



CALIFORNIA LAWYERS ASSOCIATION

Family Law Section

# Receiverships to Effectuate Family Law Orders and Judgments

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# ***Receiverships to Effectuate Family Law Orders and Judgments***



Couples choose to marry for a variety of different reasons. Traditional reasons are based in the couple's personal emotions, including love, companionship, mutual support, and shared desires to have and raise a family. At least in more modern times, objective business and/or economic considerations generally don't factor into the decision to marry.

But when a marriage dissolves and the couple starts the divorce process, then critical issues arise which concern the couple's money and property. Making decisions during this process using the same emotional factors which gave rise to the creation of the marriage, rather than applying objectively reasonable considerations based upon typical business and/or economic factors, often creates delay and conflict in the Family Law system.

**Worse, parties to a Family Law case are often at the extremes of litigant behavior.** It is not a surprise to find highly aggressive and demanding parties involved in the proceedings. There should also be no surprise that doing so can generate responsive behavior by the other litigant, which is often obstreperous, intransigent, or unusually secretive and uncooperative. Divorcing couples often don't get along, even when doing so is to their mutual advantage.

## ***Receiverships to Effectuate Family Law Orders and Judgments***

Among other purposes, the Family Law Court is a court of equity specially designed to effectuate the reasonable and orderly dissolution of a marriage.

But these types of situations foster disrespect with the judicial system and tends to perpetuate a cycle of further delay and conflict.

The consequence is often an unnecessary and wasteful loss of or injury to marital property value and a denial of effective justice to the either or both of the parties in a Family Law case.

*When the parties cannot get along, and their actions jeopardize marital property and/or business interests, a court-appointed Receiver may be the only viable remedy that the Family Law Court has to prevent waste, loss, or injury.*

## ***Consider the following scenarios which a divorcing couple may bring to the Family Law Court:***

- ❖ A jointly owned retail business which generates substantial income.
- ❖ Jointly-held minority interest(s) in private companies that are managed by one spouse but not the other.
- ❖ Jointly owned income real property managed by a third party aligned with one spouse but not the other.

These scenarios present the couple and the Family Law Court with the difficult task of deciding how to protect, preserve, manage, and then fairly divide the property or business or their shared ownership interest in the property or business.

If the couple is having serious conflicts during the proceedings over how to manage and divide such assets, a court-appointed Receiver may be the solution.

# PRO ET CONTRA (ADVANTAGES AND DISADVANTAGES)

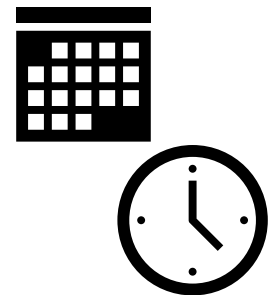
## PROS / ADVANTAGES:

- *Compliance*
- *Effectuation*
- *Justice*



## CONS / DISADVANTAGES:

- *Cost and Expense*
- *Expansion of Parties and Professionals*
- *Additional Delay*



## ***WHAT IS A RECEIVER?***

**A “Receiver” is an independent professional appointed by court order to take control of identified property which is the subject of the pending litigation.**

A trial court will appoint a disinterested person as a Receiver to act as the trial court’s independent, neutral fiduciary, under the court’s supervision, for the purpose of taking control of property pending the results of the litigation—  
notwithstanding a litigant’s constitutionally-protected property interests.

Hence, a Receiver is custodian of property committed to his or her charge which is the subject of litigation, as an officer or representative of the court, and is appointed on behalf of the parties with interests in the property, to take charge of that property, for the preservation and ultimate disposition of that property in accordance with the final order, judgment, or decree.

# WHAT IS A RECEIVER?

A court-appointed Receiver is often described as an ‘**arm of the Court.**’

This generally means the Receiver is an agent and officer of trial court that appointed the Receiver, and property in the Receiver’s hands is under the control and continuous supervision of that court.

*Shannon v. Superior Court* (1990) 217 Cal.App.3d 986

*Steinberg v. Goldstein* (1954) 129 Cal.App.2d 682

NOTE: *Morand v. Superior Court* (1974) 38 Cal.App.3d 347, 349 (noting that a Receiver appointed solely for post-judgment judgment enforcement and collection purposes “is not, except in a technical sense, an officer of or instrumentality of the trial court,” but represents and is an agent of the parties (i.e., judgment creditor and judgment debtor) and such other interested persons who may have caused the receivership to be extended to their claims).

