

# Receiverships: Maryland

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A Q&A guide to receiverships in Maryland. This Q&A addresses the process by which receiverships are generally administered in Maryland, 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 Maryland, the receivership statutes are relatively comprehensive and are codified in the Maryland Receivership Act (Md. Code Ann., Com. Law §§ 24-101 to 24-801).

### 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.

The Maryland Receivership Act applies broadly to various forms of receiverships, including:

- A receivership for an interest in real property and related personal property used in the operation of a business.
- A receivership in a voluntary dissolution or involuntary dissolution of a company.
- Any other receivership where a receiver is appointed to take possession and control of property with authority to:
  - liquidate the property; or
  - in the case of a business, wind-up the affairs of the business.

(Md. Code Ann., Com. Law §24-301.)

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

In Maryland, the circuit courts have the authority to appoint a receiver.

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

In Maryland, various parties in interest may seek appointment of a receiver, including creditors, parties in interest, or regulatory departments in Maryland.

For circumstances under which different parties may seek the appointment of a receiver, see Question 5.

### 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.

Under the Maryland Receivership Act, receivers may be appointed:

- Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or its rents and profits:



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- are being subjected to or are in danger of waste, loss, dissipation, or impairment;
- have been or are about to be the subject of a voidable transaction; or
- need to be protected and preserved, or if the rights of the parties need be protected and preserved, even if the action does not include any other claim for relief.

(Md. Code Ann., Com. Law §24-201(a)(1).)

- After judgment, to:
  - carry the judgment into effect;
  - preserve nonexempt real property pending an appeal; or
  - preserve nonexempt real property where an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(Md. Code Ann., Com. Law §24-201(a)(2).)

- In an action seeking dissolution of a corporation under § 3-411 or § 3-415 of the Maryland Corporations and Associations Article.
- To take possession and control of property to liquidate or wind-up affairs under Md. Code Ann., Com. Law § 24-103(a)(3).

In a foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property on the request of the mortgagee if:

- It is necessary to protect the property from waste, loss, transfer, dissipation, or impairment.
- The mortgagor agreed in a signed record to the appointment of a receiver when the debtor is in default (a deed of trust containing a provision agreeing to appointment of a receiver on default is typically sufficient grounds for the appointment of a receiver).
- The property owner agreed, after default and in a signed record, to appointment of a receiver.
- The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation.
- The property owner fails to turn over proceeds or rents that the mortgagee was entitled to collect.
- The holder of a subordinate lien obtains appointment of a receiver for the property.

(Md. Code Ann., Com. Law §24-201(b).)

Receivers are also typically appointed:

- At the request of a lender secured with a lien against real or personal property. The lender must show that the property needs protection.
- In a business dispute between two or more of the partners or equity holders. A court may choose to appoint a receiver when a company cannot function because of:
  - a deadlock;
  - dissolution of a corporation; or
  - a toxic atmosphere.
- Post-judgment when the judgment debtor is hiding or dissipating assets.

There is no insolvency requirement for the appointment of a receiver in Maryland.

### 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 Maryland there are no official forms for seeking appointment of a receiver, and the Maryland Receivership Act does not provide explicit procedures or requirements. However, requests for receiverships must be in writing by filing a pleading or petition with the circuit court.

The petition seeking appointment of a receiver is typically written like a civil complaint describing:

- The nature of the action.
- The parties involved in the proceeding.
- The specific nature of the relief sought.

In addition to the petition, the petitioning creditor should include:

- Two separate affidavits that:
  - support each of the factual allegation in the petition; and
  - demonstrate the receiver's eligibility to be appointed by the court.

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- A proposed order detailing the receiver's rights, duties, and obligations.

Maryland circuit courts may exercise personal jurisdiction over an entity domiciled in or organized under the laws of Maryland or that maintains its principal place of business in the state. Venue is appropriate in any county where the defendant carries on a regular business or maintains its principal offices in the state.

There is no separate fee for seeking the appointment of a receiver other than the typical filing fees applicable to a complaint in the respective circuit court. However, courts have discretion to require the party seeking appointment of a receiver to post a security amount to pay for damages or reasonable attorneys' fees.

