

RECEIVERSHIPS IN NORTH CAROLINA STATE COURTS

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Introduction

A receiver is an individual or entity appointed by the court to “receive” a debtor’s property when the property is at risk of being lost, wasted, harmed, or devalued. The receiver’s job is to preserve and manage the property, or, in certain circumstances, liquidate the property and distribute the proceeds according to law. The receiver takes possession of the property essentially as an officer of the court and is “not appointed for the benefit of either party and does not derive...authority from either one.”¹ A receivership is an *ancillary* remedy; the court must first have jurisdiction over an underlying action to which the property relates.² Receiverships often are ordered in connection with a preliminary injunction restraining the defendant (debtor) from harming or disposing of the property. While courts have broad discretion to appoint receivers, receivership is considered a “harsh” remedy, to be used “only with attendant caution and circumspection.”³

The scope of a receivership will vary according to its purpose. In North Carolina, receiverships generally fall in four categories:

- To preserve property or the value of property pending the outcome of underlying litigation;
- To liquidate a corporation’s assets in connection with a creditor’s underlying action;

¹ Wachovia Bank and Trust Co., N.A. v. Carrington Dev. Assocs., 119 N.C. App. 480, 489 (1995) (quoting Lowder v. All Star Mills, Inc., 309 N.C. 695, 701 (1983)); see also Doe v. Duke Univ., 118 N.C. App. 406, 471–72 (1995) (“A receiver is an officer of the court, and his or her possession is possession of the court.”); United States v. McPherson, 631 F. Supp. 269, 272 (M.D.N.C. 1986) (“A receiver...is under the control of the court and must obey its orders to avoid sanctions by the supervising court.”).

² Sinclair v. Moore, 228 N.C. 389, 395 (1947) (“In brief, the purpose of the receivership is the preservation and proper distribution of the subject of litigation.”).

³ Lowder v. All-Star Mills, Inc., 301 N.C. 561, 577 (1981).

- To facilitate the dissolution of a corporation or LLC; and
- To aid in enforcement and execution of an existing judgment.

Chapter 1, Article 38 of the North Carolina General Statutes governs receiverships generally, including pre-judgment receiverships,⁴ with the second part focusing on receiverships of insolvent and nearly insolvent corporations.⁵ Receiverships in dissolution actions are governed by Chapters 55 and 55A (corporations and non-profit corporations) and 57D (LLCs). Chapter 1, Article 38 also authorizes post-judgment receiverships,⁶ and Article 31 provides more specific provisions for receiverships related to unsatisfied executions.⁷ This paper discusses the statutes authorizing each of these types of receiverships and also notes a variety of other specific types of actions in which receiverships are explicitly authorized. Although this paper is not intended as a practice guide, it touches on a few matters of practice in areas not covered by statute or where the statutes are unclear.

Inherent Authority, Discretion, and Appeal

Although this paper focuses on statutory authority for receiverships, our courts have long recognized judges' *inherent* authority to appoint receivers as a matter of equity and "notwithstanding specific statutory authorization."⁸ This inherent authority gives a judge some flexibility to appoint receivers in situations similar to those expressly contemplated by the statutes, or to define a receivership in an innovative way, as long as the receivership is still designed to accomplish equity.⁹ The court's inherent authority should not, however, be seen as blanket authorization to appoint a receiver whenever the court deems it expedient; a judge must be guided by the fundamental purposes of receiverships (as reflected in the statutes). In *Williams v. Liggett*,¹⁰ for example, the Court of Appeals held that "the trial court did not have the statutory *or equitable* power to appoint a receiver" over defendant's property and its rents and profits where the plaintiff had produced no evidence that the rents or profits were in

⁴ See G.S. 1-501 to 1-505.

⁵ See G.S. 1-507.1 to 1-507.11.

⁶ See G.S. 1-502(2), (3).

⁷ See G.S. 1-363 *et seq.*

⁸ *Lowder v. All Star Mills, Inc.*, 301 N.C. 561, 576 (1981); *Barnes v. Kochar*, 178 N.C. App. 489, 499 (2006) (citations omitted); *see also Sinclair v. Moore Cent. R. Co.*, 228 N.C. 389, 395 (1947) ("It is one of the inherent powers of a court of equity."); *Stegall Milling Co., Inc. v. Hettinger*, 27 N.C. App. 76, 78 (1975) (noting the authority).

