

Memorandum 2001-14

Trial Court Unification: Authority to Appoint Receivers

In April 2000, the Commission approved a final recommendation on *Authority to Appoint Receivers*, which proposed to consolidate two provisions on appointment of a receiver (one applicable to limited civil cases and the other applicable to unlimited civil cases). This proposal was incorporated in the Assembly Judiciary Committee's omnibus civil practice bill last session (AB 1669), but later deleted as too substantive for that type of bill. The consultant for the Senate Judiciary Committee also expressed concern that (1) the proposal was premature because not all trial courts had unified, and (2) the proposal might create confusion for practitioners. Since then, the trial courts in all counties have either unified or agreed to unify (Kings County is scheduled to unify on February 8, 2001, which will eliminate the last municipal courts in California). The staff has updated the proposal to reflect this development and improve clarity for practitioners. The new draft is attached for the Commission and interested parties to review.

Significant differences between this draft and the previous version include:

- A cross-reference to Code of Civil Procedure Section 564 has been inserted in proposed Code of Civil Procedure Section 86, to aid practitioners familiar with existing law.
- A cross-reference to Code of Civil Procedure Section 565 has been inserted in proposed Code of Civil Procedure Section 564(a)(5), to alert practitioners to the existence of Section 565.
- The Comment to Code of Civil Procedure Section 564 has been revised to explain that some of the types of actions listed in the statute may only be brought as an unlimited civil case. A similar revision has been made in the preliminary part (narrative portion) of the proposal.
- The Comment to Code of Civil Procedure Section 86 has been revised to more fully explain the disposition of the language deleted from that provision.
- Code of Civil Procedure Section 86(a)(6) has been revised to delete the references to municipal courts.

The staff also considered whether to revise the proposed amendment of Section 564(a)(8), which is discussed in detail in the Comment. The issue is how best to combine the two standards now in use, which are similar in scope but differently worded: (1) the former municipal court standard, authorizing appointment of a receiver “where necessary to preserve the property or rights of any party,” and (2) the former superior court standard, authorizing appointment of a receiver “where receivers have heretofore been appointed by the usages of courts of equity.” The current draft would preserve both standards. Would it be better to eliminate one of them or combine them into a single standard? We will discuss this issue further at the Commission’s meeting.

After reviewing the revised draft and considering any issues raised, **the Commission needs to decide whether to approve the new draft (as is or with further modifications) for printing and submission to the Legislature.**

Respectfully submitted,

Barbara S. Gaal
Staff Counsel

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

PREPRINT REVISED RECOMMENDATION

Authority to Appoint Receivers

February 2001

California Law Revision Commission
4000 Middlefield Road, Room D-1
Palo Alto, CA 94303-4739

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative.

Cite this report as *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm'n Reports 291 (2001). This is part of publication #209 [*2000-2001 Recommendations*].

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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February 1, 2001

To: The Honorable Gray Davis
Governor of California, and
The Legislature of California

Two different provisions govern a court's authority to appoint a receiver. The Law Revision Commission recommends consolidating these provisions. This would not be a significant substantive change in the law, but would simplify the statutes and provide uniform court procedures.

This recommendation is submitted pursuant to Government Code Section 70219.

Respectfully submitted,

David Huebner
Chairperson

AUTHORITY TO APPOINT RECEIVERS

A receiver is a court officer or representative appointed to control and manage property that is the subject of litigation before the court, to preserve the property, and to dispose of it according to the court's final judgment.¹ A receiver may not be appointed except in cases expressly authorized by statute.² A person seeking appointment of a receiver must establish one of the statutory grounds for receivership and must also show irreparable injury and inadequacy of other remedies.³ A receivership can be harsh, time-consuming, expensive, and potentially unjust, so it should not be granted unless it is essential.⁴

Before 1998, the superior court had authority to appoint a receiver in "cases where receivers have heretofore been appointed by the usages of courts of equity"⁵ and in other

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

2. *Miller v. Oliver*, 174 Cal. 407, 410, 163 P. 355 (1917); *Turner v. Superior Court*, 72 Cal. App. 3d 804, 811, 140 Cal. Rptr. 475 (1977); Witkin, *supra* note 1, *Provisional Remedies* § 420, at 341; R. Weil & I. Brown, *California Practice Guide, Civil Procedure Before Trial* § 9:734 (1999).