### Notice

Within five days of being appointed by the court or assuming jurisdiction over the receivership property, a receiver must provide notice to creditors of its appointment if:

- The receivership is a receivership under Md. Code Ann., Com. Law § 24-103(a)(2) or (3).
- Ordered by a court.

(Md. Code Ann., Com. Law § 24-302(a); MD Rules, Rule 13-201(a).)

When providing notice, within five days of being appointed by the court or assuming jurisdiction over the receivership property, the receiver must provide the notice:

- To each creditor holding a claim against the debtor before the receivership.
- By:
  - first-class mail or other commercially reasonable delivery method to the last known address of the creditor and the creditor's attorney, if known; and
  - publication, as directed by the court.

(Md. Code Ann., Com. Law § 24-302(b); MD Rules, Rule 13-201(a).)

Within five days after the initial mailing or publication, the receiver must file a certificate of mailing or publication of the notice with the clerk of court (MD Rules, Rule 13-201(a)).

The receiver must also send notice of filing the financial documents to any creditor that did not receive the initial notice of the receivership and to any creditor whose identity is later discovered. Those notices must also be filed with the clerk of court (MD Rules, Rule 13-201(b), (c)).

If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

- The receiver does not need to give notice to all unsecured creditors, but only to unsecured creditors directed by the court.
- An unsecured creditor does not need to submit a claim.

(Md. Code Ann., Com. Law § 24-302(f).)

Under the Maryland Receivership Act, the receivership automatically stays any ongoing actions against the debtor (Md. Code Ann., Com. Law § 24-401(a)(1)). Therefore, the receiver must provide notice of the receivership and the automatic stay with the clerk of court in any pending action or litigation (MD Rules, Rule 13-201(d)). The notice must comply with the form and contents required by Md. Rule 13-201(d)(2).

The receiver must also provide notice of termination of the automatic stay within ten days after the receivership concludes (MD Rules, Rule 13-201(e)).

## 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 Maryland, the Receivership Act expressly provides that the "person seeking appointment of a receiver may nominate a person to serve as receiver" (Md. Code Ann., Com. Law § 24-203(d)(1)). Receivers are typically professionals, for example, attorneys, accountants, or property managers.

The court may not appoint a person as receiver if that person is disqualified. A person is disqualified if the person:

- Is an affiliate of a party.
- Holds an interest materially adverse to an interest of a party, the receivership estate, a creditor, or equity holder, either directly or indirectly.
- Has a material financial interest in the outcome of the action.
- Has a debtor-creditor relationship with a party.
- Holds an equity interest in a party.
- Within two years of the receivership, was a director,

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officer, or employee of the debtor, unless the court determines otherwise (Md. Code Ann., Com. Law § 24-203(c)(2)).

- Has been convicted of, or is an employee of someone convicted of, a felony or other crime involving moral turpitude.
- Has been found liable in civil court for, or is an employee of someone convicted of, fraud, breach of fiduciary duty, theft, or similar misconduct.

(Md. Code Ann., Com. Law § 24-203(b)).

The proposed receiver must sign a declaration confirming that the receiver is not disqualified (Md. Code Ann., Com. Law § 24-203(a)).

A person is not disqualified from appointment as a receiver solely because the person:

- Was appointed as a receiver of another receivership.
- Is owed compensation in an unrelated matter involving a party.
- Was engaged by a party in a matter unrelated to the receivership.
- Is an individual obligated to a party on a debt that:
  - is not in default; and
  - was incurred primarily for personal, family, or household purposes.
- Maintains a deposit account as defined in Md. Code Ann., Com. Law § 9-102(a)(29).

(Md. Code Ann., Com. Law § 24-203(c)(1)).

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

In Maryland, the Receivership Act expressly provides that the “person seeking appointment of a receiver may nominate a person to serve as receiver” (Md. Code Ann., Com. Law § 24-203(d)(1)).

The proposed receiver must sign a declaration confirming that the receiver is not disqualified under the criteria in Md. Code Ann., Com. Law § 24-203 (see Question 7).