⁹ *See, e.g., Piedmont Venture Partners, L.P. v. DeLoitte & Touche, L.L.P.*, 2007 NCBC 6 (N.C. Super.Ct.) (unpub'd) (invoking inherent authority when appointing a receiver with corporate receiver powers to oversee the winding up of a partnership where no partner appeared equipped to fulfill the duties).

¹⁰ 113 N.C. App. 812 (1994).

danger of being lost or materially injured or impaired during the litigation.¹¹ And receiverships generally are not authorized when there is an adequate legal remedy or where a less drastic equitable remedy will do. The Supreme Court has stated that, “[t]he courts look with jealousy on the application for the appointment of a receiver....The right to relief must be clearly shown, and also the fact that there is no other safe and expedient remedy.”¹² In *Murphy v. Murphy*,¹³ for example, appointment of a receiver over cash deposits pending the outcome of a domestic case “overreache[d] the bounds of discretion” where attachment would have been sufficient.¹⁴

Within these parameters, a court’s appointment of a receiver, or decision not to appoint a receiver, is reviewed for abuse of discretion.¹⁵ Even a plaintiff that has established its underlying cause of action as a matter of law is not necessarily entitled to a receiver.¹⁶ An order denying or appointing a receiver is interlocutory and generally not immediately appealable unless the appellant can show a substantial right.¹⁷ In *Barnes v. Kochar*,¹⁸ the appellants’ compelling need to preserve assets and corporate opportunities was sufficient to establish this substantial right, and the court reviewed the trial court’s denial of their request for receivership.¹⁹ Collateral attacks on receiverships, however, are not permitted.²⁰

¹¹ *Id.* at 816–17 (emphasis added).

¹² *Neighbors v. Evans*, 210 N.C. 550, 187 S.E. 796, 798 (1936) (denying receivership over real property where the plaintiff failed to show that the personal property was insufficient to cover the debt).

¹³ 261 N.C. 101 (1964).

¹⁴ *Id.* at 154; *see also* *Mooring Capital Fund, LLC v. Comstock North Carolina, L.L.C.*, 2009 N.C.B.C. 26 (unpub’d) (denying receivership for going concern where facts did not “present such a rare and drastic situation that a receivership [was] the only proper remedy available to the Plaintiff.”).

¹⁵ *Bradley v. Bradley*, 206 N.C. App. 249, 258 (2010) (citing *Barnes v. Kochar*, 178 N.C. App. 489, 496 (2006)); *Murphy*, 261 N.C. at 101.

¹⁶ *Barnes*, 178 N.C. App. at 499–500.

¹⁷ *Barnes v. St. Rose Church of Christ*, 160 N.C. App. 590, 591–92 (2003); *Stancil v. Stancil*, 94 N.C. App. 760, 763 (1989). In *St. Rose Church*, the court appointed a receiver over the church’s financial affairs in an action against the pastor for breaches of fiduciary duty. The Court of Appeals declined to review the appointment where defendants failed to show that receivership would result in substantial injury during the litigation.

¹⁸ 178 N.C. App. 489 (2006).

¹⁹ *Id.* at 498–99. The court went on to conclude that the trial court had not abused its discretion in denying the receivership. *Id.* at 500.

²⁰ *Hall v. Shippers Express, Inc.*, 234 N.C. 38, 41 (1951), *Hudson v. All Star Mills, Inc.*, 68 N.C. App. 447, 451 (1984).

Receiverships to Protect Property Pending Outcome of Litigation

A court with jurisdiction over the underlying action may appoint a receiver to protect and maintain disputed property pending the outcome of the case. G.S. 1-502 provides for pre-judgment appointment of a receiver on application of either party if that party establishes:

- An apparent right to property that is the subject of the action;
- That the property is in an adverse party's possession, and
- That the property, or rents and profits of the property, are "in danger of being lost, or materially injured or impaired[.]"²¹

If the moving party fails to demonstrate any of the three requirements in the statute, receivership is inappropriate.²² Receivership is not available "in cases where judgment upon failure to answer may be had on application to the court."²³ If the moving party, therefore, is in a position to end the trial court litigation by obtaining default judgment and beginning the enforcement process, the court should not place the property in receivership. A receivership may be necessary after the judgment, however, "to carry the judgment into effect"²⁴ or to facilitate execution on the judgment.²⁵

