

# Receiverships: New Jersey

by Vivian M. Aras, Holland & Knight LLP, with Practical Law Bankruptcy & Restructuring

Status: **Maintained** | Jurisdiction: **New Jersey, United States**

This document is published by Practical Law and can be found at: [us.practicallaw.tr.com/w-036-1924](https://us.practicallaw.tr.com/w-036-1924)

Request a free trial and demonstration at: [us.practicallaw.tr.com/practical-law](https://us.practicallaw.tr.com/practical-law)

A Q&A guide to receiverships in New Jersey. This Q&A addresses the process by which receiverships are generally administered in New Jersey, including the commencement and administration of the receiverships, the duties and actions of receivers, creditor claims, and the jurisdiction of the court. Answers to questions can be compared across a number of jurisdictions (see Receiverships: State Q&A Tool).

## Commencing a Receivership

### 1. What are the applicable statutes for receiverships in your jurisdiction?

In New Jersey, the receivership statutes are relatively comprehensive and provide rules for:

- Receiverships for insolvent corporations (N.J.S.A. 14A:14-1 to 14A:14-27).
- Partnership receiverships (N.J.S.A. 42:4-7).
- Limited partnerships (N.J.S.A. 42:3-19 to 42:3-29).
- Bank receiverships (N.J. R. 4:53-8).
- Insurance company receiverships (N.J.S.A. 17B:32-31 to 17B:32-92 and 17:30C-1 to 17:30C-31).
- Security receiverships (N.J.S.A. 49:3-69).
- Multi-family residential property receiverships (N.J.S.A. 2A:42-114 to 2A:42-142).
- Nursing home receiverships (N.J.S.A. 26:2H-42.1).
- Matrimonial receiverships (N.J.S.A. 2A:34-23 to 2A:34-27).
- Receiverships in aid of execution of a judgment (N.J.S.A. 2A:17-66 to 2A:17-68).

### 2. Please identify and describe the different types of receiverships available in your jurisdiction (for example, general receiver, special receiver, regulatory receiver, etc.) and their specific purposes. List any common law receiverships available in your jurisdiction.

In New Jersey, there are three general categories of receivers that courts may appoint:

- **Statutory receivers.** Statutory receivers may be appointed by the court following a final hearing on a contested or non-consensual matter, and are available for insolvent corporations, partnerships, and limited partnerships, typically for liquidating the business (N.J.S.A. 14A:14-2; see *N.Y. Title & Mortg. Co. v. Polk Arms*, 262 N.Y. 21, 29 (1933)). Statutory receivers are vested with legal title to the business assets and can dissolve the business and liquidate its assets (N.J.S.A. 14A:14-4 and 14A:14-5). Appointment of a statutory receiver may survive the termination of the matter and continue until the business' affairs conclude (see *Kaufman v. 53 Duncan Invs., L.P.*, 368 N.J. Super. 501, 506 (App. Div. 2004); see also Question 1 for a list of New Jersey statutory receivers).
- **Custodial receivers.** Custodial receivers are a product of a court's inherent equity power and are appointed to maintain the status quo and continue a business' operations and prevent damage to the business during the pendency of an action, typically among shareholders (N.J. R. 4:53-1 to 4:53-9; see *Kaufman*, 368 N.J. Super. at 506; *State v. E. Shores, Inc.*, 131 N.J. Super. 300, 309-10 (Ch. Div. 1974)). Custodial receivers may be appointed by a court *pendente lite* until a final hearing is held to determine whether a statutory receiver should be appointed. Unlike statutory receivers, custodial receivers do not hold legal title to business assets and therefore cannot dissolve a business and liquidate its assets. To appoint a custodial receiver, the adverse party (typically the debtor company or its officers, managers, or owners) must receive notice or provide consent unless "it clearly appears from specific facts shown by affidavit or by the verified complaint that

immediate and irreparable damage will result to the applicant before notice can be served and a hearing had thereon" (N.J. R. 4:53-1).

