephone numbers, Internet web sites, or other communication links for parties to contact the Receiver, agents of the Receiver, and other professionals associated with the Receivership;

- Preparing an inventory, under oath, of the property and assets coming into the Receiver's control or possession and filing the inventory with the clerk of the Court;
- Reviewing significant cash expenditures made by the Receivership entity;
- Reviewing existing insurance coverage;
- Conducting a physical inspection of business sites subject to the Receivership;
- Reviewing corporate books and records.

To protect, preserve, and conserve assets of the Receivership by:

- Hiring or providing security for assets, including hiring guards and changing locks, codes, passwords, etc.;
- Freezing bank accounts and canceling credit cards and credit lines;
- Securing data within computer systems;
- Eliminating or minimizing operational expenditures, including the dismissal of employees and the revocation of leases and contractual obligations, as required;
- Securing adequate insurance protection for assets;
- Securing licenses required for the business of the Receivership;
- Maintaining workers compensation insurance, as required;
- Videotaping and documenting all assets and property;
- Taking possession of all company-owned automobiles, pagers, cellular telephones, computers, and other property in the possession of company representatives.

### **Duties and Responsibilities**

- To maintain, where appropriate, the normal course of business of the enterprise in Receivership, including entering into contracts, signing leases, purchasing goods, retaining staff, and negotiating with companies and individuals whose relationships affect assets or the enterprise of the Receivership. The Receiver must operate the Receivership's businesses in his/her best "business judgment" and act in the interest of those who own or have claims against the property;
- To operate, consolidate, merge, sell, abandon, or otherwise dispose of assets;
- To invest funds of the enterprise subject to the Receivership pending their use in the enterprise or in liquidation;

- To cooperate with authorities and government agencies (Attorney General, district or county attorneys, FBI, SEC, CFTC, IRS, FTC, and other regulatory agencies);
- To establish a claims procedure in order to pay bona fide claims against the Receivership;
- To hire professionals with specific expertise, including, but not limited to attorneys, CPAs, and real estate brokers to assist the Receiver;
- To file tax returns and pay taxes accruing on Receivership operations, property, or assets;
- To comply with state and federal wage and hour mandates;
- To subpoena documents, take depositions, search for assets, and investigate prior actions of management and others;
- To defend and institute lawsuits and to take over and continue suits that are, in the best judgment of the Receiver, beneficial to the Receivership;
- To petition the Court for instructions on matters requiring judicial oversight and when the Receiver feels direction is needed about the propriety of certain contemplated acts;
- To petition the Court for fees and disbursements as required;
- To make status reports to the Court, on a prescribed basis, in both written and oral form;
- The Utah Rules of Civil Procedure specifically require that a Receiver must pay all applicable taxes and shall file with the Court receipts showing the payment of taxes before selling, transferring, or pledging personal property of the Receivership estate. If there are insufficient assets to pay the taxes, the Court may authorize a sale of the assets, with the proceeds to be used to pay taxes owed. *See* Utah R. Civ. P. 66(f);
- Special rules also apply to real property. The Receiver must file a certified copy of the order appointing the Receiver with the county recorder of the county in which real property is located before a Receiver is vested with the real property. *See* Rule 66(g).

## VIII. BONDS

### **Receiver's Bond**

- Is an expense of the Receivership estate, as are bonds for the Receiver's staff and other professionals in the employ of the Receiver;
- Is required when the Receiver handles money or other assets unless the Court orders otherwise;
- Must have sufficient surety in an amount determined by the Court, subject to adjustment, and be based on the size, character, location, and portability of the assets;
- Is conditioned on the faithful performance of those duties and obligations which have been directed by the Court;
- May be claimed against when the Receiver fails to follow or obey orders of the Court or violates his or her fiduciary duties; however, a Receiver may be sued only with Court approval;
- Is not a malpractice insurance policy.

### **Plaintiff's/Applicant's Bond**

- Typically required for the individual or agent making application to the Court for the appointment of a Receiver (state and federal government agencies generally are exempt);<sup>4</sup>
- The amount of the bond is determined by the Court and subject to adjustment;
- Is conditioned on the payment of damages and other costs that other parties may sustain if the appointment of the Receiver was wrongfully obtained;
- Is to cover damages limited to those which are the actual, natural, and proximate result of the unwarranted appointment of a Receiver;
- Bond will be discharged at the conclusion of the Receivership.

### **Defendant's Bond**

- May be required by the Court to prevent the immediate appointment of a Receiver.

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<sup>4</sup> See Utah R. Civ. P. 64(b)(4).

## **IX. RECEIVER'S REPORTS**

Neither the Utah Rules of Civil Procedure, nor the statute, mandate specific reports that a Receiver must file and no timetable is mentioned for reporting to the Court. Nonetheless, a Receiver should provide regular reports to the Court regarding the assets in the Receivership and the Receiver's progress in carrying out his or her responsibilities. Such regular reporting will not only aid the Court in conducting its oversight over the Receivership but will keep all the parties informed of the status of the Receivership.

The timetable required by Receivers in Florida is a good benchmark. In Florida, the initial inventory report should be filed with the clerk of the court within twenty (20) days after appointment. Updated inventory reports should be filed every three (3) months after the initial report. *See* Fla.R.Civ.P. 1.620(b).

### **Inventory Report Requirements**

- The Receiver should file with the clerk of the Court a true and complete inventory list of all personal, real, and intangible property coming under the Receiver's control. This inventory list should be signed under oath. It is recommended that this inventory list be filed promptly, generally within twenty (20) days after appointment.
- The Receiver should file updated inventory reports every three (3) months, or on a timetable ordered by the Court. These updated inventory reports also should be signed under oath.
- The inventory reports should identify:
  - assets in the hands of, or invested by, the Receiver;
  - the manner in which the assets are secured or invested;
  - the balance due from or to the Receiver at the time of the last inventory; and
  - receipts and expenditures since the last inventory.

### **Final Accounting**

After the main action has been terminated, the Receivership assets have been fully administered, or the need for the Receivership has otherwise ended, the Receiver must file his or her final accounting. After any objections to the final accounting are resolved by the Court, the Court will enter an order discharging the Receiver and terminating liability on the bond.

### **Other Suggested Reports**

The Receiver should provide periodic informational reports to creditors, victims of fraud, equity holders, or to other interested parties, when appropriate.