What judge has authority. Superior and district court judges "with authority to grant restraining orders and injunctions" have jurisdiction to appoint receivers.²⁶ As discussed in the

²¹ G.S. 1-502(1); *see, e.g.*, *York v. Cole*, 251 N.C. 344, 344–45 (1959) (receivership appropriate where plaintiff's affidavit showed apparent right to property and likely loss of rents and profits if property remained in defendant's hands); *People's National Bank v. Waggoner*, 185 N.C. 297 (1923) (receivership appropriate to preserve money obtained from plaintiff bank by fraudulent means); *State ex rel. Eure v. Lawrence*, 93 N.C. App. 446, 447–48 (1989) (receiver appointed to preserve defendant's assets pending outcome of action by State for securities violations); *Blue Ridge Pediatric & Adolescent Medicine, Inc.*, 2012 NCBC 51 (unpub'd) (denying motion to dismiss plaintiff's request for receiver to collect rents and preserve defendants' assets after plaintiff alleged a right to a share of rents); *see generally* *Sinclair v. Moore Central Railroad Co.*, 228 N.C. 389, 395 (1947) (noting that receiverships may be used "to preserve, pendent lite, specific property which is the subject of litigation."). Note that receiverships of this type are not permanent receiverships, but are designed only to last for the duration of the litigation or whatever shorter time the court deems necessary. *Couch v. ADC Realty Corp.*, 48 N.C. App. 108, 112 (1980).

²² *Neighbors v. Evans*, 210 N.C. 550, 187 S.E.2d 796, 798 (1936); *Williams v. Liggett*, 113 N.C. App. 812, 815 (1994).

²³ G.S. 1-502.

²⁴ G.S. 1-502(2).

²⁵ Post-judgment receiverships are discussed below.

²⁶ G.S. 1-501.

next section, however, only superior court judges have jurisdiction to appoint receivers of corporations.²⁷

Some receiverships are necessary only for a short time. Other receiverships are part of complex litigation and can persist for many months or even years. Particularly helpful in longer receiverships, the law allows the judge who appointed the receiver to retain jurisdiction over the receiver, the underlying action, and actions in the district involving the same receivership. The provision states that,

Any resident judge of the Superior Court Division or any nonresident judge of the Superior Court Division assigned to a district who appoints receivers pursuant to the authority granted hereby while holding court in that district may, in his discretion, retain jurisdiction and supervision of the original action, of the receivers appointed therefor and of any other civil actions pending in the same district involving the receivers, following his rotation out of the district.²⁸

So, even cases not assigned to the Business Court or otherwise given a Rule 2.1 designation can benefit from oversight by a (willing) judge who is already familiar with receiverships, the underlying facts, the existing procedural history, and the dynamics between the lawyers.

Scope of receivership; sale of property. In general, a receiver appointed to protect and maintain property pending the outcome of litigation should only take as much action as is reasonably necessary to preserve the status quo and prevent material loss or devaluation of the property. (Note, however, that even this seemingly narrow task often requires a broad set of powers.) The court's order setting forth the receiver's powers and duties should be drawn accordingly. It is often necessary, however, to sell receivership property to pay expenses or to avoid waste or other harm. Technological products and other intellectual property, for example, may retain their market value for only a short time; if they are not sold within this short window, the assets will diminish while the dispute goes on. To this end, the statutes authorize a receiver to obtain a court order to sell "any property, real or personal" in the receiver's hands.²⁹ The sale "shall be upon such terms as appear to be to the best interests of

²⁷ *Id.* Receivers of corporations are discussed in more detail below.

²⁸ G.S. 1-501.