- **Rent receivers.** Rent receivers are contractual receivers appointed by a court *pendente lite* based on authority arising from provisions of a mortgage or other loan document. Rent receivers are appointed to collect rents for a property and protect the interests of the mortgagee in a mortgage foreclosure action, under applicable New Jersey common law (see *Kaufman*, 368 N.J. Super. at 506; *N.Y. Title & Mortg. Co.*, 262 N.Y. at 29 (quoting *U.S. Tr. Co. of N.Y. v. N.Y., W. Shore & Buffalo Ry.*, 101 N.Y. 478, 483 (1886)); *Receivers of N.J. Midland Ry. v. Wortendyke*, 27 N.J. Eq. 658 (1876)). A rent receiver may be appointed by an order to show cause (N.J. R. 4:52-1), but the appointment is ultimately within the court's discretion (see *Barclays Bank, P.L.C. v. Davidson Ave. Assocs., Ltd.*, 274 N.J. Super. 519 (App. Div. 1994)). In a mortgage foreclosure action, a rent receiver should not be appointed without providing notice to the mortgagor or owner of the premises. Rent receivers only have the powers granted to them in the order of appointment or those reasonably implied from the order. These receivers generally stand in place of the mortgagor or owner by:
  - taking control of the property with all the burdens;
  - collecting rents and profits; and
  - being bound by all leases and tenancies existing between the owner and the tenants.

While the statutes do not specifically provide for receivers of less than substantially all assets of a debtor, courts have also allowed limited receiverships in certain circumstances (see *Atwater v. Baskerville*, 89 N.J. Eq. 136 (Ch. 1918), *aff'd*, 90 N.J. Eq. 275 (1919)).

### 3. Generally, in which court must a receivership be commenced? Please explain for each type of receiver.

In New Jersey, an action to appoint a statutory receiver is typically commenced in the Superior Court of New Jersey, Chancery Division, which is a court of general equity. This court also hears foreclosure actions and disputes between shareholders.

Custodial receivers and rent receivers are typically appointed by court order following a motion brought before the court where the pending action is ongoing, which is typically the Chancery Division or another civil court. For a custodial receiver or rent receiver, venue lies

in the county where the principal place of business or property is located (N.J. R. 4:53-2).

### 4. Please identify who has the authority to seek appointment of a receiver in your jurisdiction.

In New Jersey, the statutes permit the following parties to seek appointment of a statutory receiver:

- A creditor whose claim is for a sum:
  - certain; or
  - which can be made certain by computation.
- A shareholder or shareholders who individually or in combination own at least ten percent of the outstanding shares of any class of the corporation.
- The corporation by a resolution of its board.

(N.J.S.A. 14A:14-2(1).)

Appointment of a custodial receiver may be sought by an interested party during the pendency of a litigation (*Kaufman*, 368 N.J. Super. at 506).

Appointment of a rent receiver may be sought by a foreclosing mortgagee during the pendency of a foreclosure action (*Barclays Bank, P.L.C.*, 274 N.J. Super. at 523).

### 5. What circumstances must exist for a receiver to be appointed in your jurisdiction? Please address whether the company must be insolvent and what insolvency means in your jurisdiction.

In New Jersey, the decision whether to appoint any receiver lies within the sound discretion of the court (N.J.S.A. 14A:14-2; *Woodlake at King's Grant Condo. Ass'n, v. Coudriet*, 2014 WL 1281474, at \*2 (N.J. Super. Ct. App. Div. Apr. 1, 2014)). For example, a court interpreting the statute permitting appointment of receivers for multi-family residential properties held that "despite seemingly mandatory language" that a court must appoint a receiver on making certain findings, the statute "was intended to give broad discretion to trial judges ... [and] did not mandate appointment of a receiver" (*Mfrs. & Traders Tr. Co. v. Marina Bay Towers Urb. Renewal II, LP*, 2019 WL 5395937 at \*28-29 (N.J. Super. Ct. App. Div. Oct. 22, 2019)).

Jurisdiction for a statutory receiver is established by at least one of the following grounds:

- The corporation is insolvent.
- The corporation has suspended ordinary business for lack of funds.
- The business of the corporation is being conducted at a significant loss and prejudicial to the interests of its creditors or shareholders.

(N.J.S.A. 14A:14-2(2).)

A corporation is deemed insolvent when either:

- Its aggregate property at a fair valuation, exclusive of any property which it may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay its creditors, is insufficient to pay its debts.
- It is unable, by its available assets or the honest use of credit, to pay its debts as they become due.

(N.J.S.A. 14A:14-1(f).)