3. *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 116 Cal. App. 2d 869, 873, 254 P.2d 599 (1953); Weil & Brown, *supra* note 2, § 9:759.

4. Weil & Brown, *supra* note 2, §§ 9:743-9:744. See also *City & County of San Francisco v. Daley*, 16 Cal. App. 4th 734, 744, 20 Cal. Rptr. 2d 256 (1993); *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939) (superior court should appoint receiver only where necessary to "adequately protect the rights of the parties"); Witkin, *supra* note 1, *Provisional Remedies* § 417, at 339 (receivership is harsh and drastic, and should be granted only in cases of extreme necessity).

5. 1996 Cal. Stat. ch. 1154, § 2.1 (former Code Civ. Proc. § 564(b)(8)). In equity, exercise of the power to appoint a receiver traditionally rested in the sound discretion of the court, to be governed by consideration of the whole circumstances of the case, including the probability that the plaintiff would ultimately be entitled to a decree. *Copper Hill Mining Co. v. Spencer*, 25 Cal. 11, 16 (1864).

specifically enumerated cases.⁶ Under the statute governing municipal court jurisdiction generally, the municipal court had authority to appoint a receiver “where necessary to preserve the property or rights of any party” or to enforce a judgment.⁷

Most of the statutory detail on appointment of a receiver in superior court dates from enactment of the 1872 Code of Civil Procedure.⁸ The briefer, more general statutory authority on appointment of a receiver in municipal court was introduced in 1933.⁹ A number of the circumstances specifically enumerated in the statute on appointment of a receiver in superior court were beyond the jurisdiction of the municipal court.¹⁰

6. 1996 Cal. Stat. ch. 1154, § 2.1 (former Code Civ. Proc. § 564(b)(1)-(7), (b)(9)-(11), (c)). All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

7. 1997 Cal. Stat. ch. 527, § 2 (former Section 86(a)(8)).

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

9. 1933 Cal. Stat. ch. 743, § 13 (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 language as in former Code of Civil Procedure Section 86 (1997 Cal. Stat. ch. 527, § 2). The authority for the municipal court to appoint a receiver in aid of execution of judgment was added in 1941. 1941 Cal. Stat. ch. 371, § 1. 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.” Howell, *The Work of the 1941 California Legislature: Civil Procedure*, 15 S. Cal. L. Rev. 1, 2 (1941).

10. For example, Section 564(b)(5) refers to appointment of a receiver in an action to dissolve a corporation. The superior court had exclusive jurisdiction of such an action. See Section 565 (appointment of receiver on dissolution of corporation); Corp. Code §§ 1800 (involuntary dissolution), 1904 (voluntary dissolution); 2 B. Witkin, *California Procedure Courts* § 215, at 283.

Similarly, Section 564(b)(7) refers to appointment of a receiver where the Public Utilities Commission requests a receiver pursuant to certain provisions of the Public Utilities Code. These proceedings were exclusively in superior court. 1996 Cal. Stat. ch. 1154, § 31 (former Pub. Util. Code § 5259.5); see also Pub. Util. Code § 855.

This may be a reason for the greater degree of detail in the statute on appointment of a receiver in superior court, as compared to the similar statute for municipal court.

