

Receiverships: Texas

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A Q&A guide to receiverships in Texas. This Q&A addresses the process by which receiverships are generally administered in Texas, including the commencement and administration of the receiverships, the duties and actions of receivers, creditor claims, and the jurisdiction of the court. Answers to questions can be compared across a number of jurisdictions (see Receiverships: State Q&A Tool).

Commencing a Receivership

1. What are the applicable statutes for receiverships in your jurisdiction?

In Texas, the receivership statutes are relatively comprehensive and provide rules for:

- **General receiverships.** A court of competent jurisdiction may appoint a receiver:
 - in an action by a vendor to vacate a fraudulent purchase of property;
 - in an action by a creditor to subject any property or fund its claim;
 - in an action between partners or others jointly owning or interested in any property or fund;
 - in an action by a mortgagee for the foreclosure of the mortgage and sale of the mortgaged property;
 - for a corporation that is insolvent, in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights;
 - to rehabilitate a domestic or foreign entity (Tex. Bus. Orgs. Code Ann. §§ 11.404 and 11.409);
 - to liquidate a domestic or foreign entity (Tex. Bus. Orgs. Code Ann. §§ 11.405 and 11.409);
 - to preserve and protect marital property during a divorce proceeding (Tex. Fam. Code Ann. § 6.502);
 - over the assets of a missing person (Tex. Civ. Prac. & Rem. Code Ann. § 64.001(d));
 - to preserve mineral interest or leasehold interest under a mineral lease owned by a nonresident or absent defendant (Tex. Civ. Prac. & Rem. Code Ann. § 64.091);
 - to sell property incapable of division (Tex. R. Civ. P. 770);
 - over property in a municipality that is not in compliance with certain life, health, and safety ordinances (Tex. Loc. Gov't Code Ann. § 214.0031);
 - over property of a nonprofit housing organization that presents a life, health, or safety risk (Tex. Loc. Gov't Code Ann. § 214.0031); or
 - in any other case in which a receiver may be appointed under the rules of equity (Tex. Civ. Prac. & Rem. Code Ann. § 64.001(6)).
- **Turnover orders.** A judgment creditor is entitled to aid from a court of appropriate jurisdiction, including a justice court, using an injunction or other means to satisfy the judgment with the debtor's property, including the debtor's present or future property rights, provided that the property is not exempt from attachment, execution, or seizure for satisfying liabilities. The court may:
 - order that the judgment debtor turn over nonexempt property in its possession or subject its control, together with all documents or records related to the property, to a designated sheriff or constable for execution;
 - apply the property to satisfy the judgment; or
 - appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to satisfy the judgment.

(Tex. Civ. Prac. & Rem. Code Ann. §§ 31.002(a) to (h).)



- **Writ of sequestration.** A writ of sequestration is available to a plaintiff in a suit to:
 - obtain title or possession of personal property or fixtures or for foreclosure or enforcement of a mortgage, lien, or security interest on personal property or fixtures and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property is likely to conceal, dispose, ill-treat, waste, destroy, or remove the property from the county during the suit;
 - obtain title or possession of real property or for foreclosure or enforcement of a mortgage or lien on real property and a reasonable conclusion may be drawn that there is immediate danger that the defendant or the party in possession of the property is likely to use their possession to injure or ill-treat the property or waste or convert the property's timber, rents, fruits, or revenue;
 - obtain title or possession of property from which the plaintiff was ejected by force or violence; or
 - remove a cloud from the title of real property, foreclose a lien on real property, or partition real property where the plaintiff makes an oath that one or more of the defendants is a nonresident of Texas.

A writ of sequestration may be issued when the suit is initiated or at any time before final judgment (Tex. Civ. Prac. & Rem. Code Ann. §§ 62.001 to 62.002).

2. Please identify and describe the different types of receiverships available in your jurisdiction (for example, general receiver, special receiver, regulatory receiver, etc.) and their specific purposes. List any common law receiverships available in your jurisdiction.

In Texas, while not explicitly provided in the statutes, courts may appoint:

- General receivers, which are given broad, generalized powers over the debtor.
- Special or specific receivers, which are given powers over a specific piece of property, for example, a bank's collateral.
- A receiver to rehabilitate or liquidate a business entity.
- A receiver as a remedy for an actual or suspected breach of trust (Tex. Prop. Code § 114.008(5)).

(See Question 1.)

