



# The Michigan Business Law

## JOURNAL

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# *Statutory and Court Rule Requirements for an Order Appointing a Receiver*

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By Kay Standridge Kress

The order appointing a receiver may be the most critical document in a receivership case. Among other things, it identifies the person or entity that will act as the receiver, describes the duties, authority, and power of the receiver, provides the amount of the bond to be posted by the receiver, identifies the real and personal property of the receivership estate, provides the standards for professional compensation, and sets forth the information to be included in reports that the receiver must file. A proposed order is usually attached to the motion requesting the appointment of the receiver. This article will discuss the statutory and court rule requirements of such an order.

Without a doubt, it is critical that the receiver order include a description of the duties, authority, and power of the receiver.<sup>1</sup> There are both mandatory provisions as well as optional provisions of a receiver order. The mandatory provisions include:

1. Providing to any person or entity having a recorded interest in all or any part of the receivership estate a notice of entry of the receivership order;<sup>2</sup>
2. The receiver's power to sue and collect all debts, demands, and rents of the receivership estate and to compromise or settle claims;<sup>3</sup>
3. The personal property that may be liquidated by the receiver without further order of the court;<sup>4</sup> and
4. The ability of the receiver to pay ordinary expenses of the receivership.<sup>5</sup>

The parties or the court may also insert any other provisions that are applicable, including, for example:

1. The amount of insurance required to be maintained by the receiver;
2. Details of entities or persons to be retained by the receiver (for example, employees, attorneys, accountants, brokers, or management companies);

3. The allowed expenditures of the receiver (the type and proposed amount), particularly those outside the course of business (for example, capital expenditures), without further order of the court;
4. The bank accounts to be maintained by the receiver;
5. The licenses and permits for the receiver to maintain or use, if applicable;
6. The ability of the receiver to borrow money and details concerning such borrowing and whether receivership certificates may be issued; and
7. Whether the receiver order will include an injunction against the collection of pre-receivership receivables or pre-receivership actions.

Next, the order will also identify all of the personal and real property over which the receiver has authority. This real and personal property is generally known as the receivership estate. If real property is involved, it is best to attach the legal description of such property to the proposed order. Similarly, it is best to provide as much detail as possible as to any personal property included in the receivership estate. The order must also detail the receivership property that must be surrendered to the receiver by third-parties.<sup>6</sup>

In all cases in which a receiver is appointed, the court shall provide for a bond,<sup>7</sup> and the court will consider the following factors in setting the amount of the bond for the receiver:<sup>8</sup>

1. The value of the receivership property, if known;
2. The amount of cash or cash equivalents expected to be received into the receivership estate;
3. The amount of assets in the receivership estate on deposit in an insured financial institutions or invested in U.S. Treasury obligations;
4. Whether the assets in the receivership estate can be sold without fur-

ther order of the court,

5. The extent to which any secured creditor is undersecured,
6. Whether the receivership estate is a single parcel of real estate involving few trade creditors, and
7. Whether the parties have agreed to a nominal amount.

An order appointing a receiver will also specify (a) the source and method of compensation of the receiver,<sup>9</sup> (b) that interim compensation may be paid to the receiver after notice to all parties to the action or proceeding,<sup>10</sup> and (c) that all compensation of the receiver is subject to a final review and approval by the court. The fees and expenses of persons or entities retained by the receiver will also be paid pursuant to the terms provided in the order.

Finally, the receiver is required to produce and file certain reports with the court. The order will provide the information to be addressed in the operative reports, including:

1. The receiver's acceptance of appointment;<sup>11</sup>
2. An inventory of the receivership estate property;<sup>12</sup>
3. An accounting of all receipts, disbursements and distributions of money that flows through the receivership estate;<sup>13</sup>
4. Information concerning the receivership estate and its administration.<sup>14</sup> For example, in the case of a rental property, the report should contain cash flow statements, profit and loss statements, rent ledgers and occupancy rates, a balance sheet and/or proformas or budgets; and
5. A final written report and a final account of the administration of the receivership estate.<sup>15</sup>

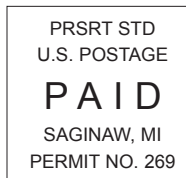
7. MCL 600.2926.
8. MCR 2.622(G).
9. MCR 2.622(F)(2)(3).
10. MCR 2.622(F)(5).
11. MCR 2.622(D)(1).
12. MCR 2.622(D)(3).
13. MCR 2.622 (D)(4).
14. MCR 2.622(D)(5).
15. MCR 2.622(D)(7).



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## NOTES

1. MCL 600.2926.
2. MCR 2.622(D)(2).
3. MCR 2.622(E)(1).
4. MCR 2.622(E)(2). Note that MCR 2.622(E)(2) provides that a receiver cannot sell real property of the receivership estate without a separate order of the court.
5. MCR 2.622(E)(3).
6. MCR 2.622(C).



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## SECTION CALENDAR

### Council Meetings

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| DATE                | TIME      | LOCATION                              |
|---------------------|-----------|---------------------------------------|
| June 4, 2015        | 3:30 p.m. | Jaffe Raitt Heuer & Weiss, Southfield |
| September 25, 2015* |           | Amway Grand Plaza, Grand Rapids, MI   |

### Seminars

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#### Business Law Institute

| DATES              | LOCATION                            |
|--------------------|-------------------------------------|
| September 25, 2015 | Amway Grand Plaza, Grand Rapids, MI |

\*Annual Meeting