It is not necessary to allege that the corporation is domestic or currently doing business in the state. To confer jurisdiction, it is instead sufficient to show that a corporation has:

- Previously done business in the state.
- Property in the state.

(*Albert v. Clarendon Land, Inv. & Agency Co.*, 23 A. 8, 9 (Ch. 1891).)

However, even if the statutory requisites are factually established, a court of equity may exercise its discretion and deny a request to appoint a statutory receiver (*Neff v. Progress Bldg. Materials Co.*, 139 N.J. Eq. 356, 357 (Ch. 1947); *Goldstein v. Deichl*, 2005 WL 1017614, at \*3 (N.J. Super. Ct. Ch. Div. Mar. 4, 2005)).

However, the factual prerequisites for a statutory receiver are not required for the appointment of a custodial receiver (*Hollander v. Breeze Corp.*, 131 N.J. Eq. 585, 610 (Ch. 1941), *aff'd*, 131 N.J. Eq. 613 (1942)). A court may instead appoint a custodial receiver even when the business is not insolvent or operating at a loss, provided that the moving party demonstrates that appointment of a receiver is necessary to protect the shareholders' rights.

Regarding a rent receiver in a commercial mortgage foreclosure action, courts are more likely to grant an application for the appointment of a receiver where the mortgagee's security is precarious or uncertain because of, among other factors:

- The mortgagor's failure to pay real estate taxes or maintain that the property is insured (*Barclays Bank, P.L.C.*, 274 N.J. Super. at 523).
- Evidence of waste (*Tr. Co. of N.J. v. Lusbie Realty Co.*, 124 N.J. Eq. 265 (1938)).
- The misappropriation of rents (*Shuster v. Ventnor Gardens*, 103 N.J. Eq. 93, 93 (1928)).

### 6. What is required to file a receivership in your jurisdiction? Please include information on:

- Documents, including any official forms and a description of the operative document.
- Filing requirements (including what needs to be filed and where, timing, electronic versus paper, and any fees that must be filed).

## Documents

In New Jersey, a receivership is commenced by filing a complaint, typically verified on personal knowledge, together with a motion on notice or by order to show cause (N.J. R. 4:52-1).

If the party is seeking a temporary restraining order, it must file an order to show cause together with the complaint and supporting affidavits seeking interim relief.

New Jersey permits actions to be commenced and pleadings to be filed electronically via the court's website. In the Superior Court, Chancery Division, the filing fee for a complaint is \$250 (N.J.S.A. 22A:2-12 and 22A:2-13), a foreclosure complaint is \$405 (N.J.S.A. 2A:50-80, 2B:1-7, and 22A:2-12), and a motion is \$50 (N.J.S.A. 22A:2-12 and 22A:2-13).

## Notice

A court may appoint an *ex parte* receivers only if the applicant submits an affidavit or verified complaint providing clear evidence that immediate and irreparable damage will occur, such as waste, mismanagement, or other wrongdoing, before notice can be served and a hearing held (N.J. R. 4:53-1).

If the court grants an *ex parte* order, the order must:

- Provide the adverse party an opportunity to move to discharge the receiver on as little as two days' notice.

- Direct a corporation or a partnership for whom a custodial receiver has been appointed to show cause why a receiver should not be appointed under the power conferred by statute.

(N.J. R. 4:53-1.)

Absent an *ex parte* receivership, notice must be provided to the adverse party for the appointment of a custodial receiver (N.J. R. 4:53-1).

A statutory receiver for a corporation must only be appointed when the adverse party has notice and an opportunity to be heard. Therefore, an order appointing a statutory receiver for a corporation must give the corporation's stockholders and creditors an opportunity, at a specified time and place, to show cause why the receiver should be discontinued (N.J. R. 4:53-1).

For additional information, see Question 2.

### Selecting a Receiver

**7. Please explain how a receiver is selected in your jurisdiction and whether there are any statutory requirements or qualifications to be appointed as receiver.**

In New Jersey, receivers are typically selected based on their:

- Experience and qualifications, evidenced by their curriculum vitae.
- History of previous court appointments as receiver.
- Lists of properties or businesses that they have managed.

There are no specific qualification requirements for New Jersey receivers, however, receivers should generally not be an interested party in the action (N.J. R. 1:17-3).