## **X. FEES AND COSTS**

### **Considerations of the Court in Awarding Fees**

The award of fees and costs to a Receiver is within the Trial Court's sound discretion.

Receivers are entitled to reasonable compensation upon:

- Proof of services rendered; and
- Proof of the reasonable value of services rendered, including a showing of:
  - Benefits to the Receivership estate;
  - Amount and extent of property administered by the Receiver;
  - Amount distributed to claimants, where appropriate;
  - Difficulty in administration of the Receivership estate; and
  - Diligence and efficiency of Receiver.

### **Nature of Fees/Costs**

- Fees may be taxed as costs;
- Fees and costs may be paid from Receivership assets;
- Fees and costs constitute a first charge against income or corpus of the Receivership estate;
- Fees and costs are superior to prior liens and lienholders;
- Receiver's fees can be paid in the ordinary course of business, subject to Court review either during or at the end of the case, per Court order;
- Receiver's compensation may also include necessary and reasonable legal and accounting fees incurred by the Receiver in managing and administering the Receivership estate.



## **XI. CLAIMS PROCEDURE**

### **Generally**

The Receiver, as the real party in interest to any action of the Receivership estate, has the right, with Court approval, to settle or litigate any claim or potential claim.

### **Legal and Practical Considerations of Receiver in Establishing Claims Procedure**

The Receiver should do the following:

- Carefully estimate the number and character of claims and claimants;
- Disseminate to claimants, victims, or creditors, in a cost-effective manner, information on claims procedures, claims bar date, and data required to support claims. These efforts will minimize victim panic, media sensationalism, and inquiries to the Court. Some suggestions include:
  - Establishment of one or more toll-free hotlines, if the number of victims is large.
  - Creation of an Internet web site to disseminate information about the claims procedure, deadlines, submitting claims, the status of the Receivership, and copies of documents relating to the underlying case and the Receiver's appointment;
  - Use of electronic and print media to give notice of the claims procedure;
  - Coordination with regulatory or law enforcement agencies, such as the SEC, FTC, FBI, and state agencies;
- Establish procedures and staffing to verify and validate submitted claims;
- Establish procedures for Receiver to settle or deny claims and provide appeal rights for claimants;
- Obtain Court approval of the claim form and claims procedures;
- Translate claims information into languages other than English, when appropriate.

## **XII. OTHER RELATED STATE AND FEDERAL APPOINTMENT AND PROCEEDINGS**

### **A. MASTERS**

- Authority:** Governed by Utah R. Civ. P. Rule 53
- Purpose:** Masters may be appointed by the Court for any particular purpose in order to determine legal facts and issues arising from pending litigation as an aid to the Court for an accurate and expeditious determination of the cause. A Master can determine any or all of the issues in an action.
- Types:** General Masters – Appointed and continue in office until removed.  
Special Masters – Appointed in particular action by Court.  
Masters include referees, auditors, and examiners.
- Reference:** Masters can be appointed by written consent of the parties or by the Court. A reference to a Master shall be the exception, not the rule.
- Jury Trials If the reference is in an action to be tried by a jury, a reference should be made only when the issues are complex.
- Non-Jury Trials In most actions to be tried without a jury, a reference shall be made only by consent of the parties or upon a showing that some exceptional condition requires it.
- Accounting References to a Master involving accounting issues require a much lower threshold, probably simple discretion by the Court. This presumably indicates acknowledgement of the advantages of using Masters on accounting issues.
- Objection:** A party may object to the appointment of any person as a Master on the same grounds a party may challenge a prospective juror for cause. The Court should hear and dispose of such objections in the same manner as a motion.
- Function/Powers:** The order of reference may specify or limit the powers of a Master. The Court may direct a Master to report only on particular issues, or perform particular acts, or receive and report evidence only.
- The Court may fix the time and place for beginning and closing the hearings and for filing the Master's report.

If authorized by the Court, a Master has power to regulate all proceedings in every hearing before the Master and to do all acts needed for the efficient performance of the Master's duties.

The Master may require the production of evidence, rule on admissibility, and put witnesses and parties under oath and examine them. The Master may issue subpoenas and any witness who fails to appear can be punished for contempt.

If requested by a party, the Master should make a record of evidence offered and excluded in the same manner as a Court would do under the Utah Rules of Evidence.

**Meetings:** The Master should hold a meeting of the parties or their attorneys within twenty (20) days after reference of the matter by the Court, unless the Court sets a different timetable. If a party fails to appear at the meeting, the Master may proceed or postpone the meeting.

**Timetable:** The Master should proceed with all reasonable diligence. Any party may apply to the Court for an order requiring the Master to speed the process and make his or her report.

**Reports:** Accounting Issues When accounting matters are at issue, the Master may prescribe the form in which the accounts shall be submitted. The Master may require that the accounting matters include a statement by a CPA.

Draft Report A Master may submit to counsel for all parties an advance draft of the Master's report, soliciting suggestions from the parties before the Report is finalized.

Final Report The Master shall prepare a report upon all matters submitted to the Master by the Court's order of reference. Any findings of fact and conclusions of law requested by the Court shall be set forth in the report. If it is a non-jury case, the Master should also file a transcript of the proceedings, including the evidence and the original exhibits. The report must be filed with the clerk of the Court, who shall send copies to all parties.

**Effect of Report:** If the case is a non-jury case, the Court shall accept the Master's findings of fact, unless clearly erroneous. Parties have ten (10) days to file written objections to the findings. If the parties object to the report or want the Court to act on the report, they should make motions to the Court. After a hearing, the Court may adopt, modify, or reject the report or may choose to receive further evidence itself or recommit the matter to the Master with instructions.

If the case is a jury case, the Master should not report the evidence. The Master's findings are admissible as evidence of the matters found and may be read to the jury, subject to any rulings of the Court on any legal objections made by parties regarding the report.

The effect of a Master's report is the same regardless of whether the parties consented to the reference. If the parties stipulated that the Master's findings would be final, only questions of law arising from the report should be considered by the Court.

**Compensation:** Compensation shall be fixed by the Court as the Court deems appropriate and includes reasonable time for legal research, preparation, and summarizing findings of fact and law. The compensation will be charged to the parties or paid out of any fund related to the matter in dispute which is under the control of the court.

The Master may not withhold its report to ensure payment, but if the party ordered to pay the compensation does not pay it after receiving notice thereof, the Master is entitled to a writ of execution against the delinquent party.