A person is not disqualified from appointment as a receiver solely because the person:

- Was appointed as a receiver of another receivership.
- Is owed compensation in an unrelated matter involving a party.

- Was engaged by a party in a matter unrelated to the receivership.
- Is an individual obligated to a party on a debt that:
  - is not in default; and
  - was incurred primarily for personal, family, or household purposes.
- Maintains a deposit account as defined in Md. Code Ann., Com. Law § 9-102(a)(29).

(Md. Code Ann., Com. Law § 24-203(c)(1)).

The court may:

- Require a receiver to post a bond or security with the court.
- Authorize a receiver to act without posting a bond or other security.
- Authorize a receiver to act before the receiver posts any bond.

(Md. Code Ann., Com. Law § 24-204(a); MD Rules, Rule 13-107; see Question 11.)

## 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 Maryland, the receiver’s duties are prescribed by statute.

Without a court order, the general statutory duties of a receiver, together with the duties conferred by rule or court order, include the ability to:

- Collect, control, manage, conserve, and protect receivership property.
- Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business.
- In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver’s preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property.
- Assert a right, claim, cause of action, or defense of the owner that relates to receivership property.

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- Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties.
- Compel a person by subpoena to submit to an examination under oath or produce and permit inspection and copying of designated records or tangible things regarding receivership property or any other matter that may affect the administration of the receivership.
- Engage a professional as provided in Md. Code Ann., Com. Law § 24-303.
- Apply to a court in another state to appoint the receiver as an ancillary receiver over receivership property located in that state.
- In a receivership to dissolve, wind-up, or liquidate a corporation, exercise any rights or powers provided for in Md. Code Ann., Com. Law § 15-101.
- Exercise any power conferred by court order, Maryland's Receivership Act, or other Maryland laws.

(Md. Code Ann., Com. Law § 24-301(a).)

With court approval, the receiver may:

- Incur debt for the use or benefit of receivership property other than in the ordinary course of business.
- Pay obligations incurred before the receiver's appointment if the court determines that:
  - the payment is reasonable and necessary for the preservation of the business or receivership property; and
  - the funds are not subject to a non-consenting creditor's lien or a creditor who is not adequately protected.
- Make improvements to receivership property.
- Use or transfer receivership property other than in the ordinary course of business as provided in Md. Code Ann., Com. Law § 24-304.
- Assume or reject an executory contract of the owner as provided in Md. Code Ann., Com. Law § 24-305.
- Pay compensation to the receiver as provided in Md. Code Ann., Com. Law § 24-303 and to each professional engaged by the receiver as provided in Md. Code Ann., Com. Law § 24-601 or 24-602.
- Recommend allowance or disallowance of a claim of a creditor as provided in Md. Code Ann., Com. Law § 24-302.
- Abandon any property that is burdensome or not of material value to the receivership.

- Make a distribution of receivership property as provided in Md. Code Ann., Com. Law § 24-302.

(Md. Code Ann., Com. Law § 24-301(b).) A receiver also must:

- Prepare and retain business records, including records related to each receipt, disbursement, or disposition of receivership property.
- Account for the receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property.
- Record the order appointing the receiver in the county recorder's office with the legal description of the real property.
- Disclose to the court any fact arising during the receivership that would disqualify the receiver.
- Perform any other duty ordered by the court.

(Md. Code Ann., Com. Law § 24-301(c).)

The court may also modify or expand the powers and duties of the receiver under court order (Md. Code Ann., Com. Law § 24-301(d)).

It is often discretionary for the receiver to file interim reports. However, the court may order that the receiver file an interim report that includes:

- The receiver's activities since its appointment or a previous report.
- Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver.
- Receipts and dispositions of receivership property.
- The receiver's fees and expenses and, if not filed separately, a request for approval of payment of the fees and expenses.
- Any other information required by the court.

(Md. Code Ann., Com. Law § 24-601(b).)

After completing its duties, the receiver must file a final report including:

- A description of the receiver's activities in conducting the receivership.
- A list of receivership property from the commencement of the receivership and any receivership property received during the receivership.
- A list of disbursements, including payments to the receiver's professionals.
- A list of dispositions of receivership property.