²⁹ G.S. 1-505; *see, e.g.*, *Lambeth v. Lambeth*, 249 N.C. 315, 321 (1959) (a court-ordered sale of real estate in receivership was appropriate to produce income to pay for the receivership and alimony awarded to plaintiff). In a Superior Court action, the order allowing sale may be made by "the resident superior court judge or a superior court judge regularly holding the courts of the district." G.S. 1-505. In a District Court action, the order may be made by "the chief district judge or a district judge designated by the chief district judge to hear motions and enter interlocutory orders." *Id.*

the creditors affected by the receivership.”³⁰ The sale must be conducted according to G.S. Chapter 1, Article 29A, which governs the procedure for judicial sales.³¹

When the debtor is a corporation, however, and the court finds that the corporation is insolvent, nearly insolvent, or has another specified difficulty listed in G.S. 1-507.1, the court may appoint a receiver with rather broad authority to settle the corporation’s business.³² By default, the receiver’s statutory powers in this regard include selling, conveying, and assigning the corporation’s assets.³³ The court may, in its discretion, limit this authority to certain specific property or require court pre-approval for sales. Receivers of corporations are not limited to conducting sales according to the judicial sales statutes. Real property, for example, is often listed with a real estate agent and sold on the real estate market, and retail inventory may be sold in a typical liquidation—or “going out of business”—sale. Receiverships of insolvent corporations are discussed in further detail below.

Bond requirements. Before appointing a receiver, the court must require the party seeking the receivership to post a surety or non-surety bond in an amount the court specifies.³⁴ The bond amount is in the court’s discretion, but should be designed to “secure payment by the applicant of all damages, including reasonable attorney fees, sustained by the adverse party by the appointment and acts of the receiver if the appointment is vacated or otherwise set aside.”³⁵ The judge may increase the bond at any time to fulfill this protective purpose.³⁶

Before the receiver’s duties begin, the receiver must also post a two-surety bond “conditioned for the faithful discharge of his duties as receiver.”³⁷ The judge sets the amount of the bond, and the receiver must file it with the clerk of court where the action is pending.³⁸ The judge has authority to remove the receiver or direct the receiver to make a new bond with new sureties.³⁹

³⁰ G.S. 1-505; *see also* Joyce Farms v. Van Vooren Holdings, Inc., 756 S.E.2d 355, 360 (2014) (noting that his language is intended “to ensure that the trial court and the receiver conduct dissolution fairly and without fraud.”).

³¹ G.S. 1-505; *see* N.C. Gen. Stat. 1-339.1 *et seq.*

³² G.S. 1-507.1; G.S. 1-507.2.

³³ G.S. 1-507.2(4).

³⁴ G.S. 1-502.1.

³⁵ *Id.*

³⁶ *Id.*

³⁷ § 1-504. Where other more specific laws govern receivers’ bonds in a particular case, those statutes apply. *Id.*

³⁸ *Id.*

³⁹ *Id.*

The statutes also provide a mechanism by which a debtor may avoid a receivership by delivering to the court a two-surety undertaking payable to plaintiff in double the plaintiff's demand.⁴⁰ If this undertaking is tendered, the judge "shall have the discretionary power to refuse the appointment of a receiver."⁴¹

Selecting the receiver. It is the court's duty to make the final selection and appointment of a receiver. The receivership statutes are silent as to how the court should do that. In practice, a plaintiff/creditor seeking a receivership typically will have chosen from among individuals and entities it knows to be experienced in receiverships, bankruptcies, or related debtor/creditor proceedings. That party will then make its recommendation(s) to the court, sometimes with the agreement of the defendant/debtor, and sometimes without.

The type of receiver best suited to a case depends on the property at issue. In a creditor's suit based on a loan default, the receiver may only be charged with preserving and managing real property that serves as collateral. In that case, a firm with experience managing real property may be an ideal receiver and may in fact seek out the work in order to eventually get the listing. In a corporate dissolution, discussed later, attorneys or consultants with expertise in corporate affairs may be well-suited, including attorneys with experience as bankruptcy panel trustees. In complex litigation involving two or more business entities making multiple cross-allegations of wrongdoing, an attorney well-versed both in business torts and corporate dissolution may be a sound choice.

Applicability of other provisions. The second part of Article 38 discusses receiverships over insolvent and troubled corporations. Many of the provisions in that section could have general applicability to receiverships, and G.S. 1-502 recognizes this by providing that "[t]he provisions of G.S. 1-507.1 through 1-507.11 are applicable, as near as may be, to receivers appointed hereunder."⁴² Of particular note is G.S. 1-507.9, the provision for compensation of a receiver, which is discussed in the next section.

⁴⁰ G.S. 1-503.

⁴¹ *Id.*; see *Sinclair v. Moore*, 228 N.C. 389, 559 (1947).

