

## Memorandum 2001-58

**SB 562 (Morrow): Authority to Appoint Receivers**

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Senate Bill 562 (Morrow) would implement the Commission's Recommendation on *Authority to Appoint Receivers*, 30 Cal. L. Revision Comm'n Reports 291 (2000), as well as another Commission proposal. As proposed by the Commission, the bill would consolidate two existing provisions governing appointment of a receiver: Code of Civil Procedure Sections 86(a)(8) and 564. The Comments to these provisions originally stated that "This is not a significant change." At the May meeting, the Commission decided to delete this language as unnecessary. (Minutes, pp. 9-11.)

While the bill was pending before the Assembly Judiciary Committee, however, the consultant analyzing the bill for the committee sought assurance that the proposed reform was nonsubstantive. He requested that the Comment to Section 564 expressly state as much:

**Comment.** For purposes of simplification, 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 delete language authorizing appointment of a receiver "where receivers have heretofore been appointed by the usages of court of equity," and insert more readily understandable language formerly found in Section 86. This is not a substantive change. The deleted language conferred broad authority to appoint a receiver, but only where other remedies were found to be inadequate. See, e.g.,

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”); Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp., 116 Cal. App. 2d 869, 873, 254 P.2d 599 (1953) (where less severe remedy will adequately protect parties, court ordinarily should not appoint receiver); see also Murray v. Murray, 115 Cal. 266, 275, 47 p. 37 (1896) (in equity, receiver may be appointed where plaintiff has equitable claim to property and “receiver is necessary to preserve the same from loss”). Similarly, subdivision (b)(9) authorizes appointment of a receiver only “where necessary to preserve the property or rights of any party.” (Emphasis added.)

As before, the general language of subdivision (b)(9) does not override specific requirements enumerated elsewhere in the statute. See, e.g., Marsch v. Williams, 23 Cal. App. 4th 238, 246 n.8, 28 Cal. Rptr. 2d 402 (1994); Dabney Oil Co. v. Providence Oil Co., 22 Cal. App. 233, 237, 133 P. 1155 (1913).

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.

The proposed revision is consistent with the content of the Commission’s recommendation, so the staff agreed to it, subject to ratification by the Commission. With that understanding, the consultant wrote a favorable analysis and the Assembly Judiciary Committee passed the bill on the consent calendar. The Assembly has since passed the bill by a 78-0 vote and sent it back to the Senate for concurrence. **The staff recommends that the Commission ratify the revised Comment as shown above.**

Respectfully submitted,

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