**8. Please explain what is required to obtain court approval of a selected receiver in your jurisdiction.**

In New Jersey, courts generally select statutory receivers but may request and be willing to accept the recommendation of the moving party regarding custodial or rent receivers (see *In re Invs. Warranty of Am., Inc. v. B.W.E. Dev., L.L.C.*, 2010 WL 2557559, at \*5 (D.N.J. June 23, 2010) (requesting movant to identify potential

receiver for appointment and to provide supporting credentials)).

### Qualification Criteria

The criteria for determining whether a proposed receiver is qualified include, among other factors, the proposed receiver's prior experience evidenced by:

- Their curriculum vitae.
- Their history of previous court appointments as receiver.
- The properties or businesses they managed.

(See Question 7.)

### Duties and Actions of the Receiver

**9. Please identify and describe the main statutory duties and responsibilities for each type of receiver, as applicable, in your jurisdiction (for example, providing notice to creditors, holding meetings of creditors, etc.).**

In New Jersey, the powers of statutory receivers for insolvent corporations include:

- Taking into possession all the corporation's property, including its books, records, and papers.
- Instituting and defending actions by or on behalf of the corporation.
- Selling, assigning, conveying, or otherwise disposing of all or any part of the property of the corporation.
- Settling or compromising with any debtor or creditor of the corporation, including any taxing authority.
- Summoning and examining under oath, which the receiver may administer, or by affirmation, any party concerning matters pertaining to the receivership or the corporation, its property and its transactions, and requiring these parties to produce books, records, papers, and other tangible things and be examined.
- Taking testimony in or out of the state of New Jersey. If out of state, then applying to courts of other jurisdictions for compulsory process to obtain the attendance of witnesses.
- Continuing the corporation's business and entering into contracts, borrowing money, pledging, mortgaging, or encumbering the property as security for the repayment of the receiver's loans.

- Taking all action to best fulfill the purpose of the receivership statutes.

(N.J.S.A. 14A:14-5.)

The duties and responsibilities for non-statutory receivers are enumerated on a case-by-case basis and included in the order of appointment (see Question 10).

### 10. In addition to statutory duties, please summarize any common law duties imposed on a receiver in your jurisdiction.

In New Jersey, the duties and responsibilities of custodial receivers are typically contained in the order of appointment and vary based on the circumstances of the appointment.

The duties and responsibilities of rent receivers typically include:

- Collecting rents.
- Insuring the property.
- Paying taxes.
- Employing contractors to maintain the property.
- Paying expenses.

As an officer of the court, the receiver takes possession of property for the benefit of parties in interest is held to a standard of ordinary care (*Rielly v. P. Rielly & Son*, 101 N.J. Eq. 432, 436 (Ch. 1927)).

### 11. Please explain if the receiver must post a bond in your jurisdiction and take any actions before beginning its duties.

In New Jersey, statutory receivers, custodial receivers, and rent receivers all must post a bond (N.J.S.A. 14A:14-2(4); N.J. R. 1:13-3). The amount of the bond is:

- Fixed in the order appointing the receiver.
- Determined by the judge, typically based on the value of the assets.

### 12. Under what circumstances can a receiver be removed in your jurisdiction?

In New Jersey, receivers may only be removed by court order on completion of the purpose of the receivership or if the moving party demonstrates appropriate grounds for removal (see *Schierstead v. City of Brigantine*, 29 N.J. 220, 232 (1959)).

### 13. Please explain the process for terminating or removing a receiver, including all relevant notice requirements.

In New Jersey, the court may terminate a receivership by entry of a court order on completion of the purpose of the receivership or if the moving party demonstrates appropriate grounds for removal. A motion seeking to remove the receiver is typically made by the party that sought the appointment, by the receiver itself, or by another party-in-interest. The party making the motion must provide notice to all other parties (see *Schierstead*, 29 N.J. at 232).

A receivership is also terminated by court order after approval of the receiver's final accounting (N.J. R. 4:53-7(d); see Question 20). Typically, the court enters the order terminating the receiver following notice to interested parties. The terms and requirements of how notice is provided is determined by the circumstances of the case.

