

Memorandum 99-9

Trial Court Unification: Appointment of Receiver

The Commission's trial court unification report identified for further study "whether to conform the statutory provisions on circumstances for appointment of a receiver." Attached to this Memorandum is a staff draft of a Tentative Recommendation on *Appointment of Receiver*. The Tentative Recommendation would eliminate the differences in the statutory authority of the court to appoint a receiver, depending on whether the matter is pending in superior or municipal court, and whether the case is classified as a limited civil case or otherwise. This would not be a significant substantive change in the law, but would simplify the statutes and provide uniform court procedures.

The staff recommends the Commission approve the attached Tentative Recommendation for distribution for comment.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Appointment of Receiver

February 1999

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN **May 15, 1999.**

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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SUMMARY OF TENTATIVE RECOMMENDATION

This recommendation would eliminate the differences in the statutory authority of the court to appoint a receiver, depending on whether the matter is pending in superior or municipal court, and whether the case is classified as a limited civil case or otherwise. This would not be a significant substantive change in the law, but would simplify the statutes and provide uniform court procedures.

This recommendation was prepared pursuant to Section 70219 of the Government Code.

1 APPOINTMENT OF RECEIVER

2 A receiver is a court officer or representative appointed to take over control and
3 management of property that is the subject of litigation before the court, to
4 preserve the property, and ultimately to dispose of it according to final judgment.¹
5 A receiver may not be appointed except in cases expressly authorized by statute.²
6 A person seeking appointment of a receiver must establish one of the statutory
7 grounds for receivership and, because receivership is an equitable remedy, must
8 also show irreparable injury and inadequacy of other remedies.³ A receivership
9 can be harsh, time-consuming, expensive, and potentially unjust, and thus should
10 be granted only if it is essential because no other remedy is sufficient.⁴

11 Before 1998, the superior court had authority under Section 564 of the Code of
12 Civil Procedure to appoint a receiver in “cases where receivers have heretofore
13 been appointed by usages of courts of equity”⁵ and in other specifically
14 enumerated cases.⁶ The municipal court had authority under Section 86 of the
15 Code of Civil Procedure to appoint a receiver “where necessary to preserve the
16 property or rights of any party” and under the enforcement of judgments law.

17 Most of the detailed authority of the superior court in Section 564 has existed
18 since the Code of Civil Procedure was enacted in 1872.⁷ The briefer, more general

1. 6 B. Witkin, California Procedure *Provisional Remedies* § 416, at 337 (4th ed. 1997).

2. Miller v. Oliver, 174 Cal. 407, 410, 163 Pac. 355, 357 (1917); Turner v. Superior Court, 72 Cal. App. 3d 804, 811, 140 Cal. Rptr. 475 (1977); 6 B. Witkin, California Procedure *Provisional Remedies* § 420, at 341 (4th ed. 1997); R. Weil & I. Brown, California Practice Guide, Civil Procedure Before Trial § 9:734 (1998). Although the Weil & Brown treatise refers to the court’s “inherent” authority to appoint a receiver, citing McCarthy v. Poulsen, 173 Cal. App. 3d 1212, 1219, 219 Cal. Rptr. 375, 380 (1985), that case relied on the provision in Code of Civil Procedure Section 564(8) for appointment of a receiver in “cases where receivers have been appointed by the usages of courts of equity.” Thus it was based on statutory, not inherent, authority.

3. Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp., 116 Cal. App. 2d 869, 872, 254 P.2d 599, 602 (1953); R. Weil & I. Brown, California Practice Guide, Civil Procedure Before Trial § 9:759 (1998).

4. R. Weil & I. Brown, California Practice Guide, Civil Procedure Before Trial §§ 9:743-9:744 (1998). See also 6 B. Witkin, California Procedure *Provisional Remedies* § 417, at 339 (4th ed. 1997) (receivership is harsh and drastic, and should be granted only in cases of extreme necessity).