The statutes on authority to appoint a receiver were revised in 1998 in connection with trial court unification.¹¹ The statute formerly applicable in municipal court now applies in “limited civil cases.”¹² A “limited civil case” is a case traditionally within the jurisdiction of the municipal court and subject to economic litigation and other traditional municipal court procedures.¹³ The statute formerly applicable in superior court now applies in “cases other than a limited civil case,”¹⁴

These are not the only examples. See, e.g., 1996 Cal. Stat. ch. 411, § 2 (former Health & Safety Code § 129173), referring to appointment of a receiver *by the superior court*. See also former Cal. Const. art. VI, § 10 (superior court has original jurisdiction except where jurisdiction is given by statute to another trial court); 1997 Cal. Stat. ch. 527, § 2 (former Code Civ. Proc. § 86) (listing causes triable in municipal court).

11. 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). At the direction of the Legislature, the Law Revision Commission prepared extensive legislation to implement this measure, including revisions of Sections 86 and 564. 1998 Cal. Stat. ch. 931, §§ 29, 75. As of February 8, 2001, the courts in all of California’s 58 counties will have unified.

12. Section 86(a)(8).

13. Section 85 & Comment, Section 85.1. To implement trial court unification, statutes that applied to municipal courts were expanded to encompass cases in a unified superior court that traditionally would have been within the jurisdiction of the municipal court. See 1998 Cal. Stat. ch. 931. The Law Revision Commission narrowly limited the scope of this legislation, preserving existing procedures but making them workable in the context of unification. *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51, 60 (1998). The Commission recommended further study of court procedures, however, with a view to possible elimination of unnecessary procedural distinctions between limited civil cases and other cases. *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 directed the Commission to undertake this study, in consultation with the Judicial Council. Gov’t Code § 70219.

14. Section 564.

which are referred to as “unlimited civil cases.”¹⁵ These types of cases are traditionally within the jurisdiction of the superior court and subject to traditional superior court procedures.¹⁶

The differences in standards for appointment of a receiver in limited civil cases and other cases are minor, and appear to be the result of historical development.¹⁷ Court unification creates an opportunity to simplify practice and procedure in the unified court without a significant change in substance, by adopting one uniform rule.

The Law Revision Commission recommends that the statute on appointment of a receiver in an unlimited civil case (Section 564) be broadened to apply to all cases.¹⁸ The language on circumstances for appointment of a receiver should be deleted from the former municipal court statute (Section 86), but replaced with a cross-reference to Section 564.

15. Section 88.

16. See generally *Revision of Codes*, *supra* note 13, at 64-65.

17. Section 564(b)(8) permits appointment of a receiver under the “usages of courts of equity.” If the case is within a specific class listed in Section 564, however, 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 P. 1155 (1913); Witkin, *supra* note 1, *Provisional Remedies* § 421, at 342. This might be considered a substantive difference between the court’s authority under Section 564 and its authority under Section 86, but the difference is not a major one, because the specific classes listed in Section 564 merely impose reasonable conditions on appointment of a receiver. The *Dabney* case, for example, was an action to recover property, so appointment of a receiver was statutorily conditioned on showing that the property was in danger of being lost, removed, or materially injured. 22 Cal. App. at 237-39. Similarly, Section 86 authorizes appointment of a receiver only “where necessary to preserve the property or rights of any party.”

18. Although Section 564 would cover both limited and unlimited civil cases, some of the types of actions listed in the statute may only be brought as an unlimited civil case. See *supra* note 10; see also Section 85 & Comment.

PROPOSED LEGISLATION

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

SECTION 1. Section 86 of the Code of Civil Procedure is amended to read:

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

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

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

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

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

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

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

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

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

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

(8) Actions to issue temporary restraining orders and preliminary injunctions, *and* to take accounts, ~~and to appoint receivers where necessary to preserve the property or rights of any party to a limited civil case; to appoint a receiver and to~~

make any order or perform any act, pursuant to Title 9 (commencing with Section 680.010) of Part 2 (enforcement of judgments) in a limited civil case; *to appoint a receiver pursuant to Section 564 in a limited civil case*; to determine title to personal property seized in a limited civil case.