## Administration of the Receivership

### 14. What are the key processes during the receivership in your jurisdiction? Please describe:

- Financing, including the ability of the receiver to obtain financing.
- Assets sales, including whether sales are held at private or public auction and the circumstances for each, as well as notice requirements.
- Avoidance powers, including the specific avoidance powers given to a receiver in your jurisdiction and the relevant time period for recovering preferences.
- Assumption or rejection of executory contracts, including what actions a receiver must take to assume or reject a contract in your jurisdiction.

## Asset Sales

In New Jersey, it is typical for the receiver to sell receivership property (N.J.S.A. 14A:14-5(c)). However, the receiver must obtain court approval of a sale that is free and clear of liens (N.J.S.A. 14A:14-7; *Pemberton Lumber & Millwork Indus., Inc. v. Wm. G. Ridgway Constr. Co.*, 38 N.J. Super. 383 (Ch. Div. 1955)).

For statutory receivers, the court may authorize sale of property free and clear of liens and encumbrances, at a private or public sale, on:

- The receiver's application.
- Notice of the sale to the holders of the encumbrances.
- A showing that the sale would be reasonably expected to benefit general creditors without adversely affecting the interests of the lienholders.

(N.J.S.A. 14A:14-7.)

In practice, whether the sale is public or private is determined on a case-by-case basis, however, typically, all interested parties are entitled to notice of the sale.

In the case of rent receivers in the mortgage foreclosure context, *pendente lite* sales of the mortgaged property are allowed in limited situations, for example, if:

- The property is of a character that would make it liable to deteriorate in value.
- Caring or preserving for the property is difficult or expensive pending the determination of the action.

(N.J.S.A. 2A:50-31; *Jersey Land Co. v. Goldblatt*, 104 N.J. Eq. 425, 428, 146 A. 198, 199 (1929); *Valley Nat'l Bank v. Tru Med Props., LLC*, 2011 WL 3176615, at \*5 (N.J. Super. Ct. App. Div. July 28, 2011); *Mortg. Elec. Registration Sys., Inc. v. Rothman*, 2005 WL 280321, at \*1 (N.J. Super. Ct. Ch. Div. Jan. 12, 2005); *Corestates/N.J. Nat'l Bank v. Chas. Schaefer Sons, Inc.*, 1995 WL 17875639 (N.J. Super. Ct. Ch. Div. Sept. 11, 1995)).

Notice of the sale, whether public or private, is determined on a case-by-case basis.

### Avoidance Powers

In New Jersey, a statutory receiver may avoid preferential transfers (N.J.S.A. 14A:14-14).

If a preference was made under the terms of the statutes, the statutory receiver may recover the property or, if the property was converted, its value, from any person that received or converted the property, except a bona fide purchaser or lienor of the corporation's transferee for a present fair consideration (N.J.S.A. 14A:14-14(4)). The statutory preference period is four months (N.J.S.A. 14A:14-14(1)(a)). However, if the bona fide purchaser or lienor gave less than fair value, the statutory receiver may hold a lien on the property, but only to the extent of the consideration given (N.J.S.A. 14A:14-14(4)).

When a preference is given in the form of a lien or security title, the Superior Court may order that the lien or title be preserved for the benefit of the insolvent corporation's estate and the lien or title pass to the receiver (N.J.S.A. 14A:14-14(4)).

### Rejection or Assumption of Unexpired Leases or Executory Contracts

Regarding the powers of a statutory receiver, the statutes do not specifically address the powers of receivers to reject or assume executory contracts.

For a rent receivership in a mortgage foreclosure context, the order appointing the rent receiver typically includes the receiver's rights and duties regarding executory leases and contracts.

## Creditor Claims

**15. What is the procedure for notifying creditors of their rights to file claims in your jurisdiction? Please explain all notice requirements, including proof of claim requirements and deadlines. List all applicable statutes.**

### Notice

In New Jersey, when a statutory receiver is appointed for insolvent corporations, within 30 days of the receiver's appointment, the receiver must:

- Give notice to all creditors to present their claims in writing (N.J.S.A. 14A:14-15(1); see *Cambridge Partners, L.P. v. Comm'r*, 2017 WL 4407834, at \*5 (Tax Ct. Oct. 2, 2017)).
- Mail notice to all creditors and publish notice in a newspaper at least twice, once in each of two consecutive weeks, in a newspaper of general circulation in the county where registered office of the corporation is located (N.J.S.A. 14A:14-15(1), (3)).