3. Generally, in which court must a receivership be commenced? Please explain for each type of receiver.

In Texas, a court of competent jurisdiction generally has authority to appoint all types of receivers. However, there are different levels of courts in Texas with varying jurisdictional limits. For example:

- **Constitutional county court.** Each county has a constitutional county court with original jurisdiction over suits where the amount in controversy is between \$200 and \$10,000. While these courts may appoint receivers, the \$10,000 jurisdictional limit makes these appointments impractical. However, not all constitutional county courts exercise judicial functions. In large counties, the county judge instead typically devotes their full attention to administering the county government as its chief executive.
- **County courts at law.** Certain counties have county courts at law in addition to constitutional county courts. County courts at law have jurisdiction over civil matters where the amount in controversy is between \$200 and \$200,000.
- **Probate courts.** Probate courts have authority over probate estates and may appoint receivers if the subject matter of the receivership is within the bounds of the court's authority (Tex. Estates Code § 32.001). In a county with a statutory probate court, the probate court has exclusive jurisdiction of all probate proceedings. There are 18 probate courts in Texas. In counties with a county court at law but no probate court, the county court at law hears probate matters. In counties without a probate court or county court at law, contested probate matters may be heard by an assigned statutory probate court judge or the district court.
- **Judicial district courts.** In Texas, these courts are referred to as general jurisdiction courts and have competent jurisdiction to appoint receivers for any matter where the amount in controversy exceeds \$500. There is no maximum limit to the amount in controversy that a district court may adjudicate. District courts also have original jurisdiction over divorce cases, juvenile cases, and cases involving title to land. District courts have concurrent jurisdiction with county courts, which means that a matter may properly be brought in a county court or a district court. In practice, district courts are most likely to be the court of competent jurisdiction appointing a receiver.

In a receivership involving real property, the receivership must be commenced in a court of competent jurisdiction in the county where the real property is located.

Appeals from county courts and district courts are made directly to the Texas Courts of Appeal. Civil appeals from the Texas Courts of Appeal are made to the Supreme Court of Texas.

4. Please identify who has the authority to seek appointment of a receiver in your jurisdiction.

In Texas, a party with a probable interest or a right to the property has standing to seek appointment of a receiver over that property (Tex. Civ. Prac. & Rem. Code § 62.001(b)). However, a petition seeking to appoint a receiver for a corporation, partnership, or individual may not be brought by that same corporation, partnership, or individual (Tex. Civ. Prac. & Rem. Code § 64.002(A)).

When determining whether the petitioning party has a right to appoint a receiver, courts evaluate whether the petitioner has a meritorious claim on the property, which may be established at a trial on the merits (see *Texas Consolidated Oils v. Hartwell*, 240 S.W.2d 324, 327 (Tex. Civ. App. 1951)). A probable interest exists by statute in actions between partners and in actions between joint owners of property (Tex. Civ. Prac. & Rem. Code § 64.001(a)(3)).

5. What circumstances must exist for a receiver to be appointed in your jurisdiction? Please address whether the company must be insolvent and what insolvency means in your jurisdiction.

Under Texas law, a receiver may be appointed at any time to protect and preserve property or funds that are in danger of being lost, removed, or materially injured (Tex. Civ. Prac. & Rem. Code §§ 64.001(b) and (c)).

In a foreclosure or other mortgage enforcement proceeding, the court may appoint a receiver for the mortgaged property if:

- It appears that the mortgaged property is in danger of being lost, removed, or materially injured.
- The condition of the mortgage has not been performed and the property is insufficient to discharge the mortgage debt.
- The property owner expressly agreed in the deed of trust to appointment of a receiver in the event of a default (see *Riverside Props. v. Teachers Ins. & Annuity Ass'n of Am.*, 590 S.W.2d 736, 738 (Tex. Civ. App. 1979)).

Insolvency is not a statutory requirement to appoint a receiver in Texas. A court of competent jurisdiction may appoint a receiver for a corporation that:

- Is insolvent.
- Is in imminent danger of insolvency.
- Is dissolved.
- Forfeited its corporate rights.

(Tex. Civ. Prac. & Rem. Code § 64.001(a)(5).)

Receivers are also typically appointed:

- At the request of a secured lender with a lien on real or personal property. The lender must only show that the property needs protection. While not required, a showing of waste, loss, fraud, or impairment strengthens the request for a receiver.
- In a business dispute between two or more partners or equity holders. In that case, a court of competent jurisdiction may choose to appoint a rehabilitative receiver to conserve the entity's business assets avoid damages to parties at interest (Tex. Bus. Orgs. Code § 11.402). A rehabilitative receiver is appropriate when a company cannot function because:
 - the entity is insolvent or in imminent danger of insolvency (including unable to pay its debts as they come due);
 - the entity's governing persons are deadlocked in managing the affairs, causing or threatening an irreparable injury to the entity;
 - management is carrying out the entity's affairs in illegal, oppressive, or fraudulent methods; or
 - the entity's property is being misapplied or wasted.
- In a for-profit corporation, the voting shareholders are deadlocked and have failed for at least two years to elect successors to governing persons the terms of which have expired or were set to expire on the election and qualification of successors (Tex. Bus. Orgs. Code § 11.404(1)(e)).