⁴² G.S. 1-502.

Receivers of Insolvent and Nearly-Insolvent Corporations

In an underlying superior court action in which an insolvent, near-insolvent, or materially impaired corporation is a party, the court may appoint a receiver with wide-ranging powers over the corporation's affairs. Only the superior court may appoint receivers of corporations.⁴³ The court must have subject matter jurisdiction over the underlying action and there must be a basis in law or equity for the receivership, such as those grounds enumerated in G.S. 1-502.⁴⁴ The court must also find, based on the competent evidence, that the corporation

- Is insolvent⁴⁵ or is in imminent danger of insolvency⁴⁶; **or**
- Has suspended its ordinary business for want of funds; **or**
- Has forfeited its corporate right or its corporate existence has expired by limitation.⁴⁷

The court may remove receivers, appoint substitutes, and fill vacancies.⁴⁸ The court may also appoint more than one receiver of a corporation, and “[e]verything required to be done by receivers...is valid if performed by a majority of them.”⁴⁹ The court may appoint a receiver over property of a foreign corporation if that property is within North Carolina.⁵⁰

Powers, duties, and responsibilities. G.S. 1-507.2 specifies that a receiver for a corporation has the power to:

⁴³ G.S. 1-501; *see also* G.S. 7A-249 (“The superior court division is the proper division, without regard to the amount in controversy, for actions for corporate receiverships under Chapter 1, Article 38, of the General Statutes[.]”).

⁴⁴ G.S. 1-507.1 (“[A] receiver may be appointed by the court under the same regulations that are provided by law for the appointment of receivers in other cases.”). The general receivership provisions in G.S. 1-501 through 1-505, discussed above, apply to such receiverships, at least to the extent they do not conflict with the more specific provisions in G.S. 1-507.1 to 1-507.11.

⁴⁵ Solvency, in North Carolina, is determined by “whether or not the entire assets of the...entity in question equal or exceed in value the total indebtedness of such person or entity.” *Kessing v. Nat’l Mortgage Corp.*, 278 N.C. 523, 535 (1971).

⁴⁶ *Mitchell v. Aulander Realty Co.*, 169 N.C. 516, 519 (1915) (receivership appropriate for troubled corporation even in absence of “absolute and irremediable insolvency”). In *Lowder v. All Star Mills, Inc.*, the court acknowledged that “a receiver for a going, solvent corporation is an especially rare and drastic remedy” but noted that it is entirely proper in cases where other problems place the assets in imminent danger, such as fraud, gross misconduct, incapacity, or neglect by management; diversion of corporate funds; and refusal to permit inspection of corporate books, especially when combined with other misconduct. 301 N.C. 561, 577 (1981).

⁴⁷ G.S. 1-507.1.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ G.S. 1-502(4).

- (1) Demand, sue for, collect, receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, and property of every description of the corporation.
- (2) Foreclose mortgages, deeds of trust, and other liens executed to the corporation.
- (3) Institute suits for the recovery of any estate, property, damages, or demands existing in favor of the corporation,⁵¹ and he shall, upon application by him, be substituted as party plaintiff in the place of the corporation in any suit or proceeding pending at the time of his appointment.
- (4) Sell, convey, and assign all of the said estate, rights, and interest.⁵²
- (5) Appoint agents under him.
- (6) Examine persons and papers, and pass on claims as elsewhere provided in this part.
- (7) Do all other acts which might be done by the corporation, if in being, that are necessary for the final settlement of its unfinished business.⁵³

Before exercising its powers, the receiver must pay the bond required by the court and otherwise “comply with such terms as the court prescribes.”⁵⁴ These powers continue for as long as the court deems necessary.⁵⁵ If the receiver sells corporate property and obtains proceeds, the receiver must “hold and dispose” of the proceeds as the court directs.⁵⁶

Because the appointment of a receiver is an equitable remedy that is allowed in the court’s discretion, the court may place whatever limits and conditions on these powers that it deems necessary under the facts of the case.⁵⁷ It is also quite common, on the other hand, for a receivership order to include a much longer enumeration of the receiver’s powers, duties, and

⁵¹ See, e.g., *Whitmire v. First Federal Sav. And Loan Ass’n of Hendersonville*, 23 N.C. App. 39 (1974) (suit by receiver against insolvent corporation’s lender to recover balance of loan proceeds).

