

Receiverships: Minnesota

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A Q&A guide to receiverships in Minnesota. This Q&A addresses the process by which receiverships are generally administered in Minnesota, 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?

The Minnesota receivership statute is codified in Chapter 576 of the Minnesota Statutes. Before 2012, Minnesota receivership law was scattered between statutes, rules, case-law, and practice. In 2012, the Minnesota legislature revised the statutes to consolidate the law into one chapter and provide a clear and consistent framework for receivership proceedings in Minnesota. The consolidated chapter consists of the following sections:

- Definitions (Minn. Stat. Ann. § 576.21).
- Applicability of Chapter and of Common Law (Minn. Stat. Ann. § 576.22).
- Powers of the Court (Minn. Stat. Ann. § 576.23).
- Types of Receiverships (Minn. Stat. Ann. § 576.24).
- Appointment of Receivers; Receivership Not a Trust (Minn. Stat. Ann. § 576.25).
- Eligibility of Receiver (Minn. Stat. Ann. § 576.26).
- Bond (Minn. Stat. Ann. § 576.27).
- Immunity; Discovery from Receiver (Minn. Stat. Ann. § 576.28).
- Powers and Duties of Receivers; Generally (Minn. Stat. Ann. § 576.29).
- Receiver as Lien Creditor; Real Property Recording; Subsequent Sales of Real Property (Minn. Stat. Ann. § 576.30).
- Duties of Respondent (Minn. Stat. Ann. § 576.31).
- Employment and Compensation of Professionals (Minn. Stat. Ann. § 576.32).
- Schedules of Property and Claims (Minn. Stat. Ann. § 576.33).
- Notice (Minn. Stat. Ann. § 576.34).
- Notices, Motions, and Orders (Minn. Stat. Ann. § 576.35).
- Records; Interim Reports (Minn. Stat. Ann. § 576.36).
- Removal of Receivers (Minn. Stat. Ann. § 576.37).
- Termination of Receiverships; Final Report (Minn. Stat. Ann. § 576.38).
- Actions by or Against Receiver or Relating to Receivership Property (Minn. Stat. Ann. § 576.39).
- Turnover of Property (Minn. Stat. Ann. § 576.40).
- Ancillary Receiverships (Minn. Stat. Ann. § 576.41).
- Stays (Minn. Stat. Ann. § 576.42).
- Utility Service (Minn. Stat. Ann. § 576.43).
- Receivership Financing (Minn. Stat. Ann. § 576.44).
- Executory Contracts (Minn. Stat. Ann. § 576.45).
- Sales Free and Clear of Lien in General Receiverships (Minn. Stat. Ann. § 576.46).
- Abandonment of Property (Minn. Stat. Ann. § 576.47).
- Liens Against After-Acquired Property (Minn. Stat. Ann. § 576.48).



- Claims Process (Minn. Stat. Ann. § 576.49).
- Objection to and Allowance of Claims (Minn. Stat. Ann. § 576.50).
- Priority of Claims (Minn. Stat. Ann. § 576.51).
- Interest on Unsecured Claims (Minn. Stat. Ann. § 576.52).
- Distributions (Minn. Stat. Ann. § 576.53).

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 Minnesota, the two primary types of receiverships are:

- **General receiverships.** A general receivership is “a receivership over all or substantially all of the nonexempt property of a respondent for the purpose of liquidation and distribution to creditors and other parties in interest” (Minn. Stat. Ann. § 576.21(h)). This includes a receivership resulting from involuntary or court-supervised voluntary dissolution of a business organization (see Minn. Stat. Ann. §§ 302A.753, 308A.945, 308B.935, 317A.753).
- **Limited receiverships.** A limited receivership is defined as “a receivership other than a general receivership” (Minn. Stat. Ann. § 576.21(k)). A limited receivership is the default type of receivership. For example, if the order appointing the receiver does not state the type of receivership, the receivership is considered a limited receivership unless and until the court later enters an order designating the receivership as general. At any time, the court may convert a limited receivership to a general receivership and vice versa. Any receivership based on the following actions is considered a limited receivership:
 - the enforcement of an assignment of rents or leases; and
 - the foreclosure of a mortgage lien, judgment lien, mechanic’s lien, or other lien where the respondent or any holder of a lien holds a statutory right of redemption.(Minn. Stat. Ann. § 576.24.)

A receiver in Minnesota therefore may be appointed in several situations (see Question 5).

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

A receivership may be commenced in the district court of any county in Minnesota. There is no specialty court for receiverships; the district courts are courts of general jurisdiction. The district court exercises jurisdiction over the property of the receivership, which makes it a quasi in rem proceeding (see *Republic Bank of Chicago v. Lighthouse Mgmt. Grp., Inc.*, 829 F. Supp. 2d 766, 774 (D. Minn. 2010)).

A party may also voluntarily submit itself to the court’s jurisdiction by filing a complaint, filing a proof of claim, or otherwise appearing in the matter (see *Igor v. Chernin*, 540 N.W.2d 913, 914 (Minn. Ct. App. 1995) (stating that a party may “submit to jurisdiction by taking ‘some affirmative step invoking the power of the court or implicitly recognizing its jurisdiction’”) (quoting *Peterson v. Eishen*, 512 N.W.2d 338, 340 (Minn. 1994))).

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

There are no statutory guidelines or strict provisions in Minnesota restricting a person or entity’s ability to seek appointment of a receiver. However, courts have held that any party with at least a colorable claim to the property in question may file a motion to appoint a receiver (see *Red River Potato v. Bernardy*, 148 N.W. 449, 450 (Minn. 1914)). These motions are typically filed by creditors, but they may also be filed by a shareholder or a member of the debtor company.

