

§ 1-507.24. Appointment of receivers; receivership not a trust.

(a) **Action in Which Receivers Appointed.** – A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a power of sale or judicial foreclosure proceeding. However, in the case of an individual business debtor, a creditor to whom only consumer debt is owing shall not file a civil action or motion to appoint a receiver for the individual business debtor. If the debtor files the complaint commencing a civil action in which the sole relief requested is the appointment of a receiver, then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:

"In re: _____ [name of debtor]".

The filing of a civil action under this subsection by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver does not waive or limit any rights or remedies the creditor or other party in interest has against the debtor or the debtor's property.

(b) **Appointment by Judge.** – Either a judge of the Superior Court Division or the District Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is appointed, the following provisions apply:

- (1) If a receiver is appointed for an individual business debtor or if a limited receiver is appointed for an entity, the clerk shall provide a copy of the order appointing the receiver to the senior resident superior court judge or the chief district court judge for the court in which the receivership is pending. If the receivership is pending in the Superior Court Division, the senior resident superior court judge for the court in which the receivership is pending shall designate either one of the resident judges for the court in which the receivership is pending, or one of the nonresident judges of the Superior Court Division then assigned to the district in which the receivership is pending, to be the presiding judge over the receiver and the receivership. The presiding judge shall retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver discharged pursuant to G.S. 1-507.37, or until the senior resident superior court judge enters an order transferring jurisdiction and supervision of the receiver to another superior court judge. The judge of the Superior Court Division so designated shall retain jurisdiction and supervision notwithstanding the judge's rotation out of the district. If the receivership is pending in the District Court Division, the chief district court judge for the court in which the receivership is pending shall designate one of the judges of the District Court Division to retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver is discharged pursuant to G.S. 1-507.37, or until the chief district court judge enters an order transferring jurisdiction and supervision of the receiver to another district court judge.
- (2) If a general receiver is appointed for an entity, the senior resident superior court judge shall promptly provide a copy of the order appointing the general receiver to the Chief Justice through the Administrative Office of the Courts and include special areas of expertise needed by the judge to be assigned and may include a list of recommended judges. The Chief Justice shall designate the receivership as an exceptional civil case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts unless the case

is designated as a mandatory complex business case under G.S. 7A-45.4(b)(4). The judge of the Superior Court Division who appoints the general receiver shall retain jurisdiction and supervision of the receivership until the Chief Justice assigns the case to a judge pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

This subsection does not apply to the appointment of a receiver in a pending action to partition real property pursuant to G.S. 46A-28.

(c) Appointment Before Judgment. – A limited receiver may be appointed before judgment to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, if the property or its rents and profits is being subjected to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction.

(d) Appointment After Judgment. – A limited or general receiver may be appointed after judgment to carry the judgment into effect, or to dispose of property according to the judgment, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(e) Receiver for Entities and Individual Business Debtors. – In addition to those situations specifically provided for by law, a limited or general receiver may be appointed when an entity or an individual business debtor meets any of the following criteria:

- (1) The person is insolvent.
- (2) The person is not paying its debts as they become due unless such debts are the subject of a bona fide dispute.
- (3) The person is unable to pay its debts as they become due.
- (4) The person is in imminent danger of insolvency.
- (5) The person suspends its business for want of funds.
- (6) The person has forfeited or has suspended its legal existence.
- (7) The person had its legal existence expire by limitation.
- (8) The person is the subject of an action to dissolve the person.

A limited receiver may also be appointed, in like cases, of the property located within this State of foreign persons.

(f) Foreclosure or Enforcement of Security Agreement. – In connection with a power of sale or judicial foreclosure proceeding or other enforcement of a security agreement, the court may appoint a limited receiver in any of the following circumstances:

- (1) The appointment is necessary to protect the property from waste, loss, spoilage, transfer, concealment, dissipation, or impairment.
- (2) The debtor agreed in a signed record to the appointment of a receiver on default.
- (3) The debtor agreed, after default and in a signed record, to the appointment of a receiver.
- (4) The property and any other collateral held by the secured party are not sufficient to satisfy the secured obligation.
- (5) The debtor fails to turn over to the secured party the collateral or proceeds of collateral, including rents, the secured party was entitled to collect.
- (6) The holder of a subordinate lien obtains the appointment of a receiver for the same collateral held by the secured party.

(g) Other Cases. – A receiver may be appointed in other cases as provided by law and equity.

(h) Motion for Appointment of Receiver. – The court may appoint a receiver in an action described in subsection (a) of this section with 10 days' notice to the debtor, all other parties to the action, any judgment creditor who is seeking the appointment of a receiver in any other action,

and other parties in interest and other persons as the court may require. The court may appoint a receiver ex parte or on shortened notice on a temporary basis, pending further order of the court, if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver and that a receiver is needed to avoid irreparable harm. In that event, the court shall set a hearing as soon as practicable and at the subsequent hearing, the burden of proof shall be as would be applicable to a motion made on notice that is not expedited.

(i) Description of Receivership Property. – The order appointing the receiver or subsequent order shall describe the receivership property with particularity appropriate to the circumstances. If the order does not so describe the receivership property, until further order of the court, the receiver shall have control over all of the debtor's nonexempt property.

(j) Receivership Not a Trust. – The order appointing the receiver does not create a trust.

(k) Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual business debtor other than on consent of the party or parties seeking the appointment of the receiver and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment against the party or parties seeking the appointment of the receiver for any damages proximately caused by the filing, including costs and reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing, that the motion was filed in bad faith. (2020-75, s. 1; 2021-93, s. 4.)