- A list of distributions for creditor claims.
- If not filed separately, a request seeking approval of the receiver's fees and expenses.
- Any other information required by the court.

(Md. Code Ann., Com. Law § 24-602(a).)

The receiver also has the duty to provide notice:

- To all known creditors of its appointment.
- To later discovered creditors of the receivership proceedings.
- Of the automatic stay where ongoing actions against the debtor are pending.

(MD Rules, Rule 13-201; see Question 6: Notice.)

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

In Maryland, every receiver has the duty to:

- Abide by the law.
- Act in the best interests of the receivership and receivership property.
- Avoid conflicts of interest.
- Neither directly nor indirectly pay or accept anything of value from the receivership property that has not been fully disclosed and approved by the court.
- Neither directly nor indirectly purchase, acquire, or accept any interest in receivership property without full disclosure and approval from the court.

The court may limit or expand the statutory powers and duties of a receiver.

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

In Maryland, the court may:

- Require a receiver to post a bond or security with the court.
- Authorize a receiver to act without posting a bond or other security.
- Authorize a receiver to act before the receiver posts any bond.

(Md. Code Ann., Com. Law § 24-204(a).)

If the court requires the receiver to post a bond, the bond must:

- Be conditioned on the faithful discharge of the receiver's duties.
- Have one or more sureties approved by the court.
- Be in an amount specified by the court.
- Be effective from the date of the receiver's appointment.

(Md. Code Ann., Com. Law § 24-204(b).)

The court may also authorize a receiver to act without a bond or alternative security (Md. Code Ann., Com. Law § 24-204(c)). Regardless, the order appointing the receiver must state whether the appointment is conditioned on a bond and, if so, the amount of the bond (MD Rules, Rule 13-107(a)).

If the court requires a bond, the bond cannot be greater than the net value of the receivership property. If receivership property is sold during the proceeding, the court must evaluate the amount of the existing bond on the receiver's request and may permit a decrease in the bond amount (MD Rules, Rule 13-107(b)). The receiver or interested party may file a motion to modify the bond amount (MD Rules, Rule 13-107(c)).

A bond must be payable to the State of Maryland and be conditioned on the faithful discharge of the receiver's duties (MD Rules, Rule 13-107(d)). Unless the court orders otherwise, a receiver may advance the bond and be allowed reimbursement of the bond from the estate (MD Rules, Rule 13-107(e)).

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

In Maryland, the court:

- May remove a receiver for cause on its own motion or the motion of an interested party.
- Must replace a receiver that dies, resigns, or is removed.

(Md. Code Ann., Com. Law § 24-703(a), (b).)

The former receiver is discharged after the court finds that the receiver has:

- Fully accounted for and delivered the receivership property to the successor receiver.
- Filed a report of all receipts and disbursements during its service.

(Md. Code Ann., Com. Law § 24-703(c).)



The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that:

- The receiver's appointment was improvident.
- The circumstances no longer warrant continuation of the receivership.

(Md. Code Ann., Com. Law § 24-703(e).)

When title of receivership property is transferred, a receivership terminates automatically for the receivership property, as provided in Md. Code Ann., Com. Law § 24-602 (Md. Code Ann., Com. Law § 24-703(d)).

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

In Maryland, a court may enter an order discharging a receiver and terminating the receivership for cause on the motion of any party in interest or on the court's own motion (Md. Code Ann., Com. Law § 24-703(a)).

The court may also terminate and discharge a receiver if the court finds that:

- The appointment of the receiver was improvident.
- The circumstances no longer warrant continuation of the receivership.

(Md. Code Ann., Com. Law § 24-703(e).)

On removal of the receiver, the court may appoint a successor receiver (Md. Code Ann., Com. Law § 24-703(b)).

## 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.

## Financing

In Maryland, a receiver operating a business or managing an entity or individual's property may:

- Without a court order, obtain unsecured credit in the ordinary course of business as a receiver's administrative expense (Md. Code Ann., Com. Law § 24-301(a)(3)(1)).
- After notice and a hearing, receive authorization from the court to incur indebtedness on a secured basis (Md. Code Ann., Com. Law § 24-301(b)(1)).