**Note:** Fed.R.Civ.P. 53 addresses the use of Masters in federal actions.

## **B. ASSIGNMENT FOR THE BENEFIT OF CREDITORS**

- Authority:** Governed by Utah Code, Title 6 (§§6-1-1 to 6-1-20).
- Purpose:** To provide a uniform procedure for the administration of insolvent estates, to ensure full reporting to creditors, and to ensure an equitable distribution of assets.
- Filing an assignment for the benefit of creditors may be preferable to filing a federal bankruptcy petition because it is generally a less expensive, quicker, and more private proceeding than bankruptcy.
- Jurisdiction:** Jurisdiction lies with the district court of the county where the property being assigned is located.
- What is Assigned:** An insolvent debtor, acting in good faith, may assign its property to one or more assignees in trust for the benefit of creditors. The assignment is void against any objecting creditors who can demonstrate it is conditional, coerces creditors to release claims, provides for payment of fraudulent claims, reserves property to the assignor, or permits the assignee to delay payment.
- Process:**
- Written Assignment The assignment must be in writing and set forth the name of the assignor, the name of the assignee, a general description of the property assigned (including its location), and the purpose of the assignment.
- Execution, Recording The assignment must be executed in the same manner as deeds and be recorded in the county where the assigned property is located.
- Title to Property The assignee must attach to the assignment an inventory, under oath, of his estate and a list of creditors and the amount owed to each. The assignment vests the Assignee with title to all property belonging to the debtor at the time of assignment, even if the property was not listed in the assignor's inventory list. Some property is excepted, such as property exempt from execution and insurance on the assignor's life.
- Assignment Filed with Court When the assignment has been recorded with the county, it shall be filed with the clerk of the district court of the county in which the property is located. All subsequent proceedings involving the assignment should be filed with this district court.
- Inventory and Bond The assignee must file with the clerk of the court an inventory of the estate, along with the valuation of the property. The inventory and valuation must be submitted under

oath. If the inventory and valuation of assets changes, the assignee must file updated inventory reports with the Court.

Bond The assignee must post a bond in an amount twice the value of the assigned property. Creditors may make claims on the bond if the assignee has not carried out its duties properly – but not for the debt underlying the assignment.

Publish Notice The assignee shall give notice of the assignment to all creditors by publication in a newspaper of general circulation, published in the county where the assignment is filed, at least once a week for six (6) weeks and by mailing a notice to each creditor, requiring the creditor to submit any claims.

Creditor Claims Creditor claims must be submitted, under oath, within three (3) months after the first publication. The Court has discretion to extend the time for submission of claims when circumstances warrant extension. The deadline for submitting claims cannot extend beyond nine (9) months from the date of the first publication.

Examination of Debtor Upon application of the assignee or any creditor, the Court may order the debtor (assignor) to appear before the Court to be examined under oath as to the amount and situation of his estate and the amounts owed to each creditor. The assignor may be compelled to deliver to the assignee any property owed to the estate.

Sale of Assets The assignee receives the assets of the estate and reduces them to money. The assignee may file suit to recover any property belonging to the estate and may sell any property by public or private sale. Advance notice must be given for sales of real estate.

Initial Report When the deadline for submitting claims has passed, the assignee shall file with the Court a report containing a description of all creditor claims that were submitted, an affidavit of publication of the notice, and a list of creditors to which notice was mailed.

Objections, Hearing Any objections must be filed within one (1) month after the report has been filed. Objections can challenge the claims of any creditor, who must respond with proof of the amount of the creditor's claims. The court must hold a hearing on the objections and render a judgment.

Taxes State and municipal taxes and assessments have priority over all other creditor claims. Taxes shall be paid by the assignee in full, whether or not the taxing authority submitted a claim.

Distribution to Creditors After any objections have been resolved, the Court shall order the assignee to make distributions to the creditors. Distributions may be made in stages, as assets are liquidated. Distributions may be subject to priorities, with certain classes of creditors (such as secured creditors) receiving preferential payments. Distributions from personal property should be completed within six (6) months of the assignment and from real estate within one (1) year of the assignment, unless the Court determines there is good cause to grant additional time to complete the liquidation. If not all creditors can be located, the Court has discretion to order the distribution of the unclaimed distributions among the other creditors.<sup>5</sup>

**Court Supervision:** The assignee's conduct is always subject to the order and supervision of the Court. The Court may require the assignee to submit periodic or special reports and may order the assignee to proceed with the execution of its duties. The assignee can be removed by the court upon written application of creditors holding a majority of the debt or if the assignee fails to perform required duties.

**Compensation:** An assignee is entitled to reasonable compensation for its services and necessary expenses incurred during management of the assignment.

**Note:** Assignments for the benefit of creditors may not be available for certain types of businesses such as financial institutions and insurance companies and special rules may apply in other industries. (*See* §§7-2-5, 31A-5-702, 38-3-2, 41-22-33, 53-7-310, and 70A-9a-309).

**Note:** Since an Assignment for the Benefit of Creditors is voluntarily commenced by an assignor, and the assignor can choose its assignee (thereby increasing the chance the assignee is *not* disinterested), a Court may look to the appointment of a Receiver if an assignee fails to perform as expected.

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<sup>5</sup> This overrides the general presumption that the money should be paid to the state as unclaimed property. *See* §67-4a-103.

### **C. FEDERAL RECEIVERSHIPS**

Federal Receiverships in federal actions are similar to those in state actions and are addressed by Rule 66 of the Federal Rules of Civil Procedure.

Federal Receiverships are equitable remedies, arising from the Federal Court's inherent equitable powers. A number of federal regulatory agencies have statutes allowing for the creation of a statutory Receivership, with the statute defining the conditions that must be met for appointment of a Receiver.

The federal agencies that most often seek appointment of Receivers are the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Federal Trade Commission (FTC).

It is within the Federal Court's sound discretion whether to appoint a Receiver, and the discretion will not be disturbed on appeal, absent an abuse of discretion.

A Federal Receivership is an ancillary proceeding to the main action.

Factors that a Federal Court considers in determining the appropriateness of the appointment of a Receiver include:

- Fraudulent conduct on the part of the defendant;
- Imminent danger that property will be lost or squandered;
- Inadequacy of available legal remedies;
- Probability that harm to the plaintiff by denial of appointment will be greater than injury to parties opposing the appointment;
- The plaintiff's probable success in the main action;
- The possibility of irreparable injury to the plaintiff's interests in property; and
- Whether such interests and others sought to be protected will, in fact, be well served by the Receivership.