The notice must include:

- That creditors must present written proof of their claims under oath to the receiver.
- A deadline for presenting the proofs of claim, which must be at least six months after the receiver first published notice of its appointment and the court may extend the time by order (N.J.S.A. 14A:14-15(1)).



The statutory receiver must file a proof of mailing and publication with the court (N.J.S.A. 14A:14-15(4)).

### Claims Process

In New Jersey, the claims process for statutory receivers are addressed in the statute (N.J.S.A. 14A:14-16 to 14A:14-27; see Question 16).

The generally applicable statutes relating to custodial receivers do not provide guidance relating to the claims process.

#### 16. Please explain the process for determining allowance and disallowance of claims in your jurisdiction, including the power and authority of the court regarding the process.

In New Jersey, in a statutory receivership for an insolvent corporation, creditors are required to timely file proofs of claim under oath (N.J.S.A. 14A:14-15(2)). An untimely filed proof of claim may be allowed by the court on a showing of good cause, but only:

- Against the corporation to the extent of any undistributed assets.
- When the undistributed assets of the corporation are not sufficient to satisfy the claim, against the shareholders to the extent of their ratable share in the company in a liquidation or dissolution process.

(N.J.S.A. 14A:14-15(2).)

The receiver may:

- Require creditors to submit to an examination and produce records and proof relating to their claims.
- Examine witnesses under oath relating to filed claims.
- Allow or disallow claims and must notify creditors of its determination.

(N.J.S.A. 14A:14-16.)

If a statutory receiver disallows a creditor's claim in whole or in part, the creditor is entitled to a trial by jury on any issue triable of right by jury (N.J.S.A. 14A:14-17). Any person aggrieved by the statutory receiver's determinations may also seek to review the receiver's action in a summary manner in the court (N.J.S.A. 14A:14-18).

#### 17. Please explain the priority scheme for the payment of creditors' claims in your jurisdiction and the applicable statutes.

In New Jersey, creditors are paid according to their priority. In a statutory receivership, claims receive distributions in the following order:

- Actual, necessary costs and expenses incurred by the receiver during the receivership, including allowed fees and expenses of:
  - the receiver; and
  - professionals employed by the receiver.
- Secured creditors with valid and perfected liens on the receivership property according to their respective priorities under applicable law, unless there is a surcharge against the collateral.
- Priority claims, which include claims for wages earned by the claimant within three months before the receivership appointment, but only up to \$600.
- General unsecured claims distributed pro rata.
- Claims of stockholders of the corporation paid proportionally according to each shareholder's respective shares.

(N.J.S.A. 14A:14-21; *Hyland v. Anchor Fin. Co., Inc.*, 146 N.J. Super. 102 (App. Div. 1977); *In re Roper & Twardowsky, LLC*, 559 B.R. 375 (Bankr. D.N.J. 2016).)

### Compensation of Receiver and Professionals

#### 18. Please explain how receivers are compensated in your jurisdiction, including:

- Whether there is a statutory or state law threshold compensation fee for receiver.
- Whether court approval is required for compensation.
- Whether parties must receive notice.

New Jersey does not contain a statutory threshold compensation fee for a statutory receiver other than the general requirement that the receiver's compensation be reasonable. The statutes also permit reasonable compensation for a receiver's professionals, including:

- The receiver's attorney.
- An appraiser.
- The auctioneer.

- The accountant.
- Any other professional appointed by the court.

(N.J.S.A. 14A:14-20.)

Court approval is required for a receiver's compensation. Parties entitled to notice must typically receive notice of a receiver's proposed compensation before it is approved by the court.

In allowing a receiver's compensation, the court should consider:

- The extent and value of the actual services rendered.
- The pains, trouble, and risk incurred by the receiver in the discharge of its duties relative to the conduct and settlement of the receivership.

(N.J. R. 4:53-4(a).)

If the receiver is authorized by the court to sell real estate or personal property, the receiver is be entitled to the same fees that would be allowed by law to a sheriff on sale by execution (N.J. R. 4:65-1).