Texas district courts may order the liquidation of assets of a business entity in only if:

- The circumstances require liquidation to avoid damage to interested persons.
- There is compliance with all other requirements of the law.
- All other remedies at law, including appointing a rehabilitative receiver, are inadequate.

(Tex. Bus. Orgs. Code § 11.405(b).)

Provided the circumstances under Tex. Bus. Orgs. Code § 11.405(a) exist, a court with jurisdiction over the property or business of a domestic entity may appoint a liquidating receiver:

- When the Texas attorney general files an action to dissolve the entity and the court determines that liquidation of the entity's business should precede entry of a decree of dissolution.
- On an entity's application to have its liquidation continued under court supervision.
- If after 12 months of being in receivership, the court does not find that a feasible plan or remedy has been presented for the property or entity in receivership.
- On application of a claimant, if irreparable damage is likely to be caused to the unsecured creditors of the entity unless there is an immediate liquidation.
- For a nonprofit or cooperative business, on application of a member or director if the entity is no longer able to carry out its purposes.

(Tex. Bus. Orgs. Code § 11.405(a).)

A receiver typically cannot be appointed without notice and hearing. However, in exceptional and extreme circumstances, a court may appoint a receiver on an ex parte basis (*Krumnow v. Krumnow*, 174 S.W.3d 820, 828-29 (Tex. App. 2005) (citing *Solomon v. Matthews*, 238 S.W. 307 (Tex. Civ. App. 1922))).

6. What is required to file a receivership in your jurisdiction? Please include information on:

- Documents, including any official forms and a description of the operative document.
- Filing requirements (including what needs to be filed and where, timing, electronic versus paper, and any fees that must be filed).

Documents

Texas does not have official forms specific to appointing a receiver. The party seeking appointment of a receiver must file a petition to commence a cause of action describing one of the causes of action in a manner sufficient to support appointment of a receiver. Receivership is typically an ancillary proceeding that is a subpart part of a civil matter.

Corporate actions or approval are not required for seeking appointment of a receiver.

When seeking to appoint a receiver, the party making the request must file:

- A petition and application for the appointment of a receiver. The burden of proof is on the plaintiff to show the existence of circumstances justifying appointment of a receiver. The court may receive a verified petition and oral testimony as evidence (see *Ferguson v. First Nat'l Bank*, 218 S.W.2d 1019, 1020 (Tex. Civ. App. 1949)).
- A bond in an amount specified by the court. The amount of the applicant's bond should be sufficient to cover all probable damages and costs (Tex. R. Civ. P. 695a). The applicant's bond is separate from the required receiver's bond and, like the receiver's bond, may be substantial depending on the facts of the case.
- A proposed receivership order.

A typical filing fee must also accompany the petition.

In certain limited circumstances, a receiver may be appointed on an ex parte basis.

A verified petition to appoint a receiver is sufficient to support a receivership without further evidence unless an adverse party counters the petition by filing a verified answer. An adverse party that files an answer to the petition should include sworn testimony refuting the need for a receivership. Filing a sworn answer shifts the burden of proof to the plaintiff to establish the allegations of the petition by a preponderance of the evidence.

After all documents are filed with the court, the court must hold a hearing on the petition for receivership.

Notice

If the application for receivership relates to property that is fixed and immovable, the court must schedule a hearing and serve notice on the adverse party at least three days before the hearing (Tex. R. Civ. P. 695). Failure to give notice makes the appointment of the receiver erroneous but not void (*Johnson v. Barnwell Prod. Co.*, 391 S.W.2d 776, 785 (Tex. Civ. App. 1965)).

However, in extraordinary circumstances, a court may appoint a receiver on an ex parte basis. When seeking an ex parte appointment, the petitioning plaintiff must clearly allege facts evidencing that the plaintiff is likely to suffer a material injury by a delay of providing notice (*Morris v. N. Fort Worth State Bank*, 300 S.W.2d 314, 315 (Tex. Civ. App. 1957)).

Examples of when a court may appoint an ex parte receiver, include:

- When the defendant is beyond the jurisdiction of the court.
- When the defendant's whereabouts are unknown.
- When notice jeopardizes delivery of the property.
- Facts that credibly suggest that removal of property from the jurisdiction of the court is imminent.
- When property is perishable.

In practice, the courts exercise extreme caution before appointing a receiver ex parte.

