

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

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.

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STATE OF CALIFORNIA

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CALIFORNIA LAW REVISION COMMISSION

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February 2, 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 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.<sup>1</sup> A receiver may not be appointed except in cases expressly authorized by statute.<sup>2</sup> A person seeking appointment of a receiver must also show inadequacy of other remedies.<sup>3</sup> A receivership can be harsh, time-consuming, and expensive, so it should not be granted unless it is essential.<sup>4</sup>

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"<sup>5</sup> and in other specifically enumerated cases.<sup>6</sup> Under the statute governing municipal court jurisdiction generally, the municipal court had authority to appoint a receiver "where necessary to pre-

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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 P. 355 (1917); *Marsch v. Williams*, 23 Cal. App. 4th 238, 246, 28 Cal. Rptr. 2d 402 (1994).

3. *Jackson v. Jackson*, 253 Cal. App. 2d 1026, 62 Cal. Rptr. 121 (1967); *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 116 Cal. App. 2d 869, 873, 254 P.2d 599 (1953).

4. See *Hoover v. Galbraith*, 7 Cal. 3d 519, 528, 498 P.2d 981, 102 Cal. Rptr. 733 (1972); *Golden State Glass Corp. v. Superior Court*, 13 Cal. 2d 384, 393, 90 P.2d 75 (1939); *City & County of San Francisco v. Daley*, 16 Cal. App. 4th 734, 744, 20 Cal. Rptr. 2d 256 (1993); Witkin, *supra* note 1, § 417, at 339.

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).

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.

serve the property or rights of any party” or to enforce a judgment.<sup>7</sup>

Most of the statutory detail on appointment of a receiver in superior court dates from enactment of the 1872 Code of Civil Procedure.<sup>8</sup> The briefer, more general statutory authority on appointment of a receiver in municipal court was introduced in 1933.<sup>9</sup> 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.<sup>10</sup>

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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 (4th ed. 1996).

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.

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).

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.<sup>11</sup> The statute formerly applicable in municipal court now applies in “limited civil cases.”<sup>12</sup> 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.<sup>13</sup> The statute formerly applicable in superior court now applies in “cases other than a limited civil case,”<sup>14</sup> which are referred to as “unlimited civil cases.”<sup>15</sup> These types of cases are traditionally within the jurisdiction of the supe-

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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 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 trial courts in all of California’s 58 counties 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 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.

15. Section 88.

rior court and subject to traditional superior court procedures.<sup>16</sup>

The differences in standards for appointment of a receiver in limited civil cases and unlimited civil cases are minor, and appear to be the result of historical development.<sup>17</sup> Court unification creates an opportunity to simplify practice and procedure without a significant change in substance, by consolidating the provisions.

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.<sup>18</sup> To promote clarity, this provision should state that appointment of a receiver is authorized “where necessary to preserve the property or rights of any party,” instead of referring to the usages of courts of equity.<sup>19</sup> 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.

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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, § 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.

19. See Section 564 Comment *infra*.



## 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 case, 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 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 ~~receivers have heretofore been appointed by the usages of courts of equity~~ *necessary to preserve the property or rights of any party.*

(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, 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 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 courts of equity,” and insert more readily understandable language formerly found in Section 86. This is not a significant 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 (a)(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.

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