### **19. What professionals are receivers permitted to retain in your jurisdiction? Please explain how a receiver's professionals are compensated.**

In New Jersey, it is typical for a statutory receiver and a custodial receiver to employ and compensate professionals (N.J.S.A. 14A:14-20; N.J. R. 4:53-3). On notice to interested parties, a receiver may be permitted by the court to retain an attorney, appraiser, auctioneer, accountant, or other professional approved by the court (N.J.S.A. 14A:14-20).

The fees for a receiver's professionals must be reasonable, and in determining the appropriate fees, a court typically considers:

- The value of the services.
- The amount of time spent.
- The benefit of the services to the estate.

(See *Unger v. Newlin Haines Co.*, 95 N.J. Eq. 16, 18 (Ch. 1923)).

A professional retained by a receiver in connection with dissolution, liquidation, or insolvency proceedings seeking to receive compensation for services rendered must file an affidavit stating that, without court approval, it will not share compensation with any other person or firm, other than the receiver's partners or employees (N.J. R. 4:53-4(b)).

## Closing the Receivership

### **20. What is the process for closing a receivership proceeding in your jurisdiction? Where a court order is required, please explain the key provisions of an order closing the case.**

In New Jersey, on completion of a receivership's purpose, the court may terminate the receivership by entry of a court order after approval of the receiver's final accounting (N.J. R. 4:53-7(d); see *Schierstead*, 29 N.J. at 232). In practice, the court enters the order terminating the receiver following notice to interested parties.

For additional information, see Question 13.

### **21. Is there a process in your jurisdiction for dissolving the receive company after the receivership concludes?**

In New Jersey, a court may appoint a statutory receiver over an insolvent corporation to dissolve and liquidate a debtor (*Fed. Terra Cotta Co. v. Atl. Terra Cotta Co.*, 133 N.J. Eq. 360, 362 (Ch. 1943)). After the conclusion of receivership, the entity may be dissolved under the applicable processes for dissolution (N.J.S.A. 42:2C-48 (limited liability companies); N.J.S.A. 42:1A-39 and 42:2C-48 (partnerships); N.J.S.A. 14A:12-1 (corporations)).

However, the purpose of the corporate receivership statute is to preserve corporate assets during the pendency of litigation (*East Shores, Inc.*, 131 N.J. Super. at 309). State court liquidations are not common, and it is more typical for a liquidation of an insolvent company to occur through the federal bankruptcy courts.

## Jurisdiction and Power of the Court

### **22. What statutes, if any, confer powers on the court relating to the receivership, receiver, and creditors in your jurisdiction? Please explain those powers.**

In New Jersey, the powers of the court relating to custodial receiverships and creditors are generally contained in the rules at N.J. R. 4:53-1 to 4:53-9. The New Jersey statutes govern statutory receiverships for insolvent corporations (N.J.S.A. 14A:14-1 to 14A:14-27), partnerships



(N.J.S.A. 42:4-7), limited partnerships (N.J.S.A. 42:3-19 to 42:3-29), banks (N.J. R. 4:53-8), insurance companies (N.J.S.A. 17B:32-31 to 17B:32-92 and 17:30C-1 to 17:30C-31), securities (N.J.S.A. 49:3-69) multi-family residential properties (N.J.S.A. 2A:42-114 to 2A:42-142) nursing homes (N.J.S.A. 26:2H-42.1), matrimonial actions (N.J.S.A. 2A:34-23 to 2A:34-27), in aid of execution of a judgment (N.J.S.A. 2A:17-66 to 2A:17-68). These statutes confer the court with the power to appoint the receiver.

In a statutory receivership, the Superior court has the power to:

- Appoint and remove one or more receivers of the corporation.
- Enjoin the corporation, its officers, and agents, from:
  - exercising any of its privileges and franchises;
  - collecting or receiving any debts; or
  - paying out, selling, assigning, or transferring any of its property, except to a receiver.

(N.J.S.A. 14A:14-2). The Superior court also has further powers to fulfill the purposes of the statutes.

For additional information, see Questions 1, 3, and 5.

### 23. What responsibilities does the clerk of court in your jurisdiction have in relation to maintaining the records of the receivership?

In New Jersey, a receiver typically maintains its own records. The deputy clerk of court is responsible for auditing the account of the receiver or trustee unless the court appoints a countersignatory to make the audit (N.J. R. 4:53-7(b)).