There are no provisions authorizing priming of existing security interests by lenders to the receivership.

## Use, Sale, or Transfer of Property

In Maryland, on motion and court approval, a receiver may:

- Use receivership property other than in the ordinary course of business.
- Transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.

(Md. Code Ann., Com. Law § 24-304(a), (b).)

Unless the sale agreement provides differently, the sale may be free and clear of the lien of:

- The person that obtained appointment of the receiver.
- Any subordinate lien.
- Any right of redemption.
- Any other legal or equitable interest.

(Md. Code Ann., Com. Law § 24-304(b)(2).)

While a receiver may transfer property without a lienholder's consent, the property is subject to:

- An existing senior lien.
- Any residential lease.
- Any nonresidential lease that would not be terminated by a foreclosure sale.

(Md. Code Ann., Com. Law § 24-304(c)(3).)

Before filing a motion to sell or exchange receivership property, the receiver must conduct a lien and title search of the receivership property. If the receiver proposes to sell real property, the lien search must:

- Cover at least 40 years.
- Be conducted according to generally accepted standards of title examination.

(Md. Code Ann., Com. Law § 24-304(e)(2), (3).)

A receiver's motion must include an affidavit by the person making the lien search. The receiver must also update the master service list based on the search and provide reasonable notice to all parties. (Md. Code Ann., Com. Law § 24-304(e)(4)-(6).)

### Avoidance Powers

A receiver's avoidance powers are set out in the receiver's powers and duties provisions of the Maryland Receivership Act.

A receiver has the power to maintain, in the receiver's name or the debtor's name, any action to enforce any right, claim, cause of action, or defense (Md. Code Ann., Com. Law § 24-301(a)(5)).

There are no statutory provisions for recovery of preferences by a receiver.

### Rejection or Assumption of Unexpired Leases for Real or Personal Property

In Maryland, a receiver may assume or reject the debtor's executory contracts or unexpired leases at any time before the court enters the final report if the court approves the assumption or rejection, with notice to the contract counterparty followed by a court hearing (Md. Code Ann., Com. Law § 24-305(a)(1)(i)). If the receiver does not provide proper notice to the contract counterparty, the lease is deemed rejected (Md. Code Ann., Com. Law § 24-305(a)(1)(ii)).

The court may condition assumption or rejection of any executory contract or unexpired lease on the terms and conditions the court believes are just and proper under the circumstances of the case (Md. Code Ann., Com. Law § 24-305(a)(2)(i)). If the receiver performs under the executory contract before the court orders the assumption or rejection, the performance does not operate as an assumption or prevent the receiver from seeking to reject the contract (Md. Code Ann., Com. Law § 24-305(a)(2)(ii)).

However, the court, for cause, may order the receiver to assume or reject an executory contract at any time after the receiver's appointment, regardless of the timing requirement for assumption and rejection in Md. Code Ann., Com. Law § 24-305(a) (Md. Code Ann., Com. Law § 24-305(b)).

If a receiver incurs an obligation or liability because of the receiver's assumption of an executory contract or unexpired lease, it is treated as an expense of the receivership (Md. Code Ann., Com. Law § 24-305(c)).

A receiver's rejection of an executory contract or unexpired lease is effective immediately and treated as a breach of the contract or lease occurring immediately before the receiver's appointment. The receiver's right to possess or use property under any executory contract or lease terminates on rejection of the contract or lease (Md. Code Ann., Com. Law § 24-305(d)(1), (2)).

A receiver cannot assume an executory contract or lease without the consent of the other party if:

- Applicable law would excuse a party, other than the debtor, from accepting performance or rendering performance to anyone other than the debtor, even if the contract or lease does not contain provisions expressly restricting or prohibiting an assignment of the debtor's rights or performance of duties.
- The contract or lease is a contract to:
  - make a loan, extend credit, or make financial accommodations for the debtor's benefit; or
  - issue the debtor's security.
- The executory contract or lease expires by its own terms or under applicable law before it is assumed by the receiver.