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.

In Minnesota, the grounds for appointment of a receiver depend on the time of appointment and the circumstances surrounding the proceedings:

- **Before judgment.** A limited receiver may be appointed before judgment to protect any party to an action demonstrating that:
 - the party has an apparent right to certain property;
 - the property is in the possession of an adverse party; and

- the property or its rents and profits are in danger of loss or material impairment.

(Minn. Stat. Ann. § 576.25 subd. 2.)

- **After judgment.** A limited receiver or a general receiver may be appointed in or after a judgment to:

- carry the judgment into effect;
- preserve property pending an appeal; or
- satisfy an execution when the judgment debtor refuses to apply the property and the execution has been returned unsatisfied.

(Minn. Stat. Ann. § 576.25 subd. 3.)

Mortgage Foreclosure

When foreclosing on a mortgage, the Minnesota's receivership statute contains two grounds where a mortgage lender may seek the appointment of a receiver;

- A limited receiver must be appointed at any time after the commencement of a mortgage foreclosure proceeding under Chapter 580 (Foreclosure by Advertisement) or Chapter 581 (Foreclosure by Action) and before the end of the redemption period if the mortgage:
 - secures an original principal amount of \$100,000 or more or is a lien on residential real estate containing more than four dwelling units; and
 - is not a lien on property that was entirely homesteaded, residential real estate containing four or fewer dwelling units where at least one unit is homesteaded, or agricultural property.

(Minn. Stat. Ann. § 576.25 subd. 5(a)(1) and (2).)

- A receiver must be appointed if the movant demonstrates that the mortgagor has breached any covenant relating to:
 - application of tenant security deposits;
 - payment of earlier or current real estate taxes (or periodic escrow for the payment of the taxes);
 - payment of premiums for insurance (or periodic escrow for the payment of premiums); or
 - keeping of the covenants required of landlords or licensors.

(Minn. Stat. Ann. § 576.25 subd. 5(b)(1) to (4).)

The Minnesota Court of Appeals held (in an unpublished and therefore nonprecedential opinion) that the two grounds for appointing a receiver in a mortgage foreclosure

are independent (see *BMO Harris Bank, N. A. v. City Ctr. Dev., LLC*, 2017 WL 74391 (Minn. Ct. App. Jan. 9, 2017)).

In *BMO Harris*, a mortgagor appealed a district court's decision to appoint a receiver based only on Minn. Stat. Ann. § 576.25 subd. 5(a), arguing that a covenant under Minn. Stat. Ann. § 576.25 subd. 5(b) must also have been breached before the court may appoint a receiver. The Court of Appeals rejected the argument, stating that the independent nature between the paragraphs is apparent "by the different nature of the conditions that each lists, and by the different nature of the receiverships each requires ("limited receiver" under subdivision 5(a) and "receiver" under 5(b))" (*BMO Harris*, 2017 WL 74391 at *3).

The Court of Appeals also noted that there is "no coordinating conjunction or semicolon" connecting the subdivision paragraphs and that the "phrase 'a limited receiver shall be appointed' in subdivision 5(a) would be superfluous if that paragraph's conditions were met but were then also subject to the further requirements stated later in the subdivision" (*BMO Harris*, 2017 WL 74391 at *3). While this decision is not binding precedent, it remains the only decision on the independence between the subdivisions.

Business Entities

A limited or general receiver may be appointed when a corporation or other entity is dissolved, insolvent, in imminent danger of insolvency, or has forfeited its corporate rights. A receiver may also be appointed in similar cases in which the property belongs to a foreign company or entity.

Minnesota courts look to two sources for a definition of insolvency:

- **Case law.** The Minnesota Supreme Court has defined insolvency to mean:
 - an inability to meet liabilities in the usual course of business (see *State v. Clements*, 85 N.W. 229, 234 (Minn. 1901)); and
 - an insufficiency of the debtor's assets to cover its liabilities (see *Gipson v. Bedard*, 217 N.W. 139, 141 (Minn. 1927)).
- **Uniform Voidable Transactions Act (UVTA).** Minnesota has codified portions of the UVTA in Minn. Stat. Ann. §§ 513.41 to 513.51. Under the UVTA, as adopted in the Minnesota Statutes:
 - "a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation"; or

- “a debtor who is generally not paying debts as they become due is presumed to be insolvent.”

(Minn. Stat. Ann. § 513.42(a) and (b).)

Other Types of Cases

A receiver may also be appointed in other types of cases “as provided by law, or in accord with existing practice” (Minn. Stat. Ann. § 576.25 Subd. 6). For example, receivers are often appointed over individuals and entities in cases involving fraud (see *Finn v. Alliance Bank*, 838 N.W.2d 585, 590 (Minn. Ct. App. 2013) (Dakota County District Court’s appointment of receiver in fraud case); *Richard P. Anderson, LLC v. U.S. Bank N.A.*, 2014 WL 502955, at *2-3 (Minn. Ct. App. Feb. 10, 2014) (Hennepin County District Court’s appointment of receiver in fraud case)).

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

In Minnesota, when seeking to appoint a receiver, the party making the request must file a complaint to commence the proceeding. Appointment of a receiver may be sought as an independent cause of action in the complaint, but more typically it is included with other relief sought in the complaint, such as breach of contract or foreclosure (Minn. Stat. Ann. § 576.25 subd. 1).