⁵² Sales of receivership property are discussed on pp. 5 and 6 above.

⁵³ 1-507.2. As to subsection (2)—foreclosure of mortgages on debtor’s behalf—more specific procedures are outlined in G.S. 1-507.4.

⁵⁴ *Id.* The bond requirements for receiverships generally are discussed on pp. 6–7 above.

⁵⁵ G.S. 1-507.2.

⁵⁶ *Id.*

⁵⁷ See, e.g., *First Citizens Bank & Trust Co. v. Berry*, 2 N.C. App. 547, 551 (1968) (“[The receiver] receives his authority from the applicable statutes, together with the directions and instructions of the court in its order appointing him.”). In addition, the court is not required to create a full liquidation-type receivership, even where the corporation is insolvent, if a more narrowly-crafted receivership will serve equity.

responsibilities to flesh out the much more general statutory list above.⁵⁸ Often, to the extent practical, the initial receivership order should be very specific; the more that can be authorized up front, the less time the court will be required to spend in subsequent hearings. The court may also benefit from asking whether the party who drafted the order has consulted with the proposed receiver. Often the receivers themselves can anticipate certain needs that the attorneys and court may not foresee.

When a receiver for a corporation is appointed, and the court so orders, “all of the real and person property of an insolvent corporation, wheresoever situated,” vests in the receiver as an agent of the court.⁵⁹ The receiver is required to present to the court within 30 days a “full and complete inventory” of the corporation’s assets and their value, the corporation’s debts and those debts that are due to the corporation.⁶⁰ To aid in this process and any other duties, the receiver has the authority to send for persons and papers (presumably via summons, if necessary) and to examine “creditors, claimants, president, directors, and other officers and agents of the corporation, on oath or affirmation” regarding more or less any financial affairs of the corporation.⁶¹ The court may enforce the receiver’s directives through contempt.⁶²

As the authorizing statute makes clear, a corporate liquidation receiver is permitted to sue to recover any property of the corporation.⁶³ What is not clear is how a receiver may recover preferential payments made by the corporation prior to the receivership. Some such payments may be recoverable in a receiver’s action under the Uniform Fraudulent Transfer Act.⁶⁴ Another mechanism is for the court’s receivership order to specify that the transfer of the corporate property to the receiver is considered an “assignment for the benefit of creditors” (ABC) under G.S. Chapter 23. With such an order in place, the receiver may be better equipped to pursue recovery of preferential payments under the ABC statutes.⁶⁵

⁵⁸ See, e.g., *Old Battleground Properties, Inc. v. Central Carolina Surgical Eye Assocs., P.A.*, 2015 N.C.B.C. 18 (2015) (including a list of 31 specific powers and a number of other directives in connection with a corporate receivership).

⁵⁹ G.S. 1-507.3.

⁶⁰ *Id.* The receiver should also make periodic reports to the court regarding the progress of the receivership as the court directs. *Id.*

⁶¹ G.S. 1-507.5.

⁶² *Id.*

⁶³ G.S. 1-507.2(3).

⁶⁴ See G.S. 39-23.1 *et seq.*; see also *Pender v. Mallett*, 123 N.C. 57 (1898) (“The receiver is the hand of the court...and is not the representative of the debtors alone, and can maintain an action to set aside fraudulent transactions of the debtors.”).

⁶⁵ See G.S. 23-1 *et seq.*

The receiver takes title to the property subject to encumbrances, including all mortgages, judgments, and other liens existing at the time of appointment.⁶⁶ In contrast to bankruptcy, therefore, the receiver may not generally dispose of the assets free and clear of encumbrances. However, when a corporation's property is encumbered at the time the receiver is appointed, and the legality of the encumbrance is questioned, the court may allow the receiver to sell the property free and clear of the encumbrance, but only if "the property is of a character materially to deteriorate in value pending the litigation."⁶⁷ The proceeds are paid into the court and remain "subject to the same liens and equities of all parties" that existed before the sale.⁶⁸ The sale may be public or private; must be "for the best price that can be obtained," and is subject to court confirmation.⁶⁹

