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When is a Court Appointed Receiver the Right Choice?

By Susan Conrad

You probably have clients who told you they have talked until they were blue in the face, trying to convince their borrower how important it is to formulate a plan to repay their debts. However, the borrower is not listening, and prefers to stick their head in the sand, hoping the situation will go away. Suddenly, the borrower is no longer returning calls.



Perhaps your client is a partner in a partnership, and discovers funds are being moved out of the company, but their partner is not being open about it. The friction between the two of them is building, and they are no longer communicating. Your client is now deadlocked on how to move forward.

What are your options for either of these scenarios?

A court appointed receiver may be a solution to either of these situations, especially if there are significant assets involved. Appointed by a court of law as an equitable remedy, the receiver is a disinterested third party that is charged with taking control of and preserving the assets of an entity.

The receiver can have a wide array of rights and obligations. While the receiver takes control of the property in a receivership, they do not obtain title to the property. In addition to being dictated by law, the rights and obligations of the receiver can and should be specifically spelled out in the receivership order. Particular attention should be given to drafting the receivership order, due to the wide array of options and authority that can be given to the Receiver.

A receiver may be the right choice in many situations, as the receiver's responsibilities and obligations to the parties is very high. The goal of a receivership is to represent all parties to the issue fairly. The receiver is required to faithfully pursue its duties and report to the Court on a consistent basis. Experience counts, as the receiver needs to be reliable, fair and exercise due care when carrying out his/her duties.

A receiver can often help the parties negotiate a settlement, or the threat of a receivership may cause the parties to settle.

A successful receiver should exercise good business judgment. Many decisions need to be made with the parties' best interest in mind. Should the business continue to operate? What is the best way to operate the business to provide the best outcome to all parties? Perhaps the best course of action is to liquidate the assets? Sound business judgment comes from experience. In addition, a receiver can bring a fresh perspective to business and legal problems that can result in savings and/or a more efficient process.

Due to our successful track record, Simon Consulting has been appointed as receiver or as a court appointed neutral in over fifty matters, ranging from complex Ponzi schemes to simple liquidations. Below, you may read about some of the receivership cases we have handled and our cases that are currently open.