After commencing the civil action in the complaint, which may include a cause of action for appointment of a receiver, the party seeking appointment of the receiver must then file a motion seeking appointment of the receiver and state the grounds for the relief requested (Minn. Stat. Ann. § 576.25 subd. 7). The motion should include the basis and reasons for requesting a receivership, for example, that the property is in danger of loss or material impairment, a judgment execution was returned unsatisfied, a corporation is insolvent, or a mortgagor broke a covenant.

If the court approves the motion, it must enter a receivership order. While there is no standard court form for this order, at a minimum, the order must contain:

- A description of the receivership property with particularity appropriate to the circumstances (Minn. Stat. Ann. § 576.25 subd. 8).
- Written conclusions that the person proposed as receiver is:
 - qualified to serve as receiver and an officer of the court; and
 - independent regarding the parties and the underlying dispute.

(Minn. Stat. Ann. § 576.26 subd. 1.)

Failure to describe the receivership property with specificity results in the receiver having control over all non-exempt property until entry of a further order of the court. (Minn. Stat. Ann. § 576.25 subd. 8). An order that does not specify the assets or the type of receivership is presumed to be a limited receivership despite the vast amount of control the receiver has over the assets (Minn. Stat. Ann. § 576.24).

All cases and documents in Minnesota state courts must be filed electronically (Minn. Gen. R. Prac. 14.01(b)(1)).

Notice

A motion to appoint a general receiver is treated as a dispositive motion, which requires notice to be served at least 28 days before the hearing (Minn. Stat. § 576.25 subd. 7; see Minn. Gen. R. Prac. 115.03 (requiring 28-day notice for dispositive motions)).

However, Chapter 576 does not specify whether a motion to appoint a limited receiver is dispositive or non-dispositive. If a motion to appoint a limited receiver is dispositive, it also requires that notice be served 28 days before the hearing. If it is not dispositive, it requires that notice be served 21 days before the hearing. (Minn. Gen. R. Prac. 115.04 -115.05.) The determination of whether a motion to appoint a limited receiver is dispositive depends on whether the motion seeks “to dispose of all or part of the claims” (Minn. Gen. R. Prac. 115.01(a)(1) (defining dispositive motions)).

The movant must give notice of the motion to:

- The debtor-respondent.
- All other parties in the action.

- Any other persons or parties in interest required by the court.
- Any judgment creditor seeking the appointment of a receiver in another action.

(Minn. Stat. Ann. § 576.25 subd. 7.)

However, the court may also appoint a receiver ex parte or on shortened notice if the parties can demonstrate that an emergency exists requiring immediate appointment. Further guidance is available in Minnesota's General Rules of Practice for District Courts, which allows for shortened notice "if irreparable harm will result absent immediate action by the court, or if the interests of justice otherwise require" (Minn. Gen. R. Prac. 115.07).

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 Minnesota, any person regardless of whether they are a resident of the state of Minnesota may serve as a receiver provided that the person:

- Is qualified to serve as a receiver.
- Is independent regarding the parties and underlying dispute.

The order appointing the receiver must contain written conclusions based on the record that the proposed receiver is qualified and independent (Minn. Stat. Ann. § 576.26 subd. 1).

When considering qualifications, the district court considers, among other things, whether the proposed receiver has:

- Sufficient knowledge and experience.
- The financial ability to post the required bond.
- Any previous disqualifications from serving as a receiver and the reason for those disqualifications.
- Any prior convictions for a felony or other crime involving moral turpitude.
- Any prior civil court findings of liability for fraud, breach of fiduciary duty, civil theft, or similar misconduct.

(Minn. Stat. Ann. § 576.26 subd. 2(a).)

If the proposed receiver is a corporation or partnership, the court also considers whether any insider of the proposed receiver has been disqualified, convicted of a felony, or found liable for fraud. For a corporation, an insider is defined to include an officer or director of the corporation or a person in control of the corporation. For a partnership, an insider includes a general or limited partner or a person in control of the partnership (Minn. Stat. Ann. § 576.26 subd. 2(b)).

When considering the independence of the proposed receiver, the court considers, among other things, whether the proposed receiver has:

- Any previous relationship with the parties or the receivership property.
- Any interest materially adverse to the interests of any of the parties.
- Any material financial or pecuniary interest in the outcome of the underlying dispute.
- Any standing as a creditor or holder of any equity interest in any of the parties.

(Minn. Stat. Ann. § 576.26 subd. 3(a).)

The court may exercise its discretion when evaluating the independence of the receiver and no specific factor is necessarily determinative of independence. For example, the proposed receiver cannot be disqualified solely because it was appointed receiver in an unrelated action involving some of the relevant parties or because the proposed receiver has been engaged by any of the parties for unrelated matters (Minn. Stat. Ann. § 576.26 subd. 3(b)).

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

In Minnesota, the party seeking appointment of a receiver typically selects and recommends a receiver as it deems appropriate. However, the act of selecting and appointing a receiver ultimately falls within the discretion of the district court's approval to decide whether the selected receiver is both qualified and independent. After a receiver is selected, the court must verify, in writing, its finding of qualifications and independence (Minn. Stat. Ann. § 576.26 subd. 1).

For a discussion of the qualification criteria necessary to appoint a receiver, see Question 7.