Selecting a Receiver

7. Please explain how a receiver is selected in your jurisdiction and whether there are any statutory requirements or qualifications to be appointed as receiver.

In Texas, the general receivership statutes require that a receiver must:

- Be a US citizen and a qualified voter in Texas at the time of appointment.
- Maintain actual residence in Texas during the receivership

(Tex. Civ. Prac. & Rem. Code §§ 64.021(a)(1) and (c).)

The receiver may not be:

- A party interested in the action.
- An attorney for a party.
- A person interested in the action.

(Tex. Civ. Prac. & Rem. Code § 64.021(a)(1).)

A receiver for a business or assets of a business must:

- Be a citizen of the US or an entity authorized to act as a receiver (Tex. Bus. Orgs. Code § 11.406(a).)
- If a foreign entity, be registered to transact business in Texas (Tex. Bus. Orgs. Code § 11.406(b).)

The proposed receiver must execute an oath to faithfully discharge its duties and follow the court's orders (Tex. Civ. Prac. & Rem. Code § 64.022; see Duties and Actions of the Receiver).

8. Please explain what is required to obtain court approval of a selected receiver in your jurisdiction.

In Texas, the party seeking appointment of a receiver typically selects and recommends a receiver as it deems appropriate. However, any party in the actions may make a nomination. The requesting party often attaches the receiver's qualifications to the verified petition.

Before assuming the duties as receiver, the receiver must post a bond and sign an oath of receiver. The amount of the bond must be:

- Included in the receiver's order of appointment.
- Conditioned on the receiver faithfully discharging its duties and obeying the court's orders.

(Tex. Civ. Prac. & Rem. Code §§ 64.022 and 64.023.)

After the court approves the bond and the receiver makes the oath, the applicant must also file a bond that is approved by the clerk, payable to the defendant in the amount specified by the court. The amount of the applicant's bond should be sufficient to cover all probable damages and costs (Tex. R. Civ. P. 695a; see Question 11).

Qualification Criteria

In determining whether a proposed receiver is qualified to serve as receiver and as an officer of the court, the discretion lies with the court.

The proposed receiver must execute an oath to faithfully discharge the receiver's duties and follow the court's orders (Tex. Civ. Prac. & Rem. Code § 64.022).

Duties and Actions of the Receiver

9. Please identify and describe the main statutory duties and responsibilities for each type of receiver, as applicable, in your jurisdiction (for example, providing notice to creditors, holding meetings of creditors, etc.).

In Texas, the receiver must execute an oath to faithfully discharge its duties and follow the court's orders (Tex. Civ. Prac. & Rem. Code § 64.022). The general powers and duties of a receiver include:

- Taking charge and keeping possession of the property.
- Collecting and receiving rents.
- Collecting and compromising demands.
- Making transfers.

- Performing other acts regarding the property as authorized by the court in the order appointing the receiver.

(Tex. Civ. Prac. & Rem. Code § 64.031.)

The court may also direct a receiver to continue operation of a business.

In certain circumstances, the court may appoint a receiver to:

- Rehabilitate a domestic entity.
- Liquidate a domestic entity.

(Tex. Bus. Orgs. Code §§ 11.404 and 11.405.)

After appointment, a receiver must provide the appointing court with an inventory of the property it received (Tex. Civ. Prac. & Rem. Code § 64.032). If a person in possession of receivership property fails to turn property over to the receiver, the receiver typically brings an action against the party in possession of the property, including a trespass to try title or forcible detainer action.

Subject to orders of the appointing court, the receiver may sell receivership property. However, the receiver may only sell interests in property that the owner had at the time of appointment. A sale of receivership assets is not final until confirmation by the court.

The receiver is entitled to compensation for their services and for attorney's fees, paid from the proceeds of receivership property. The receiver's fee and other administrative expenses are paid from funds on hand in the receivership and then against receivership property or the proceeds from the sale of property (Tex. Civ. Prac. & Rem. Code § 64.051).

10. In addition to statutory duties, please summarize any common law duties imposed on a receiver in your jurisdiction.

There are no common law duties imposed on a receiver in Texas. Receiverships in Texas are instead flexible and the order appointing the receiver may specify additional powers and duties of the receiver.

11. Please explain if the receiver must post a bond in your jurisdiction and take any actions before beginning its duties.

In Texas, before assuming the duties as receiver, the receiver must post a bond and sign an oath of receiver. The amount of the bond must be:

- Included in the receiver's order of appointment.
- Conditioned on the receiver faithfully discharging its duties and obeying the court's orders.

(Tex. Civ. Prac. & Rem. Code §§ 64.022 and 64.023.)