(Md. Code Ann., Com. Law § 24-305(e).)

A receiver cannot assign an executory contract or unexpired lease without assuming it, absent the consent of the other parties to the contract or lease (Md. Code Ann., Com. Law § 24-305(f)).

Additional rules apply to:

- The sale of real property when the debtor is the seller and the purchaser is in possession of the real property.
- The sale of a real property timeshare interest when the debtor is the seller.
- The license of intellectual property rights when the debtor is the licensor.
- The lease of real property when the debtor is the lessor.

For these types of contracts or leases, the purchaser, licensee, or lessee may either:

- Treat a rejection as a termination of the contract, license agreement, or lease.
- Remain in possession, in which case the purchaser, licensee, or lessee must continue to perform all obligations arising under the contract but may offset payments against any damages that occur because of the rejection. The purchaser of real property is entitled to receive the deed or other conveyance instrument from



the receiver, and the deed or conveyance instrument has the same force and effect as if given by the debtor.

(Md. Code Ann., Com. Law § 24-305(g).)

A purchaser, licensee, or lessee that chooses to remain in possession under the terms of Md. Code Ann., Com. Law § 24-305 does not have the right to damages that arise from the receiver's rejection except as expressly provided for in Md. Code Ann., Com. Law § 24-305(g) (Md. Code Ann., Com. Law § 24-305(g)(2)(iii)). A purchaser of real property who elects to treat rejection of an executory contract as a termination has a lien against their interest in the debtor's real property for the recovery of any portion of the purchase price it paid (Md. Code Ann., Com. Law § 24-305(g)(2)(iv)).

### 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 Maryland, a receiver must give notice to creditors of the claims bar date (see Question 6: Notice).

When providing notice to creditors of the receiver's appointment, the receiver must also send notice to each creditor with a claim against the debtor that arose before the appointment by:

- First-class mail or other commercially reasonable delivery method to the last known address of the creditor and the creditor's attorney, if known.
- Publication as directed by the court.

(Md. Code Ann., Com. Law § 24-302(b)(1).)

The notice must specify the bar date for submitting the claim to the receiver. Unless extended by the court, the bar date must be at least 120 days after the later of:

- The notice.
- The most recent publication as directed by the court.

(Md. Code Ann., Com. Law § 24-302(b)(2); MD Rules, Rule 13-401(b).)

Unless the court orders otherwise, a claim that is not submitted by the bar date is not entitled to a distribution from the receivership property (Md. Code Ann., Com. Law § 24-302(b)(2)(iii)).

#### Claims Process

Creditors holding claims that arose before the receiver's appointment, whether contingent, liquidated, unliquidated, or disputed, must serve their claims according to the Maryland Receivership Act, or the claim is barred in participating in any distribution from the receivership estate (Md. Code Ann., Com. Law § 24-302). Although a secured creditor's failure to file a claim is not a basis for disallowance, a secured creditor should file a proof of claim to preserve its rights.

Claims must:

- Be in writing and entitled "Proof of Claim."
- Contain the creditor's name and address and the nature and amount of the claim.
- Identify any property securing the creditor's claim.
- Be executed by the creditor or the creditor's authorized agent.
- Include a copy of any record on which the creditor's claim is based.

(Md. Code Ann., Com. Law § 24-302(c).)

When a secured claim or interest is based on a writing, the original or a copy of the writing must be included as a part of the proof of claim, together with evidence of perfection of any security interest or other lien.

If the court concludes that receivership property is likely to be insufficient to satisfy the claims of each creditor holding a perfected lien on the property, the court may order that:

- The receiver does not need to give notice of the appointment to all unsecured creditors, but only to the unsecured creditors directed by the court.
- An unsecured creditor does not need to submit a claim.

(Md. Code Ann., Com. Law § 24-302(f).)

If a creditor assigned its claim after filing its proof of claim, the transferee of the original claimant must file a notice of assignment within 15 days after the date of assignment (Md. Code Ann., Com. Law § 24-302(d); MD Rules, Rule 13-401(d)).

A creditor's claim for rejection damages must be submitted before the later of:

- The time for submitting a claim in the receivership case.
- 30 days after the court enters an order approving the rejection.