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 Minnesota, the duties of both a general and limited receiver are specifically conferred by statute and ordered by the court (Minn. Stat. Ann. § 576.29 subd. 2). These duties are scattered throughout Chapter 576 of the Minnesota Statutes and include the duty to:

- Collect rents, profits, and other income of mortgaged property (Minn. Stat. Ann. § 576.25 subd. 5(d)).
 - Manage mortgaged property to prevent waste (Minn. Stat. Ann. § 576.25 subd. 5(d)(1)).
 - Execute contracts and leases on mortgaged property (Minn. Stat. Ann. § 576.25 subd. 5(d)(2)).
 - Pay expenses on mortgaged property (Minn. Stat. Ann. § 576.25 subd. 5(d)(3) and (4)).
 - Perform any assignment of rents for mortgaged property (Minn. Stat. Ann. § 576.25 subd. 5(d)(5)).
 - Post a bond in an amount set by the court (Minn. Stat. Ann. § 576.27).
 - Provide notice of the receivership to all creditors and other parties in interest within 21 days after the time of appointment (Minn. Stat. Ann. § 576.34).
 - Maintain a master service list (Minn. Stat. Ann. § 576.35 subd. 2).
 - Prepare and retain appropriate business records, including records of all cash receipts and disbursements, and all receipts and distributions or other dispositions of receivership property (Minn. Stat. Ann. § 576.36).
 - File interim reports with the court addressing:
 - the activities of the receiver;
 - cash receipts and disbursements;
 - receipts and dispositions of receivership property; and
 - other matters.
- (Minn. Stat. Ann. § 576.36 subd. 2(a)(1) to (4).)

- File and provide notice of a final report:
 - after distributing or disposing of all receivership property; or
 - completing the receivership duties.
 (Minn. Stat. Ann. § 576.38 subd. 2 and subd. 4.)
- File a distribution schedule listing any proposed distributions and provide notice of the filing (Minn. Stat. Ann. § 576.53).

A receiver, whether general or limited, also has the power to:

- Collect, control, manage, conserve, and protect receivership property.
- Incur and pay expenses incidental to the performance of the receiver's duties;
- Assert rights, claims, causes of action, or defenses that relate to receivership property.
- Seek and obtain instruction from the court on any matter relating to receivership property or the receiver's powers or duties.

(Minn. Stat. Ann. § 576.29 subd. 1(a).)

Beyond the powers shared with limited receivers, a general receiver also has the power to:

- Assert or release any claim or cause of action held by the debtor if the claim is receivership property, maintain the claim in the receiver's name, and intervene in actions in which the debtor is a party.
- Pursue any claim or remedy that may be asserted by a creditor under the Uniform Voidable Transactions Act.
- Compel any person by subpoena under Rule 45 of the Minnesota Rules of Civil Procedure to give testimony or produce discovery.
- Operate any business constituting receivership property in the ordinary course of business.
- If authorized by court order, use, improve, sell, or lease assignment property outside of the ordinary course of business.
- If appointed during the process, continue the operation of a business or cooperative during an involuntary or court supervised voluntary dissolution (see Minn. Stat. Ann. §§ 302A.753, 308A.945, 308B.935 and 317A.753).

(Minn. Stat. Ann. § 576.29.)

The receiver also has the powers and priority of a lien creditor that obtained a judicial lien at the time of receivership, provided that the receiver appropriately records a notice of *lis pendens* with the county recorder or registrar of titles (Minn. Stat. Ann. § 576.30).

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

In Minnesota, the receiver's duties are limited to those contained in Chapter 576 (see *Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 68 (Minn. 2019) ("Receivers' duties are determined by 'statute, rule, or order of the court'") (citing Minn. Stat. Ann. § 576.29 subd. 2)). Therefore, there does not appear to be any common law duties imposed on a receiver.

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

In Minnesota, after appointment, both a general and limited receiver must provide a bond in the sum, nature, and conditions ordered by the district court in the county where the receivership is filed. Unless otherwise ordered, the bond is conditioned on the receiver's performance of its duties according to the terms of the receivership and the receivership statutes. The bond must be executed with a surety authorized to write bonds in the state (Minn. Stat. Ann. § 576.27).

In practice, a party may seek to waive the bond requirement in the motion requesting appointment of the receiver.

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

In Minnesota, a receiver may be removed for three reasons:

- The receiver fails to execute and file the required bond.
- The receiver resigns, refuses, or fails to serve for any reason.
- Other good cause.

(Minn. Stat. Ann. § 576.37 subd. 1.)

If the court determines that the receivership was procured in bad faith, the court may take action to assess against the party procuring the receivership:

- All the receiver's fees and expenses and other costs of the receivership.
- Any other sanctions the court deems appropriate.

(Minn. Stat. Ann. § 576.38 subd. 1.)

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

In Minnesota, termination or removal of a receiver may be made:

- On the motion of a party in interest.
- By the appointing court using its inherent power to remove a receiver at its discretion.

(Minn. Stat. Ann. § 576.35.)

When seeking removal, the moving party must provide notice to all interested parties, parties on the master service list, and other parties the court requires. However, a receiver remains in place until the appointing court orders the receiver's dismissal.

After a receiver is removed, the court must determine if the receivership is also terminated or if a new receiver should be appointed. If the court determines that there is a need for a successor receiver, the court appoints the successor receiver immediately after the successor receiver executes and files the bond required by the court (Minn. Stat. Ann. § 576.37 subd. 2).

The removed receiver must:

- File a final report with the court within 14 days of removal.
- Provide notice of the final report to all parties that filed appearances during the pendency of the receiver's services.

(Minn. Stat. Ann. § 576.37 subd. 3.)