## **D. BANKRUPTCY PROCEEDINGS (Trustees and Examiners)**

**Authority:** Governed by Title 11 of the United States Code.

**Purpose:** To liquidate or reorganize qualifying (usually insolvent) estates.

**Jurisdiction:** Bankruptcy Court, a Federal Court.

**Chapter 7 Trustee:** In Chapter 7 *liquidation* proceedings, a Trustee is appointed as the representative of the bankruptcy estate and administers the estate.

Duties include accounting for all property received, investigating the financial affairs of the Debtor, bringing any actions that are appropriate to retrieve estate property, liquidating assets of estate, examining proofs of claim and objecting to allowance of any improper claims, furnishing information concerning the estate and its administration to interested parties, making distribution of liquidated assets to allowed claims, and preparing a final report and a final accounting of the administration of the estate.

**Chapter 11 Trustee:** In Chapter 11 *reorganization* proceedings, a Trustee is not typically appointed because the Debtor remains in possession of its operating business. Only if “cause” is shown (including fraud, dishonesty, incompetence, or gross mismanagement by current management) may a Trustee be appointed to oust the Debtor from operating the business.

Duties of a Trustee are similar to those for a Chapter 7 Trustee, with additional responsibilities of investigating the acts, conduct, and financial condition of the Debtor to determine whether to continue operating the business and proposing a plan of reorganization or liquidation, if appropriate.

Rather than oust the Debtor from operating its business, the Court may appoint an Examiner, rather than a Trustee, to conduct an appropriate investigation of the Debtor and its prior and current management and to report the Examiner’s findings. The Examiner’s role may be expanded.

**Hire Professionals:** Trustees may retain attorneys, accountants, and any other professionals necessary to administer the bankruptcy estate, all of whom must be disinterested parties with no conflicts of interest.

**Compensation:** Trustees, Examiners, and their hired professionals are awarded reasonable compensation for actual, necessary services and expenses incurred. There is an emphasis on the extent of benefit to the estate for services rendered and, typically, an award of compensation is paid from monies of the estate. There are capped

amounts of compensation that a Trustee may be awarded, depending on the amount of monies collected for the estate.

**Note:**

The automatic stay, which typically halts actions against a Debtor and its assets, does not apply to a government agency commencing or continuing proceedings against a Debtor in furtherance of the agency's police and regulatory powers. *See* 11 U.S.C. §362(b)(4) and (5). However, attempts by the government agency to collect money from the Debtor may be constrained.

### **XIII. APPENDIX A**

## **RECEIVERSHIP LEGAL AUTHORITY AND SOURCE MATERIALS**

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### **PERTINENT RULES OF CIVIL PROCEDURE**

Utah R.Civ.P. 66                      Receivers

Utah R.Civ.P. 53                      Masters

### **CASE LAW, CITATIONS, AND STATUTORY AUTHORITY**

#### **Authority and Powers of Receivers and Receiverships**

*In Re Olympus Construction, LC*, 2007 UT App 361, 173 P.3d 192 (Receiver appointed by court to wind up limited liability company may recover attorneys fees and costs in defending frivolous claim against the estate).

*Irvine v. Anderson*, 2006 UT App 300, 147 P.3d 486 (appointment of Receiver who had interest in the property was error – but harmless error in light of disposition of estate).

*Chen v. Stewart*, 2004 UT 82, 100 P.3d 1177 (trial court has equitable authority to appoint interim CEO with judicial immunity. Special Master also permitted to act as party-litigant in the underlying legal dispute leading to his appointment because his powers were similar to those of a Receiver and he played an integral role in helping the court adjudicate the case).

*Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985) (held: a) Receivership is an equitable matter and is entirely within the control of the court, b) possession by the court of the *res* gives the court power to determine all questions concerning ownership and disposition of the property, c) Receiver is an officer and arm of the court and acts under its direction, and d) Receiver has limited powers and should apply to the court for advice and directions; if it acts without court authority, the Receiver assumes risk for costs. Court held expenditures were not authorized by court, so not approved as lien on the estate). (*Note: the case has no discussion of the conflict created by having a party litigant as Receiver.*)

*Shaw v. Robinson*, 537 P.2d 487 (Utah 1975) (Receivership is equitable matter which is entirely within the control of the Court. Sales by Receiver cannot be completed unless confirmed by the Court and unless consistent with the authority to sell expressly granted by the Court prior to the sale).

*Alexander Dawson, Inc. v. Hydroponics, Inc. (II)*, 535 P.2d 1251 (Utah 1975) (attorneys fees incurred by the Receiver are costs of the Receivership estate, not treated the same way as attorneys fees for the parties).

*Alexander Dawson, Inc. v. Hydroponics, Inc. (I)*, 523 P.2d 861 (Utah 1974) (claims arising from expenses of a Receivership are superior to secured claims of creditor. Here, the Receiver had been appointed at request of secured creditor and complained that the Receiver's costs got priority).

*Neilson v. Dennett*, 450 P.2d 93 (Utah 1969) (it was error for trial court not to require bond by Receiver, but the appointment did not thereby become void; defendant still was required to comply with court order to pay money to the Receiver).

*Richins v. Mitchell*, 432 P.2d 39 (Utah 1967) (injured employee cannot make claims against Receiver who was acting as an officer of the court, despite the Receiver not having workers compensation insurance in place).

*Ferrin v. Ferrin*, 315 P.2d 978 (Utah 1957) (it was questionable, but not unacceptable for a Receiver to hire as its attorney the attorney for an intervenor in the case).

*Bishop v. Parker*, 134 P.2d 469 (Utah 1943) (Receiver properly rejected claim by attorney for legal services allegedly provided to company before Receiver was appointed).

*In Re White Fawn Milling Co.*, 110 P.2d 331 (Utah 1941) (Receiver properly treated claim by state engineer as a common claim, not a preferred claim; state engineer also could not recover from entity buying property from the Receiver).

## **Settings Where Receivers May Be Appointed**

### **Business Entities**

Cooperative Association: Utah Code Ann. §16-16-605 – Court may appoint a Receiver to collect payments due from the Association to a member who has an unpaid judgment.

For-Profit Corporation: Utah Code Ann. §16-10a-1432 – Court may appoint Custodian or Receiver to manage or liquidate affairs of for-profit corporations.