After the court approves the bond and the receiver makes the oath, the applicant must also file a bond that is approved by the clerk, payable to the defendant in the amount specified by the court. The amount of the applicant's bond should be sufficient to cover all probable damages and costs. Filing a receiver's bond does not satisfy the requirement to file an applicant's bond (Tex. R. Civ. P. 695a).

A receiver for a business entity is also required to give a bond in the amount fixed by the court (Tex. Bus. Orgs. Code § 11.406(a)(2)).

12. Under what circumstances can a receiver be removed in your jurisdiction?

In Texas, a receiver is an officer and extension of the appointing court and acts under the direction and supervision of the court. If a receiver acts without authority it may assume the risk of liability for incurred costs and expenses.

A court may alter its order appointing a receiver and terminate an appointed receiver. Termination of an order appointing a receiver is appropriate, for example, immediately after the condition that necessitated appointment of the receiver is remedied (*Ritchie v. Rupe*, 443 S.W.3d 856, 867 (Tex. 2014)). After termination of a receiver, the court may determine, in its discretion, to delay the receivership process until appointment of a new receiver over the receivership property.

13. Please explain the process for terminating or removing a receiver, including all relevant notice requirements.

In Texas, termination or discharge of a receiver may be made on the motion of a party in interest at any time.

A motion to terminate a receivership is appropriate when:

- There is no longer a present need for the receivership to exist.
- A change in circumstances alleviates the need for the receivership to continue.

There is no statutory provision detailing the process for terminating or removing a receiver. The duration of a

receivership and its termination are within the sound discretion of the trial court (*Giles v. Yarborough*, 224 S.W.2d 720, 22 (Tex. Civ. App. 1949)). When seeking removal, the moving party typically should provide notice to other interested parties of the application for removal or discharge of a receiver. However, a receiver remains in place until the appointing court orders the receiver's dismissal.

After granting a motion to terminate, the receiver must return receivership property to persons entitled to that property. If necessary, the court may delay termination until it qualifies the persons entitled to receive the property.

A receivership may also terminate when the court's authority to continue the receivership ends. For example, a receivership over a corporation is typically limited to three years and cannot be extended for more than eight years (Tex. Civ. Prac. & Rem. Code § 64.072(a) and (d)).

Administration of the Receivership

14. What are the key processes during the receivership in your jurisdiction? Please describe:

- Financing, including the ability of the receiver to obtain financing.
- Assets sales, including whether sales are held at private or public auction and the circumstances for each, as well as notice requirements.
- Avoidance powers, including the specific avoidance powers given to a receiver in your jurisdiction and the relevant time period for recovering preferences.
- Assumption or rejection of executory contracts, including what actions a receiver must take to assume or reject a contract in your jurisdiction.

In Texas, there are no specific statutory requirements for sales, avoidance powers, or the assumption and rejection of executory contracts. If the receiver requires this type of relief, the receiver or other party seeking the relief typically files a motion requesting the court approve the relief.

The general powers and duties of a receiver of a Texas receivership include:

- Taking charge and keeping possession of receivership property.
- Collecting and receiving rents.
- Collecting and compromising demands.

- Making transfers.
- Performing other acts regarding the property as authorized by the court in the order appointing the receiver.

(Tex. Civ. Prac. & Rem. Code § 64.031.)

The court may also direct a receiver to continue operation of a business.

After appointment, a receiver must also provide the appointing court with an inventory of the property it received (Tex. Civ. Prac. & Rem. Code § 64.032).

Use, Sale, or Transfer of Property

In Texas, there is no statute specifically stating that a receiver may sell assets. However, a sale in a general receivership:

- May be conducted in private or at a public auction.
- Requires oversight from the court and is not final until the court approves the sale (see *Baumgarten v. Frost*, 143 Tex. 533, 186 S.W.2d 982, 986 (1945)).

The court controls the receivership and therefore has the authority to prescribe the terms and conditions of any sale of property, including any required notice. The court has wide discretion in making these determinations and the receiver must obey the terms set by court order when selling the assets.

The process for selling receivership assets from beginning to end is typically as follows:

- The receiver or a party to the receivership files a motion for an order to sell property.
- The court issues an order approving the sale of property (without hearing if the sale is uncontested). In cases where there is only one bidder, the party conducting the sale may make a representation to the court seeking approval of the sale. If there is more than one buyer, the party conducting the sale typically proposes a procedure for the sale to be approved.
- The receiver markets the property and collects bids from potential purchasers.
- The receiver reports its marketing efforts to the court and may accept the highest offer without notice to parties or court approval. The receiver is not obligated to entertain late bids.
- The receiver provides notice of the sale to all parties and requests that the court hold a hearing.