(Md. Code Ann., Com. Law § 24-305(d)(3).)

### **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 Maryland, the receiver may file an objection to a claim at any time before the court enters an order approving a general receiver's final report. The objection must be in writing and contain the basis for the objection. (Md. Code Ann., Com. Law § 24-302(e).) A copy of the objection, together with notice of hearing, must be mailed to the creditor, the creditor's counsel, if any, and to the receiver (MD Rules, Rule 13-402).

On motion by a receiver, the court may approve a compromise or settlement of a claim (MD Rules, Rule 13-403).

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

The Maryland Receivership Act does not contain a detailed priority scheme for payment of allowed claims. However, it does provide for creditors to receive distributions in the following order:

- Secured creditors with valid and perfected liens on the receivership property before the appointment of the receivership receive the proceeds from the disposition of the collateral according to their respective priorities under applicable law, unless there is a surcharge against the collateral. The receiver may recover reasonable, necessary expenses of preserving, protecting, or disposing of the property if there is any benefit to the creditors. Secured claims must be paid from the proceeds according to their respective priorities under otherwise applicable law. (Md. Code Ann., Com. Law § 24-302(g)(1).)
- Actual, necessary costs and expenses incurred by the receiver during the receivership, including the allowed fees and expenses of:
  - the receiver; and
  - professionals employed by the receiver.

(Md. Code Ann., Com. Law § 24-701(a).) However, if there are insufficient funds to pay the costs and expense of the receivership, the receiver may surcharge the secured creditor's collateral.

- All other unsecured claims as directed by the court (Md. Code Ann., Com. Law § 24-302(g)(1)).

## **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.

The Maryland Receivership Act does not contain a statutory threshold compensation fee for receivers.

To receive compensation, the receiver and any hired professionals must file an itemized billing statement with the court, indicating:

- The time spent on the case.
- The work performed on the case.
- The billing rates of all professionals who performed work for compensation.
- A detailed list of expenses.

(Md. Code Ann., Com. Law § 24-303(c)(1).)

If there are no objections to the receiver's compensation, the receiver may pay its fees and expenses and those of the retained professionals (Md. Code Ann., Com. Law §§ 24-303(c)(2) and 24-701).

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

The Maryland Receivership Act provides that a receiver, with the approval of the court, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional parties that do not represent an interest adverse to the estate (Md. Code Ann., Com. Law § 24-303(a)).

The receiver's request to retain professionals must disclose:

- The professional's identity and qualifications.
- The scope and nature of the proposed engagement.
- Any potential conflict of interest.
- The proposed compensation.

(Md. Code Ann., Com. Law § 24-303(a)(3).)

A professional is not necessarily disqualified if it has been employed, represented, or had a relationship with a creditor or a party in interest in the case, if:

- The professional discloses the relationship in its application to the court.
- The court determines that there is no actual conflict of interest or inappropriate appearance of a conflict.

(Md. Code Ann., Com. Law § 24-303(b)(1).)

A court may also authorize a receiver to act as the attorney or accountant for the receivership if the authorization is in the best interests of the estate (Md. Code Ann., Com. Law § 24-303(b)(2)).

A receiver's professionals are compensated in the same manner as a receiver (see Question 18).

## 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.**

The Maryland Receivership Act provides that a receivership is automatically terminated after all title to receivership property is transferred (Md. Code Ann., Com. Law § 24-703(d)). However, this termination is conditioned on the receiver completing its duties and filing its final report with the court. The receiver's final report must contain:

- A description of the receiver's activities in conducting the receivership.
- A list of receivership property at the receivership's commencement and any receivership property received during the receivership.
- A list of disbursements, including payments to the receiver's professionals.

- A list of dispositions of receivership property.
- A list of distributions made or proposed to be made from receivership property to satisfy creditor claims.
- If not filed separately, a request for approval for payment of the receiver's fees and expenses.
- Any other information required by the court.

(Md. Code Ann., Com. Law § 24-602(a).)

If the court approves the final report and the receiver distributes all receivership property, the receiver is discharged (Md. Code Ann., Com. Law § 24-602(b)).

