

# CALIFORNIA LAW REVISION COMMISSION

## TENTATIVE RECOMMENDATION

### Authority to Appoint a Receiver

December 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 **January 31, 2000.****

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

A court's authority to appoint a receiver depends on whether the underlying litigation is pending in superior court or in municipal court, and whether the case is classified as a limited civil case or otherwise. The Law Revision Commission recommends eliminating these differences. 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 Government Code Section 70219.

## APPOINTMENT OF RECEIVER

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

9 Before 1998, the superior court had authority to appoint a receiver in "cases  
10 where receivers have heretofore been appointed by usages of courts of equity"<sup>5</sup>  
11 and in other specifically enumerated cases.<sup>6</sup> The municipal court had authority to  
12 appoint a receiver "where necessary to preserve the property or rights of any  
13 party" or to enforce a judgment.<sup>7</sup>

14 Most of the statutory detail on appointment of a receiver in superior court dates  
15 from enactment of the 1872 Code of Civil Procedure.<sup>8</sup> The briefer, more general  
16 statutory authority on appointment of a receiver in municipal court was introduced  
17 in 1933.<sup>9</sup> A number of the circumstances specifically enumerated in the statute on

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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 (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, § 417, at 339 (receivership is harsh and drastic, and should be granted only in cases of extreme necessity).

5. 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).

6. Former Code Civ. Proc. § 564(b)(1)-(7), (b)(9)-(11), (c). Unless otherwise noted, all further statutory references are to the Code of Civil Procedure.

7. 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, § 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 language as in former 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. 1941 Cal. Stat. ch. 371, § 1. Although the earlier, more general language apparently was

1 appointment of a receiver in superior court were (and are) beyond the jurisdiction  
2 of the municipal court.<sup>10</sup> This may be a reason for the greater degree of detail in  
3 the statute on appointment of a receiver in superior court, as compared to the simi-  
4 lar statute for municipal court.

5 The statutes on authority to appoint a receiver were revised in 1998 in connec-  
6 tion with trial court unification.<sup>11</sup> The statute formerly applicable in municipal  
7 court now applies in “limited civil cases”,<sup>12</sup> and the statute formerly applicable in  
8 superior court now applies in cases other than limited civil cases.<sup>13</sup> A “limited civil  
9 case” is a case within the jurisdiction of the municipal court or, in a county in  
10 which the courts have unified, a similar case in superior court.<sup>14</sup>

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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. These include:

(1) An action by a secured lender to foreclose a deed of trust or mortgage and sell the encumbered property. Section 564(b)(2). 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, at 279-80 (4th ed. 1996).

(2) Cases where a corporation has been dissolved, is insolvent, or has forfeited its corporate rights. Section 564(b)(5). See also Section 565 (appointment of receiver on dissolution of corporation). Jurisdiction to dissolve a corporation is exclusively in superior court. Corp. Code §§ 1800 (involuntary dissolution), 1904 (voluntary dissolution); 2 B. Witkin, *supra*, § 215, at 283.

(3) Cases in which the Public Utilities Commission requests a receiver pursuant to certain provisions of the Public Utilities Code. Section 564(b)(7). These proceedings are exclusively in superior court. Pub. Util. Code §§ 855, 5295.5.

(4) Cases in which the Office of Statewide Health Planning and Development or the Attorney General requests a receiver pursuant to Health and Safety Code Section 129173 (formerly Health and Safety Code Section 436.222). Section 564(b)(9). These proceedings are exclusively in superior court. Health & Safety Code § 129173(d).

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 November 1999, the courts in 54 out of California’s 58 counties have unified.

12. Section 86(a)(8).

13. Section 564.

14. 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 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.

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.<sup>15</sup>  
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. For the sake of simplicity, the uniform rule can also be applied in non-unified  
6 counties without loss of substance. This is not unprecedented. Court rules govern-  
7 ing the procedure for appointment of a receiver apply equally in superior and  
8 municipal courts.<sup>16</sup>

9 The Law Revision Commission recommends that the statute on appointment of a  
10 receiver in a superior court case other than a limited civil case be broadened to  
11 apply to all cases, including limited civil cases, without regard to either the juris-  
12 dictional classification of the case or the type of court in which the case is pending.

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15. 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.”

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

PROPOSED LEGISLATION

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

2 SECTION 1. 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.** Subdivision (a)(8) of Section 86 is amended to delete the language relating to  
2 appointment of a receiver. Appointment of a receiver in a limited civil case is now governed by  
3 Section 564, which also applies to appointment of a receiver in an unlimited civil case.

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

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

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

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

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

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

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

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

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

32 (6) In an action of unlawful detainer.

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

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

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

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

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

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

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

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

25 (e) For purposes of this section:

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

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

39 (3) "Real property security" means any real property and improvements, other  
40 than a separate interest and any related interest in the common area of a residential  
41 common interest development, as the terms "separate interest," "common area,"  
42 and "common interest development" are defined in Section 1351 of the Civil

1 Code, or real property consisting of one acre or less that contains 1 to 15 dwelling  
2 units.

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

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

11 **Comment.** For purposes of simplification and uniformity of procedures, Section 564 is  
12 broadened to govern appointment of a receiver in all cases, regardless of the jurisdictional  
13 classification of the case or the type of court in which the case is pending. Formerly, a separate  
14 provision (former Section 86(a)(8)) governed appointment of a receiver in a limited civil case.

15 Subdivision (b)(8) of Section 564 is amended to add language formerly found in Section 86,  
16 authorizing appointment of a receiver “where necessary to preserve the property or rights of any  
17 party.” This authority largely overlaps with the remainder of paragraph (8), authorizing  
18 appointment of a receiver “where receivers have heretofore been appointed by the usages of  
19 courts of equity.” The authority to appoint a receiver where receivers have heretofore been  
20 appointed by the usages of courts of equity” is “a broad provision which vests a large measure of  
21 discretion in the trial court, and in the absence of a clear showing of an abuse of that discretion,  
22 its action in either appointing or refusing to appoint a receiver will be upheld.” *Golden State*  
23 *Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939). The trial court must,  
24 however, select the least severe remedy that “will adequately protect the rights of the parties.” *Id.*  
25 That restriction is essentially the same as the requirement that appointment of a receiver be  
26 *necessary* to preserve the property or rights of any party.

27 Subdivision (b)(9) is amended to correct the cross-reference. Health and Safety Code Section  
28 436.222 was repealed in 1995 and its substance recodified in Section 129173. See 1995 Cal. Stat.  
29 ch. 415, §§ 9, 79.5.

30 For other provisions concerning receivers, see Sections 565-570, 708.610-708.630, 712.060,  
31 1422. See also Civ. Code § 3439.07; Corp. Code §§ 1801, 1803, 16504; Fam. Code § 290; Ins.  
32 Code §§ 1064.1-1064.2.