- The court holds a hearing on the terms of the proposed sale. Parties may appear and object to the proposed sale at the hearing.
- The court approves the sale and:
 - resolves or overrules any objections;
 - confirms that the sale complied with the original sale order;
 - orders that the property is conveyed to the purchaser and the proceeds of the sale are distributed;
 - hears any claims to the proceeds of the sale
- Sale proceeds are distributed after payment of customary and reasonable expenses and fees related to the sale (see Question 17).

Avoidance Powers

There is no statute in Texas providing that a receiver may exercise any avoidance powers in a receivership. The receiver's ability to exercise any avoidance powers, including pursuing preferences or fraudulent conveyances, typically is governed by the order appointing the receiver or another related order entered by the court. Receivers also often have the authority to file suit to avoid and recover fraudulent transfers under the Texas Uniform Fraudulent Transfer Act (Tex. Bus. & Comm. Code § 24).

Rejection or Assumption of Unexpired Leases or Executory Contracts

There is no statute in Texas providing that a receiver may assume or reject a debtor's executory contracts or leases. The receiver's ability to assume or reject executory contracts typically is governed by the order appointing the receiver or another related order entered by the court.

Creditor Claims

15. What is the procedure for notifying creditors of their rights to file claims in your jurisdiction? Please explain all notice requirements, including proof of claim requirements and deadlines. List all applicable statutes.

Notice

In Texas, there are no statutory requirements setting out the procedure for notifying creditors of their rights to file

claims and the deadline for filing claims. The procedure is instead flexible, depends on each case, and is established by the court.

The receiver or party that obtained the receiver's appointment typically provides actual notice of the receivership to interested parties by delivering or mailing a copy of the receivership order. If special circumstances exist, the receiver should seek court approval of its contemplated notice procedures

Claims Process

In Texas, there are no statutory schemes for determining the validity and priority of claims in an equitable receivership. Claims may be submitted directly to the receiver or filed with the court. The receiver has broad discretion regarding treatment of claims. The receiver may:

- Object to claims in their entirety.
- Dispute the amount or asserted priority of claims.
- Determine not to raise any objection to a claim.

Texas statutes do provide a priority scheme for application of receivership funds. The receiver must apply the earnings from receivership property to pay claims in the following priority:

- The court costs of the proceeding or action.
- All employee wages.
- Any debts owed for materials and supplies purchased by the receiver for improving the receivership property.
- Any debts owed for improvements to the property made during the receivership.
- All claims and accounts against the receiver for:
 - contracts made by the receiver;
 - personal injury claims;
 - livestock claims accruing during the receivership; and
 - judgments rendered against the receiver for personal injuries and for livestock killed.
- Judgments recovered in suits brought before appointment of the receiver.

(Tex. Civ. Prac. & Rem. Code § 64.051; see Question 17.)

Texas receivership law does not discuss governmental and taxation claims. However, in practice, tax claims are generally given priority over other creditor claims (see *Finger Contract Supply Co. v. Republic Nat'l Bank*, 412 S.W.2d 79, 83 (Tex. Civ. App. 1967)).

16. Please explain the process for determining allowance and disallowance of claims in your jurisdiction, including the power and authority of the court regarding the process.

The Texas Statutes do not contain any statutory requirements or procedure for allowing or disallowing claims in a receivership. The receiver typically determines whether a claim should be allowed or disallowed and seeks approval from the court.

17. Please explain the priority scheme for the payment of creditors' claims in your jurisdiction and the applicable statutes.

The Texas statutes provide for payment of costs and claims in the following priority:

- The court costs of the proceeding or action.
- All employee wages.
- Any debts owed for materials and supplies purchased by the receiver for improving the receivership property.
- Any debts owed for improvements to the property made during the receivership.
- All claims and accounts against the receiver for:
 - contracts made by the receiver;
 - personal injury claims;
 - livestock claims accruing during the receivership; and
 - judgments rendered against the receiver for personal injuries and for livestock killed.
- Judgments recovered in suits brought before appointment of the receiver.

(See Tex. Civ. Prac. & Rem. Code § 64.051.)

Compensation of Receiver and Professionals

18. Please explain how receivers are compensated in your jurisdiction, including:

- Whether there is a statutory or state law threshold compensation fee for receiver.
- Whether court approval is required for compensation.
- Whether parties must receive notice.

In Texas, the costs of administering the receivership include the fees and expenses the receiver incurs after entry of the appointment order. A receiver's fees and expenses may include:

- Operating costs.
- Preservation costs.
- Contracts or obligations undertaken by the receiver.
- Personal expenses, where appropriate.