5. Traditionally in equity, the “exercise of the power of appointing a receiver rests very much in the sound discretion of the Court, ‘to be governed by a view of the whole circumstances of the case, one of the circumstances being the probability of the plaintiff being ultimately entitled to a decree.’” Copper Hill Mining Co. v. Spencer, 25 Cal. 11, 16 (1864) [citing Edwards on Receivers and the 1859 edition of Adams’ Equity].

6. Before 1998, the superior court also had authority under Code of Civil Procedure Section 564 to appoint a receiver “in any case in which the court is empowered by law to appoint a receiver.”

7. The court’s authority to appoint a receiver dates from the first California Legislature in 1850. See 1850 Cal. Stat. ch. 142, § 220, at 448 (order appointing receiver for property of judgment debtor). See also 1854 Cal. Stat. ch. 54, § 19, at 61-62.

1 authority of the municipal court has existed since 1933.⁸ A number of the
2 specifically enumerated cases in Section 564 are matters of which only the
3 superior court could have jurisdiction.⁹ This may be a reason for the greater detail
4 in the superior court statute.

5 These statutes were revised in 1998 in connection with trial court unification.¹⁰
6 The former municipal court statute now applies in limited civil cases,¹¹ and the
7 former superior court statute now applies in cases other than limited civil cases.¹²
8 A limited civil case is a case within the jurisdiction of the municipal court or, in a
9 county in which the courts have unified, a similar case in superior court.¹³

8. 1933 Cal. Stat. ch. 743, § 12 (enacting Code of Civil Procedure Section 89 authorizing the municipal court “to appoint receivers, where necessary to preserve the property or rights of any party to an action of which the court has jurisdiction”). This is the same as the language now found in Code of Civil Procedure Section 86. The authority for the municipal court to appoint a receiver in aid of execution of judgment was added in 1941, although the earlier, more general language apparently was broad enough to include the subject matter of the 1941 amendment. Evidently “it was thought advisable to have a more specific provision in the section in this respect.” 15 So. Cal. L. Rev. 1, 2 (1941).

9. These are:

(1) An action by a secured lender to foreclose a deed of trust or mortgage and for sale of the encumbered property. Jurisdiction for this type of case is exclusively in superior court. See Cal. Const. art. VI, § 10; Code Civ. Proc. § 86; 2 B. Witkin, California Procedure *Courts* §§ 211, 253, at 279-80, 328 (4th ed. 1996).

(2) Cases where a corporation has been dissolved, is insolvent, or has forfeited its corporate rights. Jurisdiction to dissolve a corporation is exclusively in superior court. Corp. Code §§ 1800 (involuntary dissolution), 1904 (voluntary dissolution); 2 B. Witkin, California Procedure *Courts* § 215, at 283 (4th ed. 1996).

(3) At the request of the Public Utilities Commission under Public Utilities Code Sections 855 and 5259.5. These proceedings are exclusively in superior court.

(4) At the request of the Office of Statewide Health Planning and Development or Attorney General under the Health and Safety Code. These proceedings are exclusively in superior court. Health & Safety Code § 129173(d).

10. On June 2, 1998, the voters approved Proposition 220 which revised the California Constitution to provide for unification of the municipal and superior courts in a county on a vote of a majority of the municipal court judges and a majority of the superior court judges in that county. See Cal. Const. art. VI, § 5(e). Since then, the courts in 49 out of California’s 58 counties have unified. The implementing legislation included revisions of Code of Civil Procedure Sections 564 and 86. 1998 Cal. Stat. ch. 931, §§ 29, 75.