# HOW DOES A RECEIVER GET APPOINTED?

How does a Receiver get appointed? Generally, this is no different than any other application for order or other law-and-motion proceeding (i.e., **Request for Order [RFO]**). Thus:

Either party to a Family Law Case may seek the appointment of a Receiver.  
*Armbrust v. Armbrust* (1946) 75 Cal.App.2d 272

- **PRACTICE TIP:** Normally a Receiver is appointed on regular noticed motion, and different procedural and evidentiary requirements exist for *ex parte* appointments. See, for example, Code of Civil Procedure (CCP) §556(b); California Rules of Court (CRC) Rules 3.1175 & 3.1176. Also check any application local court rules.

Importantly, the trial court may also appoint a Receiver *sua sponte*, on its own motion.  
*Venza v. Venza* (1949) 94 Cal.App.2d 878

- **PRACTICE TIP:** Appointment may be had by order made upon the parties' stipulation and/or consent. See, for example, *Venza*, at pp. 883-884 (noting that the parties had consented to appointment).



# HOW DOES A RECEIVER GET APPOINTED?

## DISCRETION:

The appointment of a Receiver is made in the discretion of the trial court.

*Barber v. Lewis & Kaufman, Inc.* (1954) 125 Cal.App.2d 95, 99

## ANALYSIS:

On an application for the appointment of a Receiver, the trial court is not required to make a determination on the ultimate issues present in the case before it. Instead, the trial court makes the sole determination of whether appointment of a Receiver, either to marshal property or operate an ongoing business enterprise, is warranted under the circumstances.

See *Ribero v. Callaway* (1948) 87 Cal.App.2d 135

# WHO CAN BE APPOINTED AS A RECEIVER?

All courts, including the Family Law Court, are generally required by equity or law to appoint someone as Receiver who has sufficient competence, qualifications, and experience to administer the receivership estate at issue.

- Unless the parties to the case consent in writing, no party or an attorney or a party or person interested in an action, or relative of any judge by consanguinity or affinity within the third degree, can be appointed a Receiver. CCP §566(a).
- Receiver is an agent of the court and not of any party, and is therefore neutral, acting for the benefit of all who may have an interest in the receivership property and, holding assets for the court and not for the parties themselves. CRC Rule 3.1179.
- California judicial officers are instructed that “each court should select attorneys, arbitrators, mediators, referees, masters, receivers, and other persons appointed by the court on the basis of merit” and that “[n]o court may discriminate in such selection on the basis of gender, race, ethnicity, disability, sexual orientation, or age.” California Judicial Administration Rules (JAR) Rule 10.611.

# RECEIVER OATH AND BOND



Before entering on the duties of a Receiver, the Receiver must be sworn to perform the duties faithfully and post a suitable undertaking. CCP §567.

- Oath is in writing.
- Undertaking (surety bond).

NOTE: See CCP §567(b). The amount of the surety bond to be posted in an amount determined by the judicial officer appointing the Receiver. The undertaking is to ensure the faithful performance and discharge of the duties of the Receiver in the action and obedience of the orders of the Court.

- Generally these are filed at or with the proposed Order appointing the Receiver.

## ***APPLICATION TO FAMILY LAW CASES:***

1. When it is appropriate to appoint a Receiver?
2. How does a Receiver benefit the Court and/or the parties to the Family Law Case?
3. What are the consequences of the Receiver's appointment?

## ***(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?***

Any judgment or order made or entered under the Family Code may be enforced by the appointment of a receiver.

Thus, for example, a Receiver may be appointed to:

- **ENFORCEMENT** – to enforce support orders.
- **POSSESSION, PROTECTION and/or PRESERVATION** – to take custody and control of marital property during or after divorce for purposes such as preservation, liquidation and division of the proceeds, or even to pay marital liabilities.

## ***(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?***

The general authority for appointment of a Receiver in a Family Law Case arises under Family Code §290. The statute reads:

### **Family Code §290. Methods of enforcement.**

**A judgment or order made or entered pursuant to this code may be enforced by the court by execution, the appointment of a receiver, or contempt, or by any other order as the court in its discretion determines from time to time to be necessary.**

Note that for these purposes the terms “judgment” and “order” include “decree.” See Family Code §100.

# **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

California's Receivership Law is generally set forth at CCP §§564-570. It is generally applicable to all actions in which a Receiver is to be appointed.