If there is no objection within 21 days, the court may enter an order approving the report and discharging the receiver from further duties (Minn. Stat. Ann. § 576.38 subd. 4). The discharge removes all the receiver's authority and discharges any *lis pendens* recorded by the removed receiver (Minn. Stat. Ann. 576.38 subd. 5).

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.
- Asset 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.

Use, Sale, or Transfer of Property

In Minnesota, both a general and limited receiver have the power to sell real and personal property during the receiverships, subject to certain guidelines. Because the receiver has the power to operate any business covered by the receivership, the receiver may sell or lease any receivership property without court approval if the sale is within the ordinary course of business (Minn. Stat. Ann. § 576.29 subd. 1(b)(4)). If the receiver seeks to sell or lease receivership property outside of the ordinary course of business, including a sale of substantially all assets, it must obtain court approval (Minn. Stat. Ann. § 576.29 subd. 1(b)(5)).

When selling or conveying real property in a receivership:

- The court may require the receiver to file a motion for an order of the sale of real property.
- The receiver must:
 - obtain a deed executed by the debtor or a notice of lis pendens. At the time of appointment, the receiver holds the priority and powers of a lien creditor that obtained a judicial lien at the time of receivership. Therefore, the receiver should possess a notice of lis pendens if it was properly recorded; and
 - record a notice of lis pendens with the county recorder or registrar of titles. After making this recording, the receiver holds an enforceable interest attached to the property.

(Minn. Stat. Ann. § 576.30.)

A general receiver may also sell receivership property free and clear of liens, except for liens for unpaid real estate taxes or assessments, or liens arising under federal law (Minn. Stat. Ann. § 576.46 subd. 1(a)). The term lien is broadly defined to mean “a charge against or interest in the property to secure payment of a debt or the performance of an obligation, including any mortgage or security interest” (Minn. Stat. Ann. § 576.21(i)).

Despite the powers of a receiver to sell, owners of receivership property and lienholders may object to the proposed sale and the court cannot permit the sale to go forward if:

- The property to be sold is agricultural land or a qualifying homestead and the owners of the property have not consented to the sale.
- The amount likely to be realized from the sale is less than the objecting owner or lienholder realizes in the absence of the sale. The receiver has the burden of proof to establish that the amount likely to be realized from the sale is equal to or greater than the amount that the objecting owner or lienholder realizes within a reasonable time in the absence of the sale (Minn. Stat. Ann. § 576.46 subd. 1(b)).

(Minn. Stat. Ann. § 576.46 subd. 1(a)(1) and (2).)

If a sale has no objections, or the receiver overcomes all objections, the property is sold free and clear of liens and any liens that previously encumbered the property automatically attach to the proceeds of the sale. The resulting liens on the sale proceeds attach in the same order, priority, and validity as they previously had to the sold property. The court may also authorize using the sale proceeds to satisfy, in whole or in part, any ownership interest, provided it does not impair the lien of any other party (Minn. Stat. Ann. § 576.46 subd. 1(c)).

If any receivership property is co-owned by another party, the receiver has the rights and powers afforded to the debtor under state and federal law, including any rights of partition. However, the receiver cannot sell the property free and clear of the co-owner's rights (Minn. Stat. Ann. § 476.46 subd. 2).

Any creditor with a valid and perfected lien against the sale property may place a credit bid at the sale, provided that the creditor also tenders enough cash to pay:

- All senior liens.
- The reasonable expenses incurred in disposing the property.

(Minn. Stat. Ann. § 576.46 subd. 3.)

Avoidance Powers

A general receiver has the power to pursue any claim or remedy that may be asserted by a creditor of the respondent under the Uniform Voidable Transactions Act (Minn. Stat. Ann. § 576.29 subd. 1(b)(2) (referencing Minn. Stat. Ann. §§ 513.41 to 513.51)). Therefore, a general receiver, but not a limited receiver, has the power to file and pursue actions to avoid fraudulent conveyances and transactions.

Rejection or Assumption of Unexpired Leases or Executory Contracts

In Minnesota, the receiver succeeds to all the rights and duties of the debtor under its executory contracts. If the receiver continues to perform under the debtor's contract, it creates a claim against receivership property up to the value of its performance. The court may condition the receiver's continued performance on terms that are appropriate based on the circumstances and the resulting claims cannot be construed as a personal obligation of receiver (Minn. Stat. Ann. § 576.45 subd. 1).

The court may authorize the receiver to:

- Assign an executory contract to a third party under the same conditions that governed the executory contract before the start of the receivership (Minn. Stat. Ann. § 576.45 subd. 2).
- Terminate an executory contract. Termination of the contract excuses the receiver from further performance, but also terminates the receiver's right to possess and use the property (if any) under the executory contract. If the termination constitutes a breach of the executory contract, the termination creates a claim equal to the damages incurred if the breach of contract had occurred immediately before the time of receivership (Minn. Stat. Ann. § 576.45 subd. 3).

Any claim arising from the termination of the executory contract must be presented and filed with the court by the latest of:

- The time set for filing claims in the receivership.
- 28 days after the receiver provides notice of termination of the executory contract.

(Minn. Stat. Ann. § 576.45 subd. 3.)

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.

In Minnesota, after appointment, the receiver must submit a recommendation to the court for a claims process that is appropriately tailored for the receivership proceeding (Minn. Stat. Ann. § 576.49 subd. 1). The recommended claims process should include:

- Whether proofs of claims must be submitted.
- The form of the proofs of claim.
- The deadlines for submitting proofs of claims.
- Where the claims must be filed.
- Other matters bearing on the claims process.