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

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

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

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

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

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

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

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

Comment. Subdivision (a)(6) of Section 86 is amended to reflect elimination of the municipal courts as a result of unification with the superior courts pursuant to Article VI, Section 5(e), of the California Constitution. For reclassification of an action in a unified superior court, see Sections 403.010-403.090.

Subdivision (a)(8) is amended to delete the language on circumstances for appointment of a receiver in a limited civil cases, and insert a cross-reference to Section 564, which now governs appointment of receivers in both limited and unlimited civil cases.

The language deleted from the first clause of subdivision (a)(8) is continued in Section 564(b)(8), but broadened to apply to all cases. This is not a significant substantive change. See Section 564 Comment.

The language deleted from the second clause of subdivision (a)(8) is not continued, because it is redundant with Section 564(b)(3) and (b)(4).

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

SEC. 2. Section 564 of the Code of Civil Procedure is amended to read:

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

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

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is

probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

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

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

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

(5) ~~In the cases when~~ *Where* a corporation has been dissolved, ~~or as provided in Section 565.~~

(6) *Where a corporation* is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(6) (7) In an action of unlawful detainer.

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

(8) (9) In all other cases where *necessary to preserve the property or rights of any party, or where* receivers have heretofore been appointed by the usages of courts of equity.

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

(10) (11) In an action by a secured lender for ~~specified~~ *specific* performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. In

addition, that *The* appointment may be continued after entry of a judgment for specific performance in that action, if appropriate to protect, operate, or maintain real property encumbered by the *a* deed of trust or mortgage or to collect the rents therefrom while a pending nonjudicial foreclosure under power of sale in the *a* deed of trust or mortgage is being completed.

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

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

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

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or

mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

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

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

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

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

Comment. For purposes of simplification and uniformity of procedures, Section 564 is broadened to govern appointment of a

receiver in all cases, regardless of the jurisdictional classification of the case. Formerly, a separate provision governed appointment of a receiver in a limited civil case. 1998 Cal. Stat. ch. 931, § 29 (former Section 86(a)(8)).

Although Section 564 covers both limited and unlimited civil cases, some of the types of actions listed in the statute may only be brought as an unlimited civil case. For example, Section 564(b)(7) refers to appointment of a receiver where the Public Utilities Commission requests a receiver pursuant to Public Utilities Code Section 855 or 5259.5. Such a proceeding may only be brought as an unlimited civil case. See Section 85 & Comment.

To aid practitioners, subdivision (b)(5) of Section 564 is amended to refer to Section 565 (appointment of receiver on dissolution of corporation).

Subdivision (b)(9) (former subdivision (b)(8)) is amended to add language formerly found in Section 86, authorizing appointment of a receiver “where necessary to preserve the property or rights of any party.” This authority largely overlaps with the remainder of paragraph (b)(9), authorizing appointment of a receiver “where receivers have heretofore been appointed by the usages of courts of equity.” The authority to appoint a receiver where receivers have heretofore been appointed by the usages of courts of equity” is “a broad provision which vests a large measure of discretion in the trial court, and in the absence of a clear showing of an abuse of that discretion, its action in either appointing or refusing to appoint a receiver will be upheld.” *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939). The trial court must, however, select the least severe remedy that “will adequately protect the rights of the parties.” *Id.* That restriction is essentially the same as the requirement that appointment of a receiver be *necessary* to preserve the property or rights of any party.

Subdivision (b)(10) (former subdivision (b)(9)) is amended to correct the cross-reference. Health and Safety Code Section 436.222 was repealed in 1995 and its substance recodified in Section 129173. See 1995 Cal. Stat. ch. 415, §§ 9, 79.5.

For other provisions concerning receivers, see Sections 565-570, 708.610-708.630, 712.060, 1422. See also Civ. Code § 3439.07; Corp. Code §§ 1801, 1803, 16504; Fam. Code § 290; Ins. Code §§ 1064.1-1064.12.