Non-Profit Corporation: Utah Code Ann. §16-6a-1416 – Court may appoint Custodian or Receiver to manage or liquidate affairs of non-profits.

Limited Liability Company: Utah Code Ann. §§48-2c-1103, 48-2c-1212 – Court may appoint Custodian or Receiver to collect amounts due to a debtor or member or to manage or liquidate affairs of limited liability companies.

Partnerships, Limited Liability Partnerships: Utah Code Ann. §48-1-25 – Court may appoint a Receiver to collect a creditor's or partner's money due from a partnership.

*In Re Olympus Construction, LC*, 2007 UT App 361, 173 P.3d 192 (Receiver appointed by court to wind up limited liability company may recover attorneys fees and costs in defending frivolous claim against the estate).

*Chen v. Stewart*, 2004 UT 82, 100 P.3d 1177 (trial court appointed interim CEO with judicial immunity. Special Master permitted to act as party-litigant in the underlying legal dispute).

*Wanlass v. D Land Title*, 790 P.2d 568 (Utah App. 1990) (best method for determining assets of dissolved partnership and fairly distributing assets is by appointment of Receiver. “The appointment of a Receiver is a judicial mechanism for marshaling the assets, paying the partnership’s debts, and dividing the remaining monies . . .”).

*Richardson v. Arizona Fuels Corp.*, 614 P.2d 636 (Utah 1980) (Receiver appointed at the request of shareholders claiming misappropriation of corporate assets by corporate insiders which threatened insolvency of the company).

*State Bank of Lehi v. Woolsey*, 565 P.2d 413 (Utah 1977) (Receiver appointed to protect mink farm during litigation over unpaid bank loans).

*G. Eugene England Foundation v. Smith’s Food King*, 542 P.2d 753 (Utah 1975) (plaintiff should have sought a Receiver to collect and hold rents during pendency of litigation. The failure to secure appointment of a Receiver makes plaintiff at fault, not the tenant who paid the rents).

*Shaw v. Robinson & KOVO, Inc.*, 537 P.2d 487 (Utah 1975) (deadlock between two owners of radio station led to appointment of a Receiver to preserve company’s value. Court approved sale of radio station to outside bidder, rejecting bids submitted by owners, and refused to terminate Receivership).

*In Re Capitol Cleaners & Dyers, Inc.*, 233 P.2d 377 (Utah 1951) (after sale of business, Receiver must give priority to unrecorded federal tax liens).

*Goodlife v. Colonial Corp.*, 155d P.2d 177 (Utah 1945) (a proper accounting in a shareholder derivative action might be fruitless if a Receiver were not also appointed).

### **Consumer/Investor Protection**

Consumer Sales: Utah Code Ann. §13-11-17 – The Utah Division of Consumer Protection can ask a Court to appoint a Receiver or Master in a class action suit brought by the Division for illegal consumer sales practices or misleading charitable solicitations (*see* §13-22-3).

Securities Fraud: Utah Code Ann. §61-1-20(2)(b) – Court may appoint a Receiver or Conservator for defendant’s assets in an action brought by the Division of Securities to enforce the Utah Securities Act.

*State v. I.M.C. Mint Corp.*, 610 P.2d 1265 (Utah 1980) (Receiver appointed for company accused of consumer fraud. Court ruled that based on statute in effect at the time, unpaid tax bills were not superior to claims of victims).

## **Domestic Relations**

*Mitchell v. Mitchell*, 611 P.2d 373 (Utah 1980) (conservator appointed to collect rents and profits on property of former husband who left the state with the children).

*Farley v. Farley*, 431 P.2d 133 (Utah 1967) (court appointed Receiver to receive and disburse payments from business operated by spouse, to ensure payment of alimony and child support previously ordered by the court).

*Parker v. Dodgion*, 971 P.2d 496 (Utah 1998) (a psychologist appointed by the court in a custody dispute is entitled to quasi-judicial immunity, because the psychologist was performing acts that are an integral part of the judicial process).

## **Probate**

No cases found.

## **In Aid of Retrieving Fraudulently Transferred Property**

Fraudulent Transfers: Utah Code Ann. §25-6-8 – A creditor may ask a Court to appoint a Receiver to take charge of assets or property that is the subject of a fraudulent transfer.

*Interlake Co. v. Von Hake*, 697 P.2d 238 (Utah 1985) (In a dispute over the sale of a ranch, the putative buyer was appointed Receiver. The seller prevailed at trial, winning \$1 million in damages. The buyer/Receiver unsuccessfully sought to have \$10 million it spent on improvements to the ranch made during the Receivership granted priority over the seller's \$1 million lien for damages).

*Perry v. Woodall*, 438 P.2d 813 (Utah 1968) (buyer of drug store who later acted as Receiver in action by creditors did not express unequivocal intent to rescind purchase transaction).

*Cole v. Parker*, 300 P.2d 623 (Utah 1956) (Receiver appointed to operate ranch during pendency of litigation in which buyer claimed fraudulent inducement for the sale).

*Nunnally v. First Federal Building & Loan Ass'n of Ogden*, 154 P.2d 620 (Utah 1944) (where owners of investment certificates alleged fraud, the first phase for the trial court should have been to impound the fund and appoint a Receiver. The second phase would be to determine the rights of each of the investors).

## **Post-Judgment Enforcement of Court Orders**

*Wright v. Westside Nursery*, 787 P.2d 508 (Utah App. 1990) (Receiver appointed to monitor compliance with court order by business and parties during pendency of case).

*Themy v. Seagull Enterprises, Inc.*, 595 P.2d 526 (Utah 1979) (Receiver appointed to manage radio station during pendency of appeal after trial court had ordered its forfeiture).

*Walker Bank & Trust Co. v. Neilson*, 490 P.2d 328 (Utah 1971) (Receiver ordered to pay funds in his possession to the court during pendency of an appeal).

*Rudd v. Crown International*, 488 P.2d 298 (Utah 1971) (application to vacate appointment of a Receiver is subject to the discretion of the trial court).

### **Real Estate**

Broker's Trust Account Abuse: Utah Code Ann. §61-2-24 – Utah Division of Real Estate can seek Receiver for a principal broker whose trust funds were mismanaged, commingled, or otherwise misused.