The court may also authorize:

- Creditors to file their proofs of claim directly with the receiver.
- Creditor claims to be established based on the amounts in the debtor's books and records without a need to file a formal proof of claim.

(Minn. Stat. Ann. § 576.49.)

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.

In Minnesota, the statutes provide that the receiver or a party in interest may file a motion objecting to a claim. The claims objection must include the grounds for the objection. The court may order that a copy of the objection be served on all parties on the master service list at least 30 days before a hearing on the objection.

All claims that are properly submitted and not disallowed by the court are deemed to be allowed claims. The court may also allow claims by court order (Minn. Stat. Ann. § 576.50 subd. 1).

For the claims allowance process, the court may estimate

- Any contingent or unliquidated claim that otherwise unduly delays the administration of the receivership.
- Any right to payment that arises from a right to an equitable remedy.

(Minn. Stat. Ann. § 576.50 subd. 3.)

If the approved claims process allows proofs of claim to be filed with the receiver as opposed to with the court, any party in interest has the right to examine:

- All claims filed with the receiver.
- All books and records in the receiver's possession that formed the basis for the receiver's conclusion that creditors are entitled to a distribution of the receivership property without filing a proof of claim.

A party in interest's inquiry into the filed claims may only be conducted:

- After claims bar date has passed.
- On 14-days' written notice to the receiver.

(Minn. Stat. Ann. § 576.50 subd. 2.)

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

In Minnesota, the receiver must file a distribution schedule with the court that lists the proposed distributions to creditors. The distribution schedule may be filed at any time during the case or may be included in the final report (Minn. Stat. Ann. § 576.53 subd. 1).

After filing the distribution schedule, the receiver must give notice to:

- All parties on the master service list.
- All creditors that filed proofs of claim.

(Minn. Stat. Ann. § 576.53 subd. 2.)

Objections to the distribution schedule must be filed within 21 days of receiving notice of the filing. If there are no objections within this 21-day period, the court may enter an order authorizing the proposed distributions (Minn. Stat. Ann. § 576.53 subd. 2).

The distribution schedule must follow a statutory order of priority, paid in the following order:

- Secured claims, after first reimbursing the receiver for the reasonable and necessary expenses of preserving, protecting, or disposing of the receivership property,

including any of the receiver's and its professionals' allowed fees and reasonable expenses.

- Other actual and necessary costs and expenses incurred during the receivership process.
- Wages up to \$15,150 incurred within 90 days of filing the receivership (see 11 U.S.C. § 507(a)(4)).
- Security deposits for the purchase, lease, or rental of noncommercial property, capped at \$3,350 (11 U.S.C. § 507(a)(7)).
- Claims for arrears on domestic support obligations.
- Unsecured claims of governmental units for taxes that accrued before the filing of the receivership.
- All other unsecured claims.
- Interest on unsecured claims.

(Minn. Stat. Ann. § 576.51.)

Despite this statutory scheme, the US government has the right to be paid first when a person indebted to the government is insolvent and consents to a voluntary receivership of its property (31 U.S.C. § 3713). The US government also has the right to recover personally from any party that made payments to others without paying the US government's interest first (even if the payment is for receivership expenses or compensation).

While there are no decisions on the intersection between Minnesota's receivership statutes and the federal government's priority rights, practitioners should note this potential issue if the receivership contains a federal governmental claim, such as tax claims and government contract claims.

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 Minnesota, a receiver is compensated with funds from the receivership property and the receiver's fees and

expenses are paid first in the distribution of property (Minn. Stat. Ann. § 576.32 subd. 2(a)).

While a separate court order is not required and there is no threshold fee, a receiver's fees and expenses must ultimately be approved by the court (Minn. Stat. Ann. § 576.32 subd. 2(a)).

All interim payments to the receiver are subject to approval as part of the receiver's final report (Minn. Stat. Ann. § 576.32 subd. 2(b)). Either concurrently or as part of the final report, the receiver must file a motion or application for approval of its fees and expenses (Minn. Stat. Ann. § 576.38 subd. 3).

Notice of the receiver's fees is provided as part of the receiver's final report or, if sought earlier, under general rules of motion practice (see Question 20).

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

In Minnesota, a receiver is permitted to hire various professionals to help the receiver carry out its duties during the receiverships. These professionals must not hold or represent an interest adverse to the receivership and include attorneys, accountants, appraisers, and auctioneers (Minn. Stat. § 576.32 subd. 1(a)). If the receivership is part of a mortgage foreclosure proceeding, the receiver must retain an experienced property manager (Minn. Stat. § 576.25 subd. 5).

When being retained, a professional must provide the receiver with a disclosure of any potential conflicts of interest (Minn. Stat. § 576.32 subd. 1(b)). However, a professional is not disqualified solely because of previous employment, representation, or relationship with a party in interest if the court determines that the retention and employment is appropriate (Minn. Stat. § 576.32 subd. 1(c)).

The receiver does not need court approval to retain a professional, however, the receiver must file with the court:

- A notice of the professional's retention.
- The proposed compensation agreement.

Any party in interest may bring a motion for disapproval of the retention within 21 days of these filings (Minn. Stat. § 576.32 subd. 1(b)).

While a separate court order is not required and there is no threshold fee, a professional's fees and expenses must

ultimately be approved by the court (Minn. Stat. § 576.32 subd. 2(a)).