11. Code Civ. Proc. § 86(a)(8).

12. Code Civ. Proc. § 564. Although Section 564 permits appointment of receiver under the “usages of courts of equity,” if the case is within a specific class listed in Section 564, the general usage theory cannot be invoked, and the plaintiff must make a sufficient showing under the specific provision. *Dabney Oil Co. v. Providence Oil Co.*, 22 Cal. App. 233, 237, 133 Pac. 1155 (1913); 6 B. Witkin, California Procedure *Provisional Remedies* § 421, at 342 (4th ed. 1996). This might be considered a substantive difference between the court’s authority under Section 564 and under Section 86, but the difference is not a major one, since the specific classes listed in Section 564 merely impose reasonable conditions. The *Dabney* case, for example, was an action to recover property, thus requiring a showing that the plaintiff’s right is “probable” as a condition of appointing a receiver. This showing was always regarded as required by usages of courts of equity. See *Copper Hill Mining Co. v. Spencer*, 25 Cal. 11, 16 (1864). The superior court also has authority in a case other than a limited civil case to appoint a receiver “in any case in which the court is empowered by law to appoint a receiver.” Code Civ. Proc. § 564.

13. Code Civ. Proc. §§ 85-86.1. In the implementing legislation for the unification measure, statutes that apply to municipal courts were expanded to apply in unified superior courts to cases that would have been within the jurisdiction of the municipal court. 1998 Cal. Stat. ch. 931. This legislation was narrowly limited

1 The differences in standards for appointment of a receiver in limited civil cases
2 and other cases are minor, and appear to be the result of historical development.
3 Court unification creates an opportunity to simplify practice and procedure in the
4 unified court without a significant change in substance by adopting one uniform
5 rule.¹⁴ For the sake of simplicity, the uniform rule can also be applied in non-
6 unified counties without loss of substance. California Rules of Court, for example,
7 have procedural rules for appointment of a receiver that apply equally in superior
8 and municipal courts.¹⁵

9 The Commission therefore recommends that the statute for appointment of a
10 receiver in superior court cases other than a limited civil case be broadened to
11 apply to all cases, including limited civil cases, without regard either to the
12 classification of the case or the court in which the matter is pending.

to preserve existing procedures in the context of unification. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm'n Reports 51, 60 (1998). The Law Revision Commission recommended further study of court procedures with a view to possible elimination of unnecessary procedural distinctions between cases that are limited civil cases and those that are not. *Id.* at 82. One of the areas recommended for study was whether to conform the statutory provisions on circumstances for appointment of a receiver. *Id.* at 85. The Legislature has directed this study. Gov't Code § 70219.

14. In a county in which the courts have unified, the superior court has statutory authority in a limited civil case to appoint a receiver "where necessary to preserve the property or rights of any party." Code Civ. Proc. §§ 85.1, 86(a)(8). By case law the court has similar authority in cases traditionally within the jurisdiction of the superior court: in deciding whether to appoint a receiver or to use a less drastic remedy, the goal of the superior court should be to "adequately protect the rights of the parties." *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939).

15. Cal. R. Ct. 301, 349-353.

PROPOSED LEGISLATION

1 **Code Civ. Proc. § 86 (amended). Miscellaneous limited civil cases**

2 SEC. ____ . Section 86 of the Code of Civil Procedure is amended to read:

3 86. (a) The following civil cases and proceedings are limited civil cases:

4 (1) Cases at law in which the demand, exclusive of interest, or the value of the
5 property in controversy amounts to twenty-five thousand dollars (\$25,000) or less.
6 This paragraph does not apply to cases that involve the legality of any tax, impost,
7 assessment, toll, or municipal fine, except actions to enforce payment of
8 delinquent unsecured personal property taxes if the legality of the tax is not
9 contested by the defendant.

10 (2) Actions for dissolution of partnership where the total assets of the partnership
11 do not exceed twenty-five thousand dollars (\$25,000); actions of interpleader
12 where the amount of money or the value of the property involved does not exceed
13 twenty-five thousand dollars (\$25,000).

14 (3) Actions to cancel or rescind a contract when the relief is sought in connection
15 with an action to recover money not exceeding twenty-five thousand dollars
16 (\$25,000) or property of a value not exceeding twenty-five thousand dollars
17 (\$25,000), paid or delivered under, or in consideration of, the contract; actions to
18 revise a contract where the relief is sought in an action upon the contract if the
19 action otherwise is a limited civil case.