Community Housing Authority: Utah Code Ann. §9-4-611 – Lenders may seek Receiver for housing project in case of default of payment by Community Housing Authority. The Authority may seek Receiver for projects it is overseeing (*see* Utah Code Ann. §9-4-623).

*In Re Olympus Construction, LC*, 2007 UT App 361, 173 P.3d 192 (claim for real estate commissions was properly rejected by Receiver under statute of frauds).

*Irvine v. Anderson*, 2006 UT App 300, 147 P.3d 486 (Receiver appointed to sell property, give accounting to owners. Appointment of Receiver who had interest in the property was error – but harmless error in light of disposition of property).

*Backstrom Family Ltd. Partnership v. Hall*, 751 P.2d 1157 (Utah App. 1988) (court denied motion to compel a sale of a real estate development and instead appointed a Receiver).

*Calder Bros. Co. v. Anderson*, 652 P.2d 922 (Utah 1982) (a Receiver may operate the business of a property owner in default on a mortgage; he is not limited to just taking possession of the real estate).

*American Savings & Loan Assoc. v. Blomquist*, 465 P.2d 353 (Utah 1970) (Receiver appointed to collect mortgage payments during pendency of legal dispute between parties).

*Larsen v. Knight*, 233 P.2d 365 (Utah 1951) (seller of property appointed as Receiver after buyers ceased making payments and failed in upkeep of equipment and property).

*O'Gorman v. Utah Realty & Construction Co.*, 129 P.2d 981 (Utah 1942) (Receiver appointed to manage two properties during litigation).

### **Public Welfare and Safety**

Agriculture: Utah Code Ann. §3-1-20.3 – Court may appoint a Custodian to manage the business and affairs of an Agricultural Cooperative Association or a Receiver to wind up and liquidate the association.

Assisted Living Facility: Utah Code Ann. §26-20-10 – A County Attorney may petition the Court to appoint a Receiver to operate an assisted living facility whose license has been revoked.

Emergency Medical Service Providers: Utah Code Ann. §26-8a-505 – The Department of Health may ask the Court to appoint a Receiver to continue operations of an emergency medical service provider if the provider ceases operations, becomes insolvent, or its license is being revoked.

Escrow Agents: Utah Code Ann. §7-22-109 – Effect of the appointment of a Receiver for an independent escrow agent.

Financial Institutions: Utah Code Ann. §7-2-1 – Commissioner of Financial Institutions may appoint a Receiver or Conservator for the assets of a financial institution (including banks, bank holding companies, savings and loans, credit unions, and trust companies) if the institution is operating in an unsafe and unsound manner or may ask a Court to appoint one (*see* §7-1-320).

Insurance: Utah Code Ann. §31A-27a-105 – The Commissioner of Insurance has broad powers to appoint Receivers for insurance companies, agencies, reinsurers, guaranty associations, and others associated with the business of insurance. Chapter 27a is the Insurer Receivership Act.

Lawyer Discipline: Utah Supreme Court Rules of Professional Practice, Rule 14-603 – A Receiver can be appointed by a Court to take over the law practice of an attorney being suspended or disbarred.

*Wilcox v. CSX Corp.*, 2003 UT 21, 70 P.3d 85 (insurance company Receiver may avoid an insurance company's transfer of property made within one year prior to the liquidation).

*Doit, Inc. v. Touche, Ross & Co.*, 926 P.2d 835 (Utah 1996) (Receiver of failed thrift is not in the same position as depositors, was not subject to special law governing claims of depositors).

*In Re Rocky Mountain State Bank*, 800 P.2d 814 (Utah 1990) (Receiver of insolvent bank entitled to rely on the effect of a court order in denying claims).

*Saunders v. Sharp*, 793 P.2d 927 (Utah App. 1990) (state commissioner of financial institutions, acting as Receiver for insolvent bank, cannot raise claim of *ultra vires* actions by bank officers for the first time on appeal).

*Harris v. Briggs*, 621 P.2d 1244 (Utah 1980) (judgment obtained in Texas court against Utah insurance agency by Receiver of failed Texas insurance company should be enforced in Utah).

*Marchant v. Nat'l Reserve Co. of America*, 137 P.2d 311 (Utah 1943) (Receiver's estimate of the value of a note from a failed savings and loan association that turned out to be an incorrect estimate did not constitute fraud or deception by the Receiver).

*Bagley v. Young*, 134 P.2d 1098 (Utah 1943) (president of insolvent insurance company held in contempt and incarcerated for not surrendering to the Receiver the records and a bond of the insurance company).

*Lustig v. Intermountain Building & Loan Ass'n*, 122 P.2d 707 (Utah 1942) (Receiver of insolvent thrift not obligated to repay bonding company for payments made to satisfy claims against the thrift arising from improper seizure by Utah bank commissioner).



## Trusts

No cases found.

## Accounting Actions

Government Bonds: Utah Code Ann. §11-14-306 – Municipalities and interlocal financing authorities can provide that bond holders may seek appointment of a Receiver if bond payments are not made (*see also* §§17A-3-911, 17C-1-507, 17D-2-503, 19-9-109, 63H-1-605).

## Miscellaneous

*Zions First National Bank v. Rocky Mountain Irrigation, Inc.*, 795 P.2d 658 (Utah 1990) (Receiver was appointed by the court to manage property pledged as collateral for bank loan).

## Special Masters

*In Re Anderson*, 2004 UT 7, 82 P.3d 1134 (special Master appointed by Supreme Court to examine conduct of district court judge).

*Hogle v. Zinetics Medical, Inc.*, 2002 UT 121, 63 P.3d 80 (special Master not needed when trial court could adequately value shareholders' minority interest in a corporation).

*Barton v. Barton*, 2001 UT App 199, 29 P.3d 13 (Utah court encouraged appointment of special Master in California to resolve issues relating to divorce and child custody).

*Hi-Country Estates Homeowners Association v. Bagley & Co.*, 928 P.2d 1047 (Utah App 1996) (court suggested that on remand, trial court and parties might consider use of special Master to value improvements to water system at issue in litigation).

*In Re Worthen*, 926 P.2d 853 (Utah 1996) (Judicial Conduct Commission may appoint special Masters to take evidence in investigations into misconduct by judges).

*In Re: Discipline of Schwenke*, 849 P.2d 573 (Utah 1993) (bar appointed special Master to inquire into alleged misconduct by attorney).