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 Minnesota, the process for closing and terminating a receivership are the same (Minn. Stat. § 576.38 subd. 1). After the receivership property is fully distributed or the receiver completes its duties, the receiver must file its final report and request that the court approve the report and discharge the receiver. The final report must include details about the receivership up until the date of removal, specifically:

- A description of the receiver's activities in conducting the receivership.
- A schedule of all receivership property when the receivership was filed and any property filed after.
- A list of expenditures, including any payments to professionals retained by the receiver.
- A list of any unpaid expenses incurred during the receivership.
- A list of all dispositions of receivership property.
- A list of all distributions made or proposed to be made.
- If not done separately, a motion or application for approval of the receiver's fees and expenses.

(Minn. Stat. § 576.38 subd. 3.)

The receiver must give notice of the final report to all parties that have filed appearances during the pendency of the receivership. If there are no objections within 21 days, the court may enter an order approving the report and discharging the receiver from further duties (Minn. Stat. § 576.38 subd. 4).

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

In Minnesota, there is no explicit process for dissolving a debtor company after the receivership concludes. However, certain receiverships may be used to dissolve

a debtor company. Specifically, when a corporation or cooperative is being dissolved, a receiver may be appointed “to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the [corporation or cooperative] either at public or private sale” (Minn. Stat. §§ 302A.753, 308A.945, 308B.935, 317A.753).

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 Minnesota receivership statutes provide that a court presiding over a receivership gains the authority to determine all controversies relating to collection, preservation, improvement, disposition, and distribution of receivership property, including all matters arising in or relating to:

- The receivership.
- The receivership property.
- The exercise of the receiver’s powers.
- The performance of the receiver’s duties.

(Minn. Stat. Ann. § 576.23.)

Given the court’s extensive authority over a receivership, the court holds the power to:

- Set conditions for the receiver’s bond (Minn. Stat. Ann. § 576.27).
- Authorize the sale of receivership property outside of the ordinary course of business (Minn. Stat. Ann. § 576.29 subd 1(b)(5)).
- Modify the powers and duties of a receiver (Minn. Stat. Ann. § 576.29 subd. 3).
- Authorize the sale of real property and require the receiver to:
 - file a motion to sell real property; or
 - obtain an order confirming sale of the real property.(Minn. Stat. Ann. § 576.30 subd. 3.)
- Approve professional retentions that have a previous relationship with a party in interest (Minn. Stat. Ann. § 576.32 Subd. 1(c)).
- Set the procedures, safeguards, and reporting requirements for the receiver’s compensation (Minn. Stat. Ann. § 576.32 subd. 2(a)).

- Approve the receiver’s fees and expenses (Minn. Stat. Ann. §§ 576.32 subd. 2(b) and § 576.38).
- Order the receiver to file a schedule of all receivership property and a schedule of all creditors and authorities (Minn. Stat. Ann. § 576.33(a)(1) and (2)).
- Order inventories and appraisals of the receivership property (Minn. Stat. Ann. § 576.33(b)).
- Set notice and service requirements that differ from the statutory scheme (Minn. Stat. Ann. § 576.35 subd. 1 to 5).
- Grant certain requested relief without a hearing (Minn. Stat. Ann. § 576.35 subd. 6).
- Issue an ex parte order based on an application without a motion, notice, or hearing for:
 - administrative matters; and
 - matters where no party in interest is materially prejudiced.(Minn. Stat. Ann. § 576.35 subd. 7.)
- Order the receiver to provide records to parties in interest after due consideration of issues of confidentiality (Minn. Stat. Ann. § 576.36 subd. 1).
- Order the receiver to prepare and file interim reports addressing:
 - the receiver’s activities;
 - cash receipts and disbursements;
 - receipts and dispositions of receivership property; and
 - other matters as the court determines.(Minn. Stat. Ann. § 576.36 subd. 2(a)(1) to (4).)
- Remove the receiver for:
 - failure to execute and file the required bond;
 - failure or refusal to serve for any reason; or
 - any other good cause.(Minn. Stat. Ann. § 576.37 subd. 2.)
- Determine it is necessary to further administer the receivership after removing the receiver and before appointing a successor receiver (Minn. Stat. Ann. § 576.37 subd. 2).
- Discharge a removed receiver (Minn. Stat. Ann. § 576.37 subd. 3).
- Terminate a receivership (Minn. Stat. Ann. § 576.38).
- Assess fees and other sanctions against any person that procures the appointment of a receiver in bad faith (Minn. Stat. Ann. § 576.38 subd. 1).

- Approve the receiver's final report (Minn. Stat. Ann. § 576.38 subd. 4).
- Enter any order necessary to effectuate orders entered by a foreign jurisdiction's receivership proceeding (Minn. Stat. Ann. § 576.41 subd. 2(b)).
- Order a stay on all receivership property to facilitate proper administration (Minn. Stat. Ann. § 576.42 subd. 2 and 5).
- Prohibit alteration, refusal, or discontinuance of utility service if the receiver furnishes adequate assurance of payment (Minn. Stat. Ann. § 576.43).
- Authorize the receiver to obtain credit or incur indebtedness (Minn. Stat. Ann. § 576.44(c)).
- Condition continued performance of an executory contract on terms that are more appropriate to the circumstance (Minn. Stat. Ann. § 576.45 subd. 1).
- If there is good cause, authorize the receiver to:
 - assign and delegate an executory contract to a third party; or
 - terminate an executory contract.
- Order a sale of receivership property free and clear of all liens, with certain exceptions (Minn. Stat. Ann. § 576.46 subd. 1(a)).
- Determine whether the amount likely to be realized from the sale of receivership property is more or less than an objecting creditor realizes in the absence of the sale (Minn. Stat. Ann. § 576.46 subd. 1(a)(2)).
- Authorize the receiver to satisfy, in whole or in part, any ownership or lien using the proceeds of the sale of receivership property (Minn. Stat. Ann. § 576.46 subd. 1(c)).
- Authorize a lienholder to credit bid at a sale (Minn. Stat. Ann. § 576.46 subd. 3).
- Authorize the abandonment of any receivership property (Minn. Stat. Ann. § 576.47).
- Establish a claims process (Minn. Stat. Ann. § 576.49 subd. 2).
- Regarding the claim determination process:
 - authorize creditors to file proofs of claim with the receiver instead of the court; or
 - allow claims to be determined based on the debtor's books and records instead of requiring formal proofs of claim.(Minn. Stat. Ann. § 576.49 subd. 3.)
- Allow and disallow claims (Minn. Stat. Ann. § 576.50).
- Estimate:
 - any contingent or unliquidated claim that otherwise unduly delays the administration of the receivership; and
 - any right to payment that arises from a right to an equitable remedy.(Minn. Stat. Ann. § 576.50, Subd 3.)
- Authorize the distribution of receivership property (Minn. Stat. Ann. § 576.53).