A court may also:

- Terminate the receiver for cause on its own motion or the motion of a party (Md. Code Ann., Com. Law § 24-703(a)).
- Discharge a receiver and terminate the administration of the receivership property if the court finds that:
  - appointment of the receiver was improvident; or
  - the circumstances no longer warrant continuation of the receivership.

(Md. Code Ann., Com. Law § 24-703(e).)

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

In Maryland, there is no statutory process for dissolving a debtor company after the receivership concludes.

To dissolve a corporation, articles of dissolution must be filed with the State Department of Assessments and Taxation of Maryland (Md. Code, Corps. & Ass'ns § 3-407).

## 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 Maryland, the court appointing a receiver has the exclusive power to:

- Appoint a receiver:
  - before judgment, to protect a party that demonstrates an apparent right, title, or interest in real 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;

- after judgment, to carry the judgment into effect or preserve nonexempt real property pending an appeal, or if an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment;
- in an action seeking dissolution of a corporation;
- to take possession and control of property to liquidate or wind-up affairs;
- in connection with a foreclosure or enforcement of a mortgage if the mortgagee is entitled to appointment of a receiver; and
- to protect property from waste, loss, or dissipation.

(Md. Code Ann., Com. Law § 24-201(a), (b); see Question 5.)

- Direct the receiver's actions.
- Determine any controversy related to the receivership property located within Maryland, including all controversies relating to:
  - collection, preservation, improvement, disposition, and distribution of receivership property;
  - the exercise of the receiver's powers; or
  - the performance of the receiver's duties.

(Md. Code Ann., Com. Law § 24-205(1).)

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

In Maryland, the clerk of the court has no additional responsibilities in a receivership than it does in any other type of proceeding. However, the Maryland Rules do provide that the clerk must receive a copy of the notice of receivership within five days after the notice is mailed or published (MD Rules, Rule 13-201(a)).

## Bankruptcy Considerations

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

The Maryland Receivership Act does not address whether a receiver may commence a bankruptcy proceeding.

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

An involuntary bankruptcy case may generally be filed by three creditors holding at least \$18,600 in liquidated unsecured claims not subject to a bona fide dispute if they can show that the debtor is generally not paying its debts (§ 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 (Md. Code Ann., Com. Law § 24-401(c)(8)). While the Maryland Receivership Act does not address the duties of a receiver when an involuntary bankruptcy proceeding is filed, the Bankruptcy Code provides that if creditors file an involuntary petition during the receivership:

- 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;
    - the debtor is solvent; and
    - it is in the best interest of equity holders.
- (11 U.S.C. § 543(d).)

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

In Maryland, there is no specific statutory authority giving receivers authority to object to an involuntary bankruptcy petition. However, because a general receiver

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is authorized to act in the name of the entity without approval or consent of the debtor or other parties, a general receiver likely has authority to object to an involuntary bankruptcy petition (Md. Code Ann., Com. Law § 24-301).

A bankruptcy court may:

- 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).

### 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.**

In Maryland, cannabis and marijuana are legal for medicinal use but not for recreational use. There are no

statutes or case law regarding the ability of a cannabis business to file for a receivership.

**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.**

### Receivership in Another State

The court may appoint a receiver appointed in another state, or that receiver's nominee, as an ancillary receiver over the property located in Maryland or subject to the jurisdiction of the court for which a receiver could be appointed under the Receivership Act if:

- The receiver or nominee would be eligible to serve as receiver under Md. Code Ann., Com. Law § 24-203.
- The appointment furthers the receiver's possession, custody, control, or disposition of property involved in the receivership in the other state.

(Md. Code Ann., Com. Law § 24-202(b).)

The court may also issue an order giving effect to an order entered in another state appointing or directing a receiver (Md. Code Ann., Com. Law § 24-202(c)).

Unless the court orders otherwise, an ancillary receiver appointed under Md. Code Ann., Com. Law § 24-202(a) has the rights, powers, and duties of a receiver appointed under the Receivership Act (Md. Code Ann., Com. Law § 24-202(d)).

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