*Plumb v. State*, 809 P.2d 734 (Utah 1990) (court appropriately appointed special Master to determine reasonableness of attorneys fees claimed in class action litigation but the special Master failed to give adequate notice or conduct hearings before issuing recommendations. Utah rules regarding special Masters are similar to federal rules; Utah courts can look to federal precedents for guidance).

*Cook v. Cook*, 739 P.2d 90 (Utah 1987) (special Master appointed to sell property of marital estate and distribute proceeds in accordance with formula set by court).

*Abbott v. Christensen*, 660 P.2d 254 (Utah 1983) (three lawsuits arising from ranching joint ventures were consolidated before a special Master appointed by stipulation of the parties).

## **SECONDARY SOURCE MATERIALS**

Peterson, *Special Masters, Receivers, and the Duty to Marshall Evidence*, Utah Bar Journal, May 2006.

Peterson, *The Appointment of Special Masters in High Conflict Divorces*, Utah Bar Journal, August 2002.

Wing and Norman, *SEC Receivers: What Are They and What Do They Do?*, Utah Bar Journal, Nov. 2007.

**APPENDIX B**

**RECEIVERSHIP FORMS**

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Attorney Name, Bar # \_\_\_\_\_  
Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone \_\_\_\_\_  
Attorneys for \_\_\_\_\_

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IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

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<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant.</p>	<p style="text-align: center;"><b>PLAINTIFF’S MOTION FOR APPOINTMENT OF RECEIVER</b></p> <p>Case No. _____</p> <p>Judge: _____</p>
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COMES NOW the Plaintiff, by and through the undersigned counsel, and moves for the appointment of a Receiver in this action to take possession of and administer the property [described in Plaintiff’s Complaint/described herein] and as grounds therefore would state the following:

1. The subject property is under the exclusive control and possession of the Defendant and Defendant has been receiving all of the [income/profits/rents] from the property since [date].
2. Defendant’s management and control of the property is jeopardizing the interest of the Plaintiff in the property which is [describe Plaintiff’s interest in the property].
3. Defendant has failed to account to the Plaintiff for [income/profits/rents].

4. The appointment of a Receiver is necessary in order to preserve and protect Plaintiff's interest in the property.

5. The Plaintiff has no other adequate remedy available.

DATED:

[Firm name] \_\_\_\_\_  
By (signature) \_\_\_\_\_  
[Attorney name] \_\_\_\_\_  
Attorneys for \_\_\_\_\_  
[Address] \_\_\_\_\_

Attorney Name, Bar # \_\_\_\_\_  
Firm Name \_\_\_\_\_  
Address \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
Telephone \_\_\_\_\_  
Attorneys for \_\_\_\_\_

IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

<p>_____, Plaintiff,  vs.  _____, Defendant.</p>	<p><b>PLAINTIFF'S AFFIDAVIT FOR APPOINTMENT OF RECEIVER</b></p> <p>Case No. _____</p> <p>Judge: _____</p>
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STATE OF UTAH                    )  
  : ss  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned notary public, \_\_\_\_\_ personally appeared,  
who was sworn and states the following:

1. Affiant is the Plaintiff in this action.
2. This action is brought for the purpose of [describe the property and the nature of the action] .
3. The above-described property is in the possession of the Defendant.
4. Affiant has an interest in or right to the property as follows: \_\_\_\_\_  
\_\_\_\_\_.
5. It is necessary for the protection of the rights of Affiant that a Receiver of the property described above be appointed because [set forth the reasons] .

6. This action was begun by service on Defendant on [date] of the Summons and Complaint and Defendant has filed his/her Answer in which he/she denies allegations of the Complaint as follows: \_\_\_\_\_

\_\_\_\_\_.

7. The approximate value of the property that will come into the hands of the Receiver, if appointed, is \$\_\_\_\_\_.

\_\_\_\_\_  
Plaintiff

Sworn to and subscribed before me in person this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Utah, by [name of affiant], who is personally known to me or who has provided the following type of identification.

\_\_\_\_\_  
Notary Public, State of Utah

My Commission Expires:

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IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

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\_\_\_\_\_,  
Plaintiff,

vs.

\_\_\_\_\_,  
Defendant.

**ORDER APPOINTING RECEIVER**

Case No. \_\_\_\_\_

Judge: \_\_\_\_\_

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THIS CAUSE came to be heard before this Court on [date] on [Plaintiff's/Defendant's] Motion for Appointment of Receiver and the Court having heard argument of counsel and having conducted an evidentiary hearing, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that:

1. [Plaintiff's/Defendant's] Motion for Appointment of Receiver is granted.
2. [Name of Receiver] is appointed Receiver of and shall take immediate possession of all of the assets of the Defendant, including all of the property as is more particularly described in the attached schedule, and all of the rents, revenues, income, profits, or other sums due the Defendant.
3. Defendant, its agents or employees, and other persons in possession of any of the foregoing assets shall forthwith deliver them to the Receiver and are restrained from interfering with the Receiver or with any of the property delivered to the Receiver.
4. The Receiver is authorized, empowered, and directed to:

- a. Marshal and take control of all assets and property belonging to, or in the custody, control, or possession of Defendant, with full power to take such steps as he/she deems necessary to secure such assets and property;
  - b. Have control of, and to close, transfer, or otherwise take possession of all accounts, securities, funds, or other assets of, or in the name of Defendant, at any bank, brokerage firm, or financial institution which has possession, custody, or control of any assets of Defendant;
  - c. Take such action as is necessary to preserve and take control of, and to prevent the dissipation, concealment, or disposition of any assets of Defendant;
  - d. Make or authorize such payments and disbursements from the funds and assets under his/her control pursuant to this Order, and to incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary, and advisable in discharging his/her duties as Receiver;
  - e. Take possession, have access to, and to review all mail or any other communication, in any other form, of the Defendants or of its agents, officers, and directors;
  - f. Execute all necessary corporate resolutions or directions necessary in carrying out the Receiver's responsibilities; and
  - g. Make demand, file, or otherwise handle any claim under any insurance policy held by or issued on behalf of the Defendant or other persons affiliated with it.
5. The Receiver is authorized, empowered, and directed without further leave of the Court, to liquidate and convert into money all of the assets, property, and interests of every



nature held in his/her possession and control pursuant to this Order, by selling, conveying, and disposing of the property, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the persons or parties entitled to the proceeds and to deposit such proceeds into an account, pending further order of the Court.