A receiver may present an interim fee application. The receiver should also file a final fee application with supporting evidence of the reasonable and customary nature of the fees owed (see *Hill v. Hill*, 460 S.W.3d 751, 756 (Tex. App. 2015)).

Compensation of the receiver's fees and its professionals comes from the proceeds of receivership property. The amount of the receiver's fee is determined by the value of services rendered (*Bergeron v. Sessions*, 561 S.W.2d 551, 553 (Tex. Civ. App. 1977)). For example, the following factors are considered:

- The nature, extent, and value of the receivership estate.
- The complexity and difficulty of the work.
- The time spent.
- The knowledge, experience, skill, and labor required from the receiver
- The diligence and completeness of the tasks performed.
- The results achieved.

(See *Bergeron*, 561 S.W.2d at 554-55.)

The court must approve the receiver's compensation and cannot fully award the fees until the receiver submits a final accounting and is discharged from its duties (*Hodges v. Peden*, 634 S.W.2d 8, 10 (Tex. Civ. App. 1982) (citing *Bergeron*, 561 S.W.2d at 553 (Tex. Civ. App. 1977))). In Texas receiverships, "a court should cautiously avoid excessive or improper fee allowances ...[s]ufficient fees should be allowed to induce competent persons to serve as receiver, attorney or accountant; however, receiverships should also be administered as economically as possible, and fees for services performed by these court officers should be moderate rather than generous" (*Bergeron*, 561 S.W.2d at 555).

In some instances, the receiver may also serve as their own attorney. In that instance, the receiver acting as the receiver's own attorney must segregate the value of their skills as a receiver and the value of their services as attorney for the receiver (see *Hodges*, 634 S.W.2d at 11).

Texas law does not address whether parties must receive notice of the terms and payment of compensation.

19. What professionals are receivers permitted to retain in your jurisdiction? Please explain how a receiver's professionals are compensated.

The Texas statutes do not explicitly provide for the retention of professionals by a receiver. However, the order appointing the receiver typically authorizes receivers to retain professionals and contains the procedures regarding compensation of those professionals. The professionals are then hired without further court approval.

Closing the Receivership

20. What is the process for closing a receivership proceeding in your jurisdiction? Where a court order is required, please explain the key provisions of an order closing the case.

In Texas, when the receiver completes administration of the receivership estate or its duties regarding the receivership, the receiver or the party that sought the appointment of the receiver must file a motion with the court requesting termination of the receivership and discharging the receiver.

An orderly termination and discharge of a receiver includes:

- A final accounting of the receivership estate prepared by the receiver and submitted to the court.
- A determination of the receiver's fees and an order directing payment of the fees.
- Restoring any remaining receivership property to the owner of the property.
- Entry of an order discharging the receiver.

21. Is there a process in your jurisdiction for dissolving the receive company after the receivership concludes?

In Texas, there is a limited statutory process for dissolving a debtor entity after the receivership concludes. At the conclusion of the receivership, typically:

- The attorney general may choose to file an action to dissolve the entity. When this occurs, the court may also determine to appoint a liquidating receiver. In other circumstances, Texas law permits appointment of a liquidating receiver to liquidate an entity's assets but does not specifically provide for dissolution of the entity in receivership (Tex. Bus. Orgs. Code § 11.405)
- The debtor's officers or directors may file articles of dissolution with the Texas Secretary of State in the ordinary course.

Jurisdiction and Power of the Court

22. What statutes, if any, confer powers on the court relating to the receivership, receiver, and creditors in your jurisdiction? Please explain those powers.

The Texas statutes provides that a court has the power to appoint a general receiver (Tex. Civ. Prac. & Rem. Code § 64.001). Pending any hearing on a receiver's appointment, the court may restrain an adverse party from removing, secreting, or disposing of the property.

After appointing a receiver, the court:

- Has exclusive jurisdiction over the assets placed in receivership.
- Determines the rights of the parties in the debtor's assets the distribution of the proceeds.

The court's procedures regarding a general receivership are detailed Tex. Civ. Prac. & Rem. Code § 64 and supplemented by the Texas Rules of Civil Procedure.

The court

(See Question 3 and Question 5.)

23. What responsibilities does the clerk of court in your jurisdiction have in relation to maintaining the records of the receivership?

In Texas, an applicant seeking the appointment of a receiver must post a bond with the clerk of court in an amount determined by the court (Tex. R. Civ. P. 695a). The appointed receiver must also post a bond with the clerk in an amount determined by the court conditioned on receiver faithfully discharging its duties and following the court's orders (Tex. Civ. Prac. & Rem. Code § 64.022; see Question 11).