- **CCP §564(a) permits a trial court to appoint a Receiver in any pending case “in which the court is empowered by law to appoint a [R]eceiver.”**
- **CCP §564(b)(9) authorizes appointment of a Receiver “[i]n all other cases where necessary to preserve the property or rights of any party” to a pending court proceeding.**

*NOTE: The text of CCP §564 subdivision (b)(9) (former subdivision (b)(8)) was amended to delete explicit language authorizing appointment of a receiver “where receivers have heretofore been appointed by the usages of courts of equity,” without intending any substance change to the court’s authority. Official Comment of the California Law Revision Commission (2001) to CCP §564.*

The authority granted by §290 is “subject to the general provisions governing enforcement of judgments and orders and to any special provisions applicable to enforcement of a judgment or order.” Official Comment of the California Law Revision Commission (2003) to Family Code §290.

## **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

How does this generally apply to parties to a marital dissolution proceedings in Family Law Court?

**“The appointment of a receiver to liquidate joint interests in property and carry out the terms of a judgment is authorized by the Code of Civil Procedure, section 564. [Citations Omitted] If jointly-owned property is in danger of being lost or destroyed or misappropriated, the trial court may appoint a receiver to protect a party's interest in the property, and such an appointment will be upheld on appeal. [Citations Omitted]”**

*Rosenthal v. Rosenthal* (1966) 240 Cal.App.2d 927, 933



## **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

Remember that appointment of a Receiver is in the Court's discretion (supra).

However, the appointment of a Receiver in a Family Law Case is generally considered a “**drastic**” or “**extraordinary**” **remedy**.

**Because of the “drastic” nature of the receivership remedy, the trial 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.”**

*Golden State Glass Corp. v. Superior Court* (1939) 13 Cal.2d 384, 393.

# **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

*Takeba v. Superior Court* (1919) 43 Cal.App. 469:

**“The power vested by the codes in superior courts to appoint receivers in actions pending before them involves in its effect more than a mere remedy. Of course, the power is in a sense remedial, but in its exercise the substantive rights of the parties are necessarily dealt with. When exercised, it means the taking of property by the court from one who may turn out to be the rightful owner thereof, and transferring it, pro re nata, to an agent of the court vested with power to handle and dispose of it according as the court may direct for the purposes of the action in which such agent or receiver is appointed. There is no power vested in the courts more jealously guarded or safeguarded than this very power to appoint a receiver to take, for the court, the possession and control of the property of others, and this is because, as above suggested, the exercise of the power may mean the divesting the owner of his lawful right to remain in possession of his property. It is, therefore, obvious that, while the power to appoint a receiver is provisional and an ancillary remedy, its scope may go beyond that of a mere remedy and strike at the very substance of a person's property rights.”**

*Takeba*, at p. 475.

Although the *Takeba* case occurred before the current statutory authorities were completely enacted, the concerns expressed in the Court of Appeal's comments are valid and confirm the drastic and extraordinary nature of the remedy of receivership.

## **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

The *Rosenthal case* (supra) itself is an example of the extreme nature of the facts giving rise to the necessity for the appointment of a Receiver.

In *Rosenthal*, one spouse was a lawyer who acted consistently antagonistic throughout the case, often being involved in heated litigation with the other spouse as well as with various third parties, which led the Family Law Court to concluding that there was no option but to directly intervene in the management and control of the marital property with the appointment of a Receiver.

# **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

California often blazes its own trail in jurisprudence. How does this compare to other jurisdictions?

## **NEW YORK:**

*Nelson v. Nelson* (N.Y. 1984) 99 A.D.2d 917: Although appointment of a temporary receiver in connection with a marital dissolution case is an “extreme remedy that is not lightly granted,” if plaintiff satisfies New York’s statutory requirements, the plaintiff is entitled to such relief. Here, the trial court dealt with a divorcing couple who jointly-owned a valuable, ongoing business (in this case a successful restaurant), finding that the wife made a prima facie showing that her assets were in danger of dissipation by the husband’s sole management of the restaurant. The appointment of a Receiver to take possession and control of the restaurant was affirmed on appeal.

## **FLORIDA:**

*Ugarte v. Ugarte* (Fla. 1989) 553 So.2d 250: Again, although appointment of a temporary receiver is an extreme remedy, the trial court found during the course of a divorce proceeding that the husband had sole control over the means of the entire family’s income, persisted in diverting large sums of money using his control, which threatened to unfairly dissipate his wife's interest. The Court of Appeal approved the trial court’s appointment of a receiver an appropriate means to preserve the assets from the husband's misconduct and mismanagement until the assets were divided at the time of divorce.

# **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

## **COMMON EXAMPLES OF RECEIVERS APPOINTED FOR PURPOSES OF ENFORCEMENT OF SUPPORT ORDERS:**

Prototypical post-judgment receivership arises when assets are exempt from the enforcement of judgment or are otherwise difficult assets:

- Federal wages or benefits;
- Liquor licenses;
- Intellectual property;
- Hidden assets;
- Ongoing businesses; and
- Assets under the control of third parties.

