

## What Makes for A Successful Receivership: Ins and Outs of How They Work



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Uncle Ben said to Peter Parker (or Voltaire, depending on whom you believe), “with great power comes great responsibility.” In the receivership context, it might better be said, “with great trust comes great responsibility.” A receiver is appointed by a court and tasked with taking possession of or managing a property, a business, or considerable amounts of money. Further, a receiver is a fiduciary and charged with the ongoing operation, management, or liquidation of a troubled asset or company. When an attorney is appointed as a receiver by a judge, this signals that the judge has placed a great amount of trust in that attorney. It is mandatory upon that attorney to prove herself worthy of that trust. As practitioners, we have been involved in the receivership process from every side—seeking to have a receiver appointed, being appointed as receiver, and representing receivers. As such, our experience teaches us that there are particular strategies that successful receivers are recommended to follow:

1. **Be clear.** The function of a receiver is to be an extension of the court, and is required in most jurisdictions by either statute or procedural rule to regularly account to the court and to the parties involved in a litigation regarding what actions have been taken. More importantly, how money is being collected or spent in a receivership. A receiver is held to the highest fiduciary standard and a failure to disclose where money is being spent is troublesome. Regardless of the legal mandate for reporting, more than often, we have seen occur-

rences where the appointed receiver has failed for months, or even longer, to submit regular accountings or reports in a case. Failing to account for one’s actions could result in a court or party questioning exactly what the receiver has been doing and, in a worse-case scenario, the failure to report may result in the replacement of a receiver. We have seen this happen. In one scenario, where our partner was appointed as a replacement receiver (where the prior receivers had failed to report for months) it was discovered that the failure to report in one instance was “covering up” a lack of action, which included a failure to secure insurance for an apartment building. In another, the failure to report made it easy for the receiver to participate in questionable activities that were indicative of larger issues within the receivership that had to be undone by the replacement receiver.

2. **Be practical.** While reporting requirements may be the same in each receivership, the individual tasks required of a receiver relies very much on the type of receivership. In certain cases, a receiver may be appointed to take over and run a business and to investigate potential fraud. In other instances, a receiver may be appointed simply to collect rents or to otherwise manage a property. The skills and tasks required for these different receiverships are not the same, and receivers should take special care to know the expectations of the court and the parties regarding the scope of the receivership. By example, if the receiver has been appointed solely to collect rents and manage a building during the pendency of a foreclosure case, imagine the surprise of the lender and the court when the receiver submitted a bill for well over \$500,000 for actions unrelated to rent collection or property management, but related to hours upon hours of investigation into fraud that was never proven. This example is based upon actual experience where the receiver in question spent hundreds of thousands of dollars looking for fraud (issue spotting), none of which led to actually finding or prosecuting any fraud (solutions), yet the receiver was looking to the lender to pay for all of that unnecessary time. Such an approach is entirely unrealistic and results in unhappy “customers.” It is critical that a receiver properly assess the scope of what a receivership requires, and even more important, assess what is not required, and proceed accordingly.

3. **Be efficient and organized.** At the outset of a receivership, the receiver should develop a plan to protect, preserve, and, if necessary, liquidate the assets. Once that plan is secured, the receiver should take steps to implement that plan with as few resources and persons as necessary, given that the receiver’s function is to protect and preserve (and, thus, not waste) the assets. If suitable, setting a realistic budget at the onset can help avoid the unpleasant experience of discovering that there are no funds to pay the receiver or a lender or owner refusing to pay the fees because the receiver was not efficient and was not useful in her approach to the problem.

4. **Be wise with your resources.** As mentioned above, each case is unique and the approach used by the receiver depends on the type of case; the objective is to use the resources wisely. For example, if a receiver is appointed in a case in which the victims are unsophisti-

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cated, it may make sense to field calls from victims to make sure that they are informed. Even in such a case, the calls should be fielded by someone at a lower rate and should only “escalate” to the receiver when absolutely required. In other cases, in which the victims are sophisticated, it may make sense to create a website on which information can be posted about the receiver’s activities. This is usually a much more cost efficient mechanism to transmit information to interested parties, but again, it depends on the nature of the case and the complexity of the constituents to which a receiver is reporting.

5. **Be intelligent.** This is the single most important thing that a receiver needs to be. Don’t forget the reason why a receiver is being appointed: to function as an extension of the Court for the benefit of the affected parties. This often means that a receiver will be acting as a CEO, a CFO, and a COO simultaneously. The receiver needs to be able to determine what he or she can

do and, more importantly, what he or she cannot do. If the receiver is not an accountant and the case involves financial reporting, the receiver needs to engage an accountant. The receiver also needs to be mindful of the foregoing rules regarding transparency and acting wisely; in other words, advise the parties and the Court what you intend to do and be sure that the resources of the case justify the decision. If the receiver has been appointed in a case requiring technical expertise (such as insurance contracts, computer service companies, and the like), the receiver may need to engage experts in that field.

**In short, a successful receiver is one that should be wise; be intelligent; be practical; and remember that the receiver has been appointed to a position of trust to assist the Court and the parties during the pendency of a case. Like Peter Parker, a receiver must acknowledge the responsibility she has been given and act accordingly.**