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

In Minnesota, the statutes provide that the court administrator or clerk must certify any court orders authorizing the receiver or causing the debtor to sell real property (Minn. Stat. Ann. § 576.30 subd. 3). This is comparable to the responsibility of the county recorder or registrar of titles to hold the lis pendens filed by the receiver until the receiver is removed or the receivership terminated (Minn. Stat. Ann. § 576.30 subd. 2). The tasks of certifying orders and logging liens are not unique to the receivership process. Therefore, as in any case, the court clerk's typical work in a receivership consists of maintaining and recording all court filings.

Interim reports are typically the most crucial filings for the court records. While the receiver is allowed to keep its own business records, the receiver must also file interim reports to the court, addressing:

- The activities of the receiver.
 - Cash receipts and disbursements.
 - Receipts and dispositions of receivership property.
- (Minn. Stat. Ann. § 576.36 subd. 2(a)(1) to (4).)

These interim reports provide the court with a view into an otherwise self-sufficient receivership. The court clerk must record the receiver's interim reports just as it does with the other case filings.

Bankruptcy Considerations

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

In Minnesota, there is no statutory prohibition on a receiver's ability to file a bankruptcy case.

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 (Minn. Stat. Ann. § 576.42 subd. 6(8)). Therefore, when an involuntary petition is filed after a receiver has been appointed under Minnesota law, and an order for relief is entered by the bankruptcy court, the debtor's property becomes subject to 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 it is in the best interest of the creditors; and
 - if the debtor is solvent, it is in 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 Minnesota, there is no specific statutory authority giving receivers authority to object or challenge 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.

Marijuana is legal in Minnesota for medicinal purposes only, although products with up to 5mg of hemp-derived THC per serving were legalized in 2022. There are no statutes that prevent a business engaged in medical marijuana from being placed into a receivership.

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.

Minnesota common law historically viewed receiverships as closely related to involuntary bankruptcy (see *In re Mann's Estate*, 19 N.W. 347, 349 (1884)). Unlike an

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assignment for the benefit of creditors, which is based on a mutual agreement and equates to voluntary bankruptcy, a receivership is often initiated by a creditor that seeks to better control the debtor's assets for fear they are being diminished. Therefore, Minnesota receivership law follows bankruptcy procedure by implementing an automatic stay once a receiver is appointed (Minn. Stat. Ann. § 576.42).

Like a bankruptcy case, the Minnesota receivership statutes also contain a provision for a stay, which is an attempt to codify the common law concept of *in custodia legis*, where property of a pending litigation passes into the custody of the court (*In re Telesports Prods., Inc.*, 476 N.W.2d 798, 800 (Minn. Ct. App. 1991)). According to the Minnesota Court of Appeals, "[c]reditors have no right to interfere with property held *in custodia legis* or acquire liens upon it which if enforced would affect the rights of those acquiring title under the receiver's distribution with the authority of the court" (*In re Telesports*, 476 N.W.2d at 800).

The entry of an order appointing a general or limited receiver operates as a stay of any act:

- To obtain possession or to interfere or exercise control over receivership property.
- To create or perfect any lien against receivership property.

(Minn. Stat. Ann. § 576.42 subd. 3.)

The appointment of a general receiver also operates as a 30-day stay (with the option to seek an order extending the stay on motion of the receiver or other party) of any act against the debtor or the receiver:

- That was or may have been commenced before the receiver is appointed.
- That seeks to recover a claim that arose before appointment.

- That seeks to enforce any lien having priority over the rights of the receiver.

(Minn. Stat. Ann. § 576.42 subd. 4.)

However, the entry of an order appointing a receiver does not operate as a stay of:

- Any criminal proceeding against the debtor.
- Any proceeding by a governmental unit to enforce its police or regulatory powers.
- The enforcement of a judgment obtained by a governmental unit or involving a licensure.
- The establishment of any tax liability by a governmental unit.
- Filing an action to:
 - establish paternity;
 - establish or modify alimony, maintenance, or support; or
 - collect alimony, maintenance, or support under any order of a court.
- The exercise of a right of setoff.
- Any act to maintain perfection of a lien or preserve or protect rights in receivership property, but only to the extent that the act was necessary to preserve or protect the lien or other rights as they existed as of the time of the receiver's appointment.
- Filing a bankruptcy case.
- Other exceptions recognized by the Bankruptcy Code.

(Minn. Stat. Ann. § 576.42 subd. 6.)

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