*There are numerous advantages in appointing so-called 'post-judgment Receivers,' for instance the ability to act more quickly than a levying officer, the ability to take ancillary action such as securing data, records, and documents, and the ability to take possession of certain financial assets without the delays typically associated with levy or garnishment.*

# **(1) WHEN IS IT APPROPRIATE TO APPOINT A RECEIVER IN A FAMILY LAW CASE?**

COMMON EXAMPLES OF RECEIVERS APPOINTED FOR PURPOSES OF  
**POSSESSION, PROTECTION and/or PRESERVATION:**

*(taking possession of marital property during or after divorce for purposes such as preservation, liquidation and division of the proceeds, or even to pay marital liabilities)*

- Assets at risk of loss or injury; and
- Ongoing businesses and other assets under the control of one spouse but not another.

**Remember that parties to a Family Law case are often at the extremes of litigant behavior. It is not a surprise to find highly aggressive and demanding parties involved in the proceedings. There should also be no surprise that doing so can generate responsive behavior by the other litigant, which is often obstreperous, intransigent, or unusually secretive and uncooperative. Divorcing couples often don't get along, even when doing so is to their mutual advantage**

## ***(2) HOW DOES A RECEIVER BENEFIT THE COURT AND THE PARTIES TO A FAMILY LAW CASE?***

Generally, a Receiver is an officer of the Court subject to its continuing control. The Receiver has only those powers granted by statute (see CCP §568, *infra*), by the order of appointment, and by any subsequent court orders.

*Steinberg v. Goldstein* (1956) 145 Cal.App.2d 692

*Morand v. Superior Court* (1974) 38 Cal.App.3d 347

*In re Executive Life Ins. Co.* (1995) 32 Cal.App.4th 344

### **CCP §568. Powers of receivers**

**The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver; to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.**

## ***(2) HOW DOES A RECEIVER BENEFIT THE COURT AND THE PARTIES TO A FAMILY LAW CASE?***

- The court order appointing the Receiver should provide adequate powers and directions to the Receiver, because the Receiver has only those powers conferred by the court or pursuant to the statutes under which the Receiver was appointed. If it does not, then, after appointment, a Receiver may petition for additional authority or instructions as the need arises. Consequently, a Receiver may properly apply to the court which appointed the receiver for instruction and authority from time to time as the receiver may require—and is encouraged to do so.

*People v. Riverside University* (1973) 35 Cal.App.3d 572, 580

- Whenever in doubt, the Receiver should apply to the court for specific instructions. A court-appointed Receiver is a mere ‘hand of the Court,’ so it is eminently proper for a Receiver to apply to the court by which he was appointed for instruction and authority from time to time, as such instruction and/or authority may be needed.

*Free Gold Min. Co. v. Spiers* (1901) 135 Cal. 130, 131–132.



## ***(2) HOW DOES A RECEIVER BENEFIT THE COURT AND THE PARTIES TO A FAMILY LAW CASE?***

In addition to taking possession of property, Receivers often are empowered to sell the property, borrow money against the receivership property, complete construction of incomplete developments, resolve hazards and deficiencies, and otherwise act and exercise all of the characteristics of ownership.

- Of course, this is subject to Court oversight and approval.
- Most of these judicial determinations are made in the Court's discretion.

**So how does a Receiver benefit the Court and the parties to a Family Law Case?**

***Receivers obey and discharge their duties.***

### **(3) WHAT ARE SOME OF THE CONSEQUENCES OF THE RECEIVER'S APPOINTMENT?**

#### **Selling Property:**

CCP §568.5 provides that:

- Upon approval by the Court;
- A Receiver may **sell** real or personal property in the receivership estate; and
- The Receiver do so ***without*** *the involvement, consent, or approval of the parties who hold title.*

**PRACTICE TIP:** The sale of property in a receivership estate is one of the most powerful tools available to a Receiver, and correspondingly has detailed procedural and evidentiary requirements and safeguards.

### (3) WHAT ARE SOME OF THE CONSEQUENCES OF THE RECEIVER'S APPOINTMENT?

#### Borrow Funds:

With the authority of the Court, a Receiver may **borrow** funds necessary for the preservation and management of property and the administration of the receivership estate.

