

RECEIVERSHIPS



Receiverships

Are you involved in a judicial proceeding where receivership issues exist? Quite often, when business owners, creditors, or individuals experience receivership issues during litigation, they are unfamiliar with the concept when the term first appears in their judicial proceeding. However, receivership is a complex area of law, with unique procedural elements to consider when determining whether receivership applies. Additionally, there are responsibilities, duties, and obligations that must be followed by a receiver to avoid potential liability.

Receivership applies when it is necessary to protect property controlled by a person being sued in a court case, and frequently occurs in real estate transactions, business disputes, bankruptcies, or creditor proceedings. Florida law allows receivership before a judgment if the property is in danger of waste, loss, substantial diminution in value, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction. Additionally, Florida law allows receivership after a judgment when it is necessary to carry the judgment into effect or to preserve the property pending appeal. Receivers are often viewed as custodians of property, tasked with maintaining the value of an asset in a passive or active manner, depending on the appointing order.

During a receivership proceeding, the court may appoint a receiver, who is an independent third party that takes control over the disputed property. Because the appointment of the receiver is an extraordinary remedy, such impactful request is available only in extraordinary situations to those who have a legal or equitable claim to the property or assets. In evaluating the request for the appointment of a receiver, the courts have to balance the owner's right to own and possess the property against the asserted rights of others to protect its security in the property and prevent waste. Upon appointment, the receiver becomes an officer of the court concerning the property and is responsible for its care, management, protection, and operation. Because receivers are afforded broad authorities and powers from a court, a court appointed receiver is tasked with stringent reporting duties and responsibilities to the appointing court and parties in interest. Ideally, a receiver would actively perform a scope of services designed to protect or increase the value of the property assets. However, many times these appointments offer limited resources, liquidity or cash flow that inhibit receiver functionality. In those situations, the receiver works within the limits of available funds and resources to protect and maintain the property assets until the property is sold, or the court directs and settles the disposition of the assets.

For businesses or individuals appointed as receivers, they possess great power over the property and assume tremendous duties and responsibilities. Receivers become the legal decision-makers with regard to the property and step into the shoes of the original owner with regard to its control, management, business rights, and legal rights. Additionally, there are several duties, responsibilities, and obligations that must be followed by the receiver throughout the duration of the receivership. Though a receiver always owes allegiance to the court that appointed the receiver, they also owe fiduciary duties of care, loyalty, and obedience to each of the receivership's creditors. The receiver also assumes numerous responsibilities during the receivership, including accounting for receivership property and preparing and maintaining business records. Additionally, upon completion of the receivership, the receiver is obligated to produce a lengthy final report to the court disclosing things such as the activities of the receiver, a list of property acquired or disposed of during the receivership, a list of payments made by the receiver, and a list of distributions made by the receiver.

No matter the issues surrounding the receivership, Jimerson Birr offers comprehensive legal services related to receiverships to meet our client's specific needs. Our firm represents clients across various industries who are faced with receivership issues and provides skilled representation in all matters relating to receiverships. Our attorneys draw upon their legal expertise in receivership law and their extensive experience representing clients in real estate, business, bankruptcy, and creditor related legal matters, to guide our clients throughout the process.

For clients faced with the challenge of obtaining a receivership and locating a trusted receiver to take control over disputed property, our firm is well-equipped to guide them through the process and legal proceedings. Our attorneys have the legal experience necessary to understand the nuances associated with each receivership and are able to recognize key procedural facts that support a court granting the receivership. Our attorneys will then assist clients with preparing documents needed to obtain a receivership, and help our clients identify potential third parties that could protect their interests in the disputed property and effectively serve as a receiver.

Clients also trust our firm to serve as a receiver when our possession over the property offers the most efficient solution. Our firm's legal expertise, coupled with our business knowledge and transactional experience, allows clients to rest assured knowing their property is in qualified hands. Clients trust our firm with control and management over receivership property, knowing our attorneys can be counted upon to comply with all statutory responsibilities and duties required of the receiver. Upon final disposition of the property, our attorneys effectuate the sale, distribute the sale proceeds, and prepare final documents for the court.

For our clients who are currently serving as receivers, our firm helps them relieve some of their burdens by guiding them throughout the duration of their receiverships. Our attorneys advise clients on their statutory responsibilities, obligations, and duties arising from their receiverships and help them develop strategies they can utilize to ensure compliance and recover any costs they incur while serving as a receiver. Additionally, our attorneys utilize their knowledge of the laws, both related to the receivership and the property under control, to help our clients make decisions which reduce their exposure to liability. Upon final disposition of the property, our attorneys help our clients effectuate the sale, distribute the sale proceeds, and prepare final documents for the court to ensure compliance.

Jimerson Birr also represents clients when disputes arise from a receivership, including claims made against a receiver. Our attorneys draw upon their legal expertise and experience both serving as a receiver and counseling receivers, to efficiently identify the facts in each case that may establish a breach of fiduciary duties. Our firm represents clients throughout the litigation and pursues all legal claims against a receiver to maximize our client's recovery. While we are renowned for our work in a courtroom, we will explore negotiation and arbitration when they may provide a more cost-efficient resolution for our clients that is also in line with their objectives. However, should a trial be necessary, our clients know our firm will diligently represent their interests before the court.

Jimerson Birr offers the following receivership services, including:

- > Representing clients throughout the receivership process, including assistance obtaining a receivership, and identifying potential receivers who can be trusted to control the property and comply with all statutory requirements
- > Acting as a receiver over the property, ensuring competent management, and compliance with all relevant statutory obligations, responsibilities, and duties required of a receiver
- > Advising receivers on their statutory obligations, responsibilities, and fiduciary duties, including consultation on management decisions to reduce exposure to liability, and providing assistance when selling property, distributing sale proceeds, and preparing final receivership documents for the court
- > Representing clients with claims against a receiver for breach of fiduciary duties, including providing representation during pretrial negotiations, arbitrations, and trial
- > Court-appointed receiverships in all forms
- > Bankruptcy and creditors matters where the receiver's goal is to identify and recover assets
- > Preservation or sale of real, personal or intangible property both in and out of foreclosure
- > Shareholder disputes and derivative litigation
- > Receiverships of commercial entities designed to warrant high-value realization for creditors
- > Full-service representation of owners, claimants and receivers

Jimerson Birr is a premier law firm with a market-leading receivership practice that is tailored to the nuances of the industries we serve. Our teams have a global perspective and strong Florida roots. Our clients look to us to bring a distinctively high degree of quality, passion and creativity to resolve receivership challenges effectively and cost efficiently.

When our clients place receivership matters with us, they enlist sets of broad shoulders that carry their burdens for them so that they no longer feel their weight. This deep business partnership will give us both an opportunity to be at our best. We draw on the strength of our character and talents to deliver the best of our firm to every client through true collaboration. We don't confuse effort with results, and we focus on the immutable, allied goals at all times. Partnership with Jimerson Birr on receivership matters means that you are not looking in any direction but ahead.

Attorneys