20 (4) Proceedings in forcible entry or forcible or unlawful detainer where the
21 whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or
22 less.

23 (5) Actions to enforce and foreclose liens on personal property where the amount
24 of the liens is twenty-five thousand dollars (\$25,000) or less.

25 (6) Actions to enforce and foreclose liens of mechanics, materialmen, artisans,
26 laborers, and of all other persons to whom liens are given under the provisions of
27 Chapter 2 (commencing with Section 3109) of Title 15 of Part 4 of Division 3 of
28 the Civil Code, or to enforce and foreclose an assessment lien on a common
29 interest development as defined in Section 1351 of the Civil Code, where the
30 amount of the liens is twenty-five thousand dollars (\$25,000) or less. However,
31 where an action to enforce the lien affects property that is also affected by a
32 similar pending action that is not a limited civil case, or where the total amount of
33 the liens sought to be foreclosed against the same property aggregates an amount
34 in excess of twenty-five thousand dollars (\$25,000), the action is not a limited civil
35 case, and if the action is pending in a municipal court, upon motion of any
36 interested party, the municipal court shall order the action or actions pending
37 therein transferred to the proper superior court. Upon making the order, the same
38 proceedings shall be taken as are provided by Section 399 with respect to the
39 change of place of trial.

1 (7) Actions for declaratory relief when brought pursuant to either of the
2 following:

3 (A) By way of cross-complaint as to a right of indemnity with respect to the
4 relief demanded in the complaint or a cross-complaint in an action or proceeding
5 that is otherwise a limited civil case.

6 (B) To conduct a trial after a nonbinding fee arbitration between an attorney and
7 client, pursuant to Article 13 (commencing with Section 6200) of Chapter 4 of
8 Division 3 of the Business and Professions Code, where the amount in controversy
9 is twenty-five thousand dollars (\$25,000) or less.

10 (8) Actions to issue temporary restraining orders and preliminary injunctions,
11 ~~and to take accounts, and to appoint receivers where necessary to preserve the~~
12 ~~property or rights of any party to a limited civil case; to appoint a receiver and to~~
13 ~~make any order or perform any act, pursuant to Title 9 (commencing with Section~~
14 ~~680.010) of Part 2 (enforcement of judgments) in a limited civil case; to determine~~
15 ~~title to personal property seized in a limited civil case.~~

16 (9) Actions under Article 3 (commencing with Section 708.210) of Chapter 6 of
17 Division 2 of Title 9 of Part 2 for the recovery of an interest in personal property
18 or to enforce the liability of the debtor of a judgment debtor where the interest
19 claimed adversely is of a value not exceeding twenty-five thousand dollars
20 (\$25,000) or the debt denied does not exceed twenty-five thousand dollars
21 (\$25,000).

22 (10) Arbitration-related petitions filed pursuant to either of the following:

23 (A) Article 2 (commencing with Section 1292) of Chapter 5 of Title 9 of Part 3,
24 except for uninsured motorist arbitration proceedings in accordance with Section
25 11580.2 of the Insurance Code, if the petition is filed before the arbitration award
26 becomes final and the matter to be resolved by arbitration is a limited civil case
27 under paragraphs (1) to (9), inclusive, of subdivision (a) or if the petition is filed
28 after the arbitration award becomes final and the amount of the award and all other
29 rulings, pronouncements, and decisions made in the award are within paragraphs
30 (1) to (9), inclusive, of subdivision (a).

31 (B) To confirm, correct, or vacate a fee arbitration award between an attorney
32 and client that is binding or has become binding, pursuant to Article 13
33 (commencing with Section 6200) of Chapter 4 of Division 3 of the Business and
34 Professions Code, where the arbitration award is twenty-five thousand dollars
35 (\$25,000) or less.

36 (b) The following cases in equity are limited civil cases:

37 (1) Cases to try title to personal property when the amount involved is not more
38 than twenty-five thousand dollars (\$25,000).