## Bankruptcy Considerations

### 24. May a receiver commence a bankruptcy proceeding in your jurisdiction?

There is no New Jersey statute specifically permitting or prohibiting a statutory receiver from commencing a bankruptcy proceeding. However, more typically, an intervening bankruptcy may be filed by the shareholders or directors of an insolvent corporation following a creditor's filing of a motion for the appointment of a statutory receiver. The authority to commence a bankruptcy proceeding is determined by the bankruptcy court.

### 25. If an involuntary petition is filed during the course of the receivership in your jurisdiction, what action, if any, must the receiver take?

The jurisdiction of the bankruptcy court is typically paramount to state receivership jurisdiction, which requires state court receivers to turn over any property and assets in their possession to the bankruptcy trustee in New Jersey.

An involuntary bankruptcy case generally may be filed by one or more creditors holding at least \$18,600 in non-contingent claims that are not subject to a bona fide dispute if the petitioning creditors either:

- File their petition within 120 days after the receiver is appointed.
- Can show that the debtor generally is not paying its debts as they come due.

(§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process](#).)

An order appointing a receiver does not operate as a stay to the commencement of a bankruptcy case under federal bankruptcy laws. In New Jersey, if an involuntary petition is filed during the course of the receivership, the receiver must not make distributions of estate property, file an accounting of all property in the receiver's possession, and otherwise comply with bankruptcy court requirements (§ 543, Bankruptcy Code). On the filing of an involuntary petition, the debtor's property becomes the jurisdiction of the bankruptcy court and the receiver is considered a custodian (§ 543, Bankruptcy Code). At that time:

- The receiver must preserve and protect the assets of the receivership estate (§ 543(a), Bankruptcy Code).
- Unless otherwise ordered by the bankruptcy court, the receiver must turn over property of the receivership estate to the bankruptcy trustee (§ 543(b), Bankruptcy Code).
- The bankruptcy court may permit the receiver to continue to administer the debtor's assets if appointed or in possession of the assets more than 120 days before the bankruptcy unless the assets must be returned to prevent fraud or injustice (§ 543(d), Bankruptcy Code). However, even if the receiver is appointed less than 120 days before bankruptcy, the bankruptcy court may exercise discretion in rare cases and allow the receiver instead of the bankruptcy trustee to administer the assets if:

- it is in the best interest of the creditors; and
- the debtor is solvent, it is the best interest of equity holders.

(§ 543(d), Bankruptcy Code.)

### **26. May a receiver challenge an involuntary bankruptcy proceeding in your jurisdiction? Please explain.**

There is no New Jersey statutory authority specifically permitting or prohibiting a statutory receiver from challenging an involuntary bankruptcy proceeding. The authority to challenge an involuntary bankruptcy proceeding is typically determined by the bankruptcy court. However, the receiver may request that the bankruptcy court:

- Dismiss an involuntary bankruptcy proceeding on certain circumstances, including the consent of the petitioner and the debtor (§ 303(j), Bankruptcy Code).
- Dismiss or abstain from hearing a bankruptcy case if it is in the best interest of creditors depending on the facts and circumstances of the case and the length of time that a receiver has been in place (§ 305(a)(1), Bankruptcy Code).
- Excuse the receiver from compliance under the turnover requirements of section 543 of the Bankruptcy Code if

the receivership has been in effect for more than 120 days from the petition date (§ 543(d)(2), Bankruptcy Code).

## Other Topics

### **27. Are there any statutes or case law in your jurisdiction that would prevent a business directly engaged in cannabis business (i.e., cultivators, dispensaries), or a business that provides ancillary services to a cannabis business (i.e., commercial landlords), from being placed into a receivership? If yes, please list and explain the statutes.**

There are currently no New Jersey statutes or case law that would prevent a cannabis business from utilizing statutory receiverships to liquidate its assets.

### **28. If the receivership statutes in your jurisdiction are unique in aspects not covered by the questions in this Q&A, please state so here.**

There are no unique aspects of receiverships in New Jersey that are not addressed in this State Q&A.

#### **About Practical Law**

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at [legalsolutions.com/practical-law](https://legalsolutions.com/practical-law). For more information or to schedule training, call 1-800-733-2889 or e-mail [referenceattorneys@tr.com](mailto:referenceattorneys@tr.com).