*Title Ins. & Trust Co. v. California Development Co.* (1915) 171 Cal. 227

NOTE: Despite the lack of a statutory grant of authority, Receivers may obtain “super-priority” status for refinancing loans. *City of Sierra Madre vs. SunTrust Mortgage, Inc.* (2019) 32 Cal.App.5th 648 (enabling the Receiver to remediate illegal conditions on a parcel of real property in the receivership estate, even though the new loan pushed the refinancing lender's lien into second place, i.e., ‘priming’) [overruling prior case law generally prohibiting such super-priority status]. Query whether this makes any sense at all for a Receivership established in a Family Law Case where the Receiver is managing only a single asset or a small class of properties or businesses.



### ***(3) WHAT ARE SOME OF THE CONSEQUENCES OF THE RECEIVER'S APPOINTMENT?***

#### **Employing Attorneys and Professionals:**

With the authority of the Court, a Receiver may employ an **attorney** and/or other professional advisors customary for the nature of the receivership.

CRC Rule 3.1180

**PRACTICE TIP:** It is generally advised to include authorization to employ any necessary attorneys, accountants, etc. in the Order appointing the Receiver, including names, firms, approved hourly and/or project rates, etc.



### (3) *WHAT ARE SOME OF THE CONSEQUENCES OF THE RECEIVER'S APPOINTMENT?*

#### Assume or Reject Executory Contacts:

With the authority of the Court, a Receiver may **assume or reject** executory contracts.

*H.D. Roosen Co. v. Pacific Radio Pub. Co.* (1932) 123 Cal.App. 525

**PRACTICE TIP:** This is a seldom used power. Under Common Law principles, Receivers generally have a reasonable time after appointment to either affirm and assume pre-receivership contracts or to reject those contracts. See *Sunflower Oil Co. v. Wilson* (1892) 142 U.S. 313. The consequences in doing so can be significant to the Receiver as well as to the parties and/or lienholders. Tread carefully and only with Court approval and full disclosure of the consequences.



### ***(3) WHAT ARE SOME OF THE CONSEQUENCES OF THE RECEIVER'S APPOINTMENT?***



#### **Selected Ongoing Duties and Obligations:**

**Inventory (CRC Rule 3.1181):** A receiver must, within 30 days after appointment, or within 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 the appointment. The receiver must promptly file a supplementary inventory of all subsequently obtained property.

**Reports and Accounts (CRC Rule 3.1182-3.1183):** Subject to the order and direction of the Court that appointed the Receiver, the receiver must provide interim reports on a monthly basis to the parties and, if requested, to nonparty lienholders. These reports must include:

- A narrative report of events;
- A financial report; and
- A statement of all fees paid to the receiver, employees, and professionals showing:
  - Itemized services; and
  - Itemized fee statements.

The monthly reports are not to be filed with the court unless the court so orders.

**NOTE:** A party may object to a Receiver's report. But, unless good cause is shown, objections to a Receiver's report and accounting must be made within 10 days of notice of the report and accounting. The objections must be specific and must be delivered to the Receiver and all parties entitled to service of the interim report and accounting. CRC Rule 3.1183(b).

**PRACTICE TIP:** Receiver must file a final report and account before the Court may grant discharge. CRC Rule 3.1184.

# ***ARE THERE REASONABLE ALTERNATIVE REMEDIES?***

## **PARTITION REFEREE**

Detailed statutory scheme set forth in CCP §§872.0101 et seq.

The “Partition Referee” is a person appointed by court order in connection with ***an action involving the partition and sale of co-owned real property.***

The Partition Referee is appointed ONLY post-judgment, after the trial court has issued an interlocutory judgment that determines the interests of the parties in the co-owned real property and orders its partition by and through sale or other approved transaction. CCP §872.720.

The trial court then appoints and supervises the Partition Referee in a manner similar to the administration of a receivership estate. For instance, the Partition Referee may seek further instructions from the Court regarding their duties, and, with court approval, may hire attorneys and other professionals.

**NOTE:** The usefulness of the Partition Referee is limited due to its restricted, post-judgment application in the context of co-owned real property.

# ARE THERE REASONABLE ALTERNATIVE REMEDIES?

## ELISOR

An “Elisor” is person appointed by the court to perform functions like the execution of a deed or document.

A court typically appoints a person as an Elisor to **sign** instruments **on behalf of a recalcitrant party** in order to effectuate its judgments or orders where the party refuses to execute such instruments.

*Blueberry Properties LLC v. Chow* (2014) 230 Cal.App.4th 1017

**To compel obedience to its judgments, orders, and process and to the orders of a judge out of court, in an action or proceeding pending therein.**

CCP §128(a)(4)

Note: The word is (*maybe*) pronounced: **eh - 'lī-zər**



*When the parties cannot get along, and their actions jeopardize marital property and/or business interests, a court-appointed Receiver may be the only viable remedy that the Family Law Court has to prevent waste, loss, or injury.*

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