Bankruptcy Considerations

24. May a receiver commence a bankruptcy proceeding in your jurisdiction?

In Texas, there is no statutory prohibition on a receiver's ability to file a bankruptcy case. However, a receiver's ability to file a bankruptcy case is directly derived from the order of appointment. If the order of appointment does not specifically grant the receiver the authority to file a bankruptcy proceeding, it therefore is possible that the receiver cannot take that action.

If an entity or an individual in receivership files for bankruptcy, the receivership does not terminate but the rights and powers of the receiver may be affected by the bankruptcy and the bankruptcy court's jurisdiction (§§ 362, 542, 543, Bankruptcy Code).

25. If an involuntary petition is filed during the course of the receivership in your jurisdiction, what action, if any, must the receiver take?

An involuntary bankruptcy case generally may be filed by one or more creditors holding at least \$16,750 in non-contingent claims that are not subject to a bona fide dispute if the petitioning creditors either:

- File their petition within 120 days after the receiver is appointed.
- Can show that the debtor generally is not paying its debts as they come due.

(§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process.](#))

An order appointing a receiver does not operate as a stay to the commencement of a bankruptcy case under federal bankruptcy laws. When an involuntary petition is filed after a receiver has been appointed under Texas law, the debtor's property becomes the jurisdiction of the bankruptcy court and the receiver is considered a custodian (§ 543, Bankruptcy Code). At that time:

- The receiver must preserve and protect the assets of the receivership estate (§ 543(a), Bankruptcy Code).
- Unless otherwise ordered by the bankruptcy court, the receiver must turn over property of the receivership estate to the bankruptcy trustee (§ 543(b), Bankruptcy Code).
- The bankruptcy court may permit the receiver to continue to administer the debtor's assets if appointed or in

possession of the assets more than 120 days before the bankruptcy unless the assets must be returned to prevent fraud or injustice (§ 543(d), Bankruptcy Code). However, even if the receiver is appointed less than 120 days before bankruptcy, the bankruptcy court may exercise discretion in rare cases and allow the receiver instead of the bankruptcy trustee to administer the assets:

- if is in the best interest of the creditors; and
- if the debtor is solvent, it is the best interest of equity holders.

(§ 543(d), Bankruptcy Code.)

26. May a receiver challenge an involuntary bankruptcy proceeding in your jurisdiction? Please explain.

In Texas, there is no specific statutory authority giving receivers authority to object to an involuntary bankruptcy petition. However, the receiver may request that the bankruptcy court:

- Dismiss an involuntary bankruptcy proceeding on certain circumstances, including the consent of the petitioner and the debtor (§ 303(j), Bankruptcy Code).
- Dismiss or abstain from hearing a bankruptcy case if it is in the best interest of creditors depending on the facts and circumstances of the case and the length of time that a receiver has been in place (§ 305(a)(1), Bankruptcy Code).
- Excuse the receiver from compliance under the turnover requirements of section 543 of the Bankruptcy Code if the receivership has been in effect for more than 120 days from the petition date (§ 543(d)(2), Bankruptcy Code).

Other Topics

27. Are there any statutes or case law in your jurisdiction that would prevent a business directly engaged in cannabis business (i.e. cultivators, dispensaries), or a business that provides ancillary services to a cannabis business (i.e. commercial landlords), from being placed into a receivership? If yes, please list and explain the statutes.

Cannabis is not legal in Texas for recreational use and, as of the date of this Q&A, there have not been any cases where a cannabis business was placed into receivership.

Receiverships: Texas

Texas recently expanded the permitted legal use of certain cannabis products on a limited basis to individuals with specific medical conditions. Texas law also allows physicians to prescribe low tetrahydrocannabinols for medical purposes (Tex. Health & Safety Code §§ 487.001 to 487.256).

28. If the receivership statutes in your jurisdiction are unique in aspects not covered by the questions in this Q&A, please state so here.

Texas law provides significant flexibility when seeking relief in a general receivership proceeding. The general

Texas law governing receiverships is Tex. Civ. Prac. & Rem. Code § 64.001 to 64.004, but it is limited to general receiverships. Receiverships for business entities are governed by additional provisions in the Texas Business Organizations Code (Tex. Bus. Orgs. Code Ann §§ 11.401 to 11.414).

A receivership for a religious congregation, an insurer, a family or marriage dissolution, and a mineral interest are further governed by other statutes (see Tex. Civ. Prac. & Rem. Code §§ 126.001 to 126.013 (religious congregation receivership); Tex. Ins. Code §§ 443.001 to 443.402 (insurer receivership); Tex. Fam. Code. §§ 6.502(5), 6.709(3); Tex. Civ. Prac. & Rem. Code §§ 64.091, 64.092 (mineral interest receivership)).

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