39 (2) Cases when equity is pleaded as a defensive matter in any case that is
40 otherwise a limited civil case.

41 (3) Cases to vacate a judgment or order of the court obtained in a limited civil
42 case through extrinsic fraud, mistake, inadvertence, or excusable neglect.

1 **Comment.** Section 86 is amended to delete from paragraph (8) of subdivision (a) the language
2 relating to appointment of a receiver. Appointment of a receiver in a limited civil case as well as
3 other cases is now governed by Sections 564-570.

4 **Code Civ. Proc. § 564 (amended). Appointment of receiver**

5 564. (a) A receiver may be appointed, in the manner provided in this chapter, by
6 the court in which an action or proceeding is pending in any case in which the
7 court is empowered by law to appoint a receiver.

8 (b) ~~In superior court a~~ A receiver may be appointed by the court in which an
9 action or proceeding is pending, or by a judge thereof, in the following cases, ~~other~~
10 ~~than in a limited civil case:~~

11 (1) In an action by a vendor to vacate a fraudulent purchase of property, or by a
12 creditor to subject any property or fund to the creditor's claim, or between partners
13 or others jointly owning or interested in any property or fund, on the application of
14 the plaintiff, or of any party whose right to or interest in the property or fund, or
15 the proceeds thereof, is probable, and where it is shown that the property or fund is
16 in danger of being lost, removed, or materially injured.

17 (2) In an action by a secured lender for the foreclosure of the deed of trust or
18 mortgage and sale of the property upon which there is a lien under a deed of trust
19 or mortgage, where it appears that the property is in danger of being lost, removed,
20 or materially injured, or that the condition of the deed of trust or mortgage has not
21 been performed, and that the property is probably insufficient to discharge the
22 deed of trust or mortgage debt.

23 (3) After judgment, to carry the judgment into effect.

24 (4) After judgment, to dispose of the property according to the judgment, or to
25 preserve it during the pendency of an appeal, or pursuant to Title 9 (commencing
26 with Section 680.010) (enforcement of judgments), or after sale of real property
27 pursuant to a decree of foreclosure, during the redemption period, to collect,
28 expend, and disburse rents as directed by the court or otherwise provided by law.

29 (5) In the cases when a corporation has been dissolved, or is insolvent, or in
30 imminent danger of insolvency, or has forfeited its corporate rights.

31 (6) In an action of unlawful detainer.

32 (7) At the request of the Public Utilities Commission pursuant to Sections 855
33 and 5259.5 of the Public Utilities Code.

34 (8) In all other cases where receivers have heretofore been appointed by the
35 usages of courts of equity.

36 (9) At the request of the Office of Statewide Health Planning and Development,
37 or the Attorney General, pursuant to Section ~~436.222~~ 129173 of the Health and
38 Safety Code.

39 (10) In an action by a secured lender for specified performance of an assignment
40 of rents provision in a deed of trust, mortgage, or separate assignment document.
41 In addition, that appointment may be continued after entry of a judgment for
42 specific performance in that action, if appropriate to protect, operate, or maintain

1 real property encumbered by the deed of trust or mortgage or to collect the rents
2 therefrom while a pending nonjudicial foreclosure under power of sale in the deed
3 of trust or mortgage is being completed.

4 (11) In a case brought by an assignee under an assignment of leases, rents,
5 issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

6 (c) A receiver may be appointed, in the manner provided in this chapter,
7 including, but not limited to, Section 566, by the superior court in an action ~~other~~
8 ~~than a limited civil case~~ brought by a secured lender to enforce the rights provided
9 in Section 2929.5 of the Civil Code, to enable the secured lender to enter and
10 inspect the real property security for the purpose of determining the existence,
11 location, nature, and magnitude of any past or present release or threatened release
12 of any hazardous substance into, onto, beneath, or from the real property security.
13 The secured lender shall not abuse the right of entry and inspection or use it to
14 harass the borrower or tenant of the property. Except in case of an emergency,
15 when the borrower or tenant of the property has abandoned the premises, or if it is
16 impracticable to do so, the secured lender shall give the borrower or tenant of the
17 property reasonable notice of the secured lender's intent to enter and shall enter
18 only during the borrower's or tenant's normal business hours. Twenty-four hours'
19 notice shall be presumed to be reasonable notice in the absence of evidence to the
20 contrary.