6. The Receiver is authorized, empowered, and directed to investigate, prosecute, defend, intervene in, or otherwise participate in or compromise actions in any state, federal, or foreign court or proceeding of any kind as may be advisable, in his sole discretion, to recover or conserve assets and property of Defendant.
7. The Receiver shall have the authority to issue subpoenas for documents and testimony consistent with the Utah Rules of Civil Procedure.
8. Defendant and its officers, agents, servants, employees, attorneys-in-fact, consultants, accountants, advisers, and counsel shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, by appearing for deposition testimony and producing documents.
9. The Receiver is authorized to employ agents, servants, or employees in his/her discretion to assist him/her in taking possession of the property and carrying out the terms of the Receivership and the orders of this Court, including accountants, attorneys, securities and real estate brokers, financial or business advisers, forensic experts, or liquidating agents.
10. The costs, fees, and expenses of the Receiver incurred in connection with the performance of his/her duties described herein, including the costs and expenses of those persons who may be engaged or employed by the Receiver to assist him/her in carrying out his/her duties hereunder, shall be paid out of the proceeds or other assets of

Defendant and any other assets under the control of the Receiver pursuant to this Order.

All applications for costs, fees, and expenses for services rendered in connection with the Receiver shall be made by application detailing the nature of the services and shall be heard by the Court.

11. Within \_\_\_\_\_ days of the date of this Order, the Receiver shall file with this Court an Oath and Acceptance of Receiver accepting the appointment and agreeing to faithfully discharge his/her duties.

12. The Receiver shall file a good and sufficient bond in the sum of \$\_\_\_\_\_ to secure the faithful performance of his duties.

13. The Receiver shall serve until further order of this Court.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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District Court Judge

Copies furnished to:  
Counsel of Record  
Receiver

IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant.</p>	<p><b>PLAINTIFF'S BOND RELATING TO APPOINTMENT OF RECEIVER</b></p> <p>Case No. _____</p> <p>Judge: _____</p>
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We, \_\_\_\_\_, as principal, and \_\_\_\_\_, as surety, are bound to Defendant, \_\_\_\_\_, in the sum of \$\_\_\_\_\_ for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Plaintiff pays all costs and damages that Defendant sustains, and is awarded by the Court, in consequence of Plaintiff improperly obtaining appointment of a Receiver in this action, this bond is void; otherwise it remains in full force and effect.

SIGNED AND SEALED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Approved this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
As Principal

By: \_\_\_\_\_  
As Attorney in Fact  
As Surety

IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

\_\_\_\_\_,  
Plaintiff,

vs.

\_\_\_\_\_,  
Defendant.

**OATH AND ACCEPTANCE  
OF RECEIVER**

Case No. \_\_\_\_\_

Judge: \_\_\_\_\_

STATE OF UTAH            )  
  : ss  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_  
\_\_\_\_\_, who was duly sworn and says that he/she will faithfully perform the duties of Receiver  
in this cause and that he/she accepts the appointment as Receiver in this cause.

\_\_\_\_\_  
Receiver

Sworn to and subscribed before me in person this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at  
\_\_\_\_\_, Utah, by [name of affiant], who is personally known to me or who has  
provided the following type of identification.

\_\_\_\_\_  
Notary Public, State of Utah

My Commission Expires:

IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

<p>_____, Plaintiff, vs. _____, Defendant.</p>	<p><b>RECEIVER'S BOND</b></p> <p>Case No. _____</p> <p>Judge: _____</p>
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I, \_\_\_\_\_, as Receiver, and \_\_\_\_\_, as surety, are bound to Defendant, \_\_\_\_\_, and to the State of Utah, in the sum of \$\_\_\_\_\_ for the payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Receiver discharges his/her obligations faithfully, obeys all lawful Orders of the Court, and accounts for all property coming into his/her hands by virtue of the appointment as Receiver, then this bond is void; otherwise it remains in full force and effect.

SIGNED AND SEALED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Approved this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
As Principal

By: \_\_\_\_\_  
As Attorney in Fact  
As Surety

IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant.</p>	<p><b>RECEIVER'S INITIAL INVENTORY</b></p> <p>Case No. _____</p> <p>Judge: _____</p>
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STATE OF UTAH )  
 : ss  
COUNTY OF \_\_\_\_\_ )

BEFORE ME, the undersigned authority, this day personally appeared \_\_\_\_\_  
\_\_\_\_\_, who was duly sworn and says that the following is a true and accurate inventory of the  
property of the Defendant \_\_\_\_\_, coming under his/her control or possession  
under his/her Order of appointment as Receiver.

**ASSET**

**APPROXIMATE VALUE**

Real Estate:

(legal descriptions)

Total Real Estate \$ \_\_\_\_\_

Personal Property:

(Itemized schedules of personal  
property including cash, bank  
accounts and tangible personal  
property should be attached to the  
Inventory.)

Total Personal Property \$ \_\_\_\_\_

Total Real and Personal Property \$ \_\_\_\_\_

\_\_\_\_\_  
Receiver

Sworn to and subscribed before me in person this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_, Utah, by [name of affiant], who is personally known to me or who has provided the following type of identification.

\_\_\_\_\_  
Notary Public, State of Utah

My Commission Expires:

## **RECEIVER'S REPORT**

[Name of Business]

Period ending [date]

### **INTRODUCTION:**

### **GENERAL:**

### **FINANCIAL:**

Basis of Accounting:

Summary of Receipts and Disbursements:

[Additional paragraphs may be added under this section based on the particular circumstances of the case and the type of business involved. For example, a report regarding a retail business could include information on store sales, average daily sales, sales taxes, accounting, and income taxes.]

### **OPERATIONS:**

[Include specifics regarding operations for the particular business involved.]



IN THE \_\_\_\_\_ DISTRICT COURT, \_\_\_\_\_ COUNTY  
STATE OF UTAH

\_\_\_\_\_,  
Plaintiff,

vs.

\_\_\_\_\_,  
Defendant.

**ORDER DISCHARGING RECEIVER**

Case No. \_\_\_\_\_

Judge: \_\_\_\_\_

THIS CAUSE came to be heard before this Court on [date] on the Receiver's Motion for Final Discharge and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that:

1. \_\_\_\_\_ is discharged as Receiver in this action and the liability of the surety, \_\_\_\_\_, on the Receiver's bond is terminated.

IT IS SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
District Court Judge

Copies furnished to:  
Counsel of Record  
Receiver