21 (d) Any action by a secured lender to appoint a receiver pursuant to this section
22 shall not constitute an action within the meaning of subdivision (a) of Section 726.

23 (e) For purposes of this section:

24 (1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a
25 mortgage, where the deed of trust or mortgage encumbers real property security
26 and secures the performance of the trustor or mortgagor under a loan, extension of
27 credit, guaranty, or other obligation. The term includes any successor-in-interest of
28 the trustor or mortgagor to the real property security before the deed of trust or
29 mortgage has been discharged, reconveyed, or foreclosed upon.

30 (2) "Hazardous substance" means (A) any "hazardous substance" as defined in
31 subdivision (f) of Section 25281 of the Health and Safety Code as effective on
32 January 1, 1991, or as subsequently amended, (B) any "waste" as defined in
33 subdivision (d) of Section 13050 of the Water Code as effective on January 1,
34 1991, or as subsequently amended, or (C) petroleum, including crude oil or any
35 fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic
36 gas usable for fuel, or any mixture thereof.

37 (3) "Real property security" means any real property and improvements, other
38 than a separate interest and any related interest in the common area of a residential
39 common interest development, as the terms "separate interest," "common area,"
40 and "common interest development" are defined in Section 1351 of the Civil
41 Code, or real property consisting of one acre or less that contains 1 to 15 dwelling
42 units.

1 (4) “Release” means any spilling, leaking, pumping, pouring, emitting,
2 emptying, discharging, injecting, escaping, leaching, dumping, or disposing into
3 the environment, including continuing migration, of hazardous substances into,
4 onto, or through soil, surface water, or groundwater.

5 (5) “Secured lender” means the beneficiary under a deed of trust against the real
6 property security, or the mortgagee under a mortgage against the real property
7 security, and any successor-in-interest of the beneficiary or mortgagee to the deed
8 of trust or mortgage.

9 **Comment.** Section 564 is amended to authorize the superior court to appoint a receiver under
10 this section in any case, including a limited civil case, and to apply the section to municipal courts
11 as well. Some proceedings enumerated in subdivision (b) are matters of which only the superior
12 court could have jurisdiction in any event. See 2 B. Witkin, California Procedure *Courts* §§ 211,
13 253, at 279-80, 328 (4th ed. 1996) (action by secured lender to foreclose deed of trust or
14 mortgage and for sale of encumbered property); Corp. Code §§ 1800 (involuntary dissolution of
15 corporation), 1904 (voluntary dissolution of corporation); 2 B. Witkin, California Procedure
16 *Courts* § 215, at 283 (4th ed. 1996); Pub. Util. Code §§ 855, 5259.5 (at request of Public Utilities
17 Commission); Health & Safety Code § 129173(d) (at request of Office of Statewide Health
18 Planning and Development or Attorney General).

19 Section 564 does not contain language formerly found in Section 86 authorizing appointment of
20 a receiver “where necessary to preserve the property or rights of any party.” However, in applying
21 Section 564 the superior court should choose the remedy that “will adequately protect the rights
22 of the parties.” *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75
23 (1939).

24 For other provisions concerning receivers, see Code Civ. Proc. §§ 708.610-708.630, 712.060,
25 1422; Civ. Code § 3439.07; Corp. Code §§ 1801, 1803, 16504; Fam. Code § 290; Ins. Code §§
26 1064.1-1064.2.

27 The reference in paragraph (9) of subdivision (b) to Health and Safety Code Section 436.222 is
28 revised to refer to Section 129173 of that code. Section 436.222 was repealed in 1995 and its
29 substance recodified in Section 129173. See 1995 Cal. Stat. ch. 415.