One of the most important duties of a corporate liquidation receiver is to manage claims against the insolvent corporation. The procedure by which claimants present their claims to the receiver is set forth in G.S. 1-507.6. The receiver has broad authority to examine creditors in relation to their claims.⁷⁰ The statute sets forth no specific time limit on claims, but states that the court may limit the time and may bar untimely claims.⁷¹ The time limits and claims procedures may be set out in the order appointing the receiver or in a separate order. After the receiver has determined the validity of claims, the receiver must make a report to the court.⁷² This begins a process by which creditors may file exceptions (within 10 days unless extended by the court).⁷³ The creditor may also demand a **jury trial**.⁷⁴ After the process of reporting claims has run its course, the receiver may seek an order allowing distribution of the

⁶⁶ National Surety Corp. v. Sharpe, 236 N.C. 35, 50 (1952); East Carolina Lumber Co. v. Pamlico County, 250 N.C. 681, 684 (1959); State ex rel. Eure v. Lawrence, 93 N.C. App. 446, 450 (1989)(describing the rule as "well settled" and noting that, "Nothing in th[e] statute suggests that the receiver should take the property free of existing obligations."). A judgment entered after the appointment of a receiver, on the other hand, does not create a lien on the property as against the receiver. First Citizens Bank & Trust Co. v. Berry, 2 N.C. App. 547, 551 (1968).

⁶⁷ G.S. 1-507.8.

⁶⁸ *Id.*; *Eure*, 93 N.C. App. at 450.

⁶⁹ G.S. 1-507.8.

⁷⁰ G.S. 1-507.6.

⁷¹ G.S. 1-507.6; *see* First Citizens Bank & Trust Co. v. Berry, 2 N.C. App. 547, 552 (1968) ("Proof of claims must be filed with the receiver in writing pursuant to the statute and within the time limit directed by the court or such claim may be barred."); *see also* Tractor and Auto Supply Company v. Fayetteville Tractor and Equipment Company, Inc., 2 N.C. App. 531, 537-38 (1968)(holding that judge did not abuse his discretion by denying motion to amend claim made two years after receiver's determination).

⁷² G.S. 1-507.7.

⁷³ *Id.*

⁷⁴ *Id.*

assets and a subsequent discharge of the receiver from its duties.⁷⁵ Before ordering distribution or relieving the receiver, the court must conduct a hearing, and the court must be satisfied that every creditor who has filed a claim has been properly notified of the hearing by registered or certified mail at least 20 days prior to the hearing.⁷⁶

Once the receiver is authorized to distribute the corporation's assets, the creditor must make distributions to claimants according to priority. An analysis of priority is outside the scope of this paper. In general, however, a receiver typically must prioritize various types of liens, perfected and unperfected; tax liens; employee wages; and general unsecured claims.⁷⁷ In the rare event that the corporation has assets remaining to continue its operations, the court may discharge the receiver and decree that the remaining property be returned to the corporation to resume control of it.⁷⁸ With agreement of stockholders and after certain agreements by creditors, the court may also authorize a plan for the corporation's reorganization.⁷⁹

Compensation and reimbursement. The court is authorized to allow the receiver "a reasonable compensation...for his services[.]"⁸⁰ The amount of compensation may not exceed an amount equal to five percent of the receipts and disbursements of the receivership.⁸¹ If the receiver is a lawyer, the court may also allow payment of his or her fees for "professional services, as an attorney, which are beyond the ordinary routine of a receivership and of a type which would reasonably justify the retention of legal counsel by any such receiver not himself licensed to practice law."⁸² An award of fees for legal services is reviewable on appeal, but will be reversed only when "clearly inadequate or excessive, or based on the wrong principle."⁸³ In

⁷⁵ G.S. 1-507.7; G.S. 1-507.11. Note that this discharge relates only to the duties of the receiver. Unlike bankruptcy, state court liquidation receiverships *do not* result in discharge of the defendant/debtor from its debts.

⁷⁶ G.S. 1-507.7; *see also* National Security Corp. v. Sharpe, 232 N.C. 98, 101-03 (1952) (invalidating an order where no notice was given to other creditors); John T. Council, Inc. v. Balfour Prods. Group, Inc., 80 N.C. App. 157, 159-60 (1986) (noting that compliance with the notice provisions are a prerequisite to entry of an order of discharge). Certain notice exceptions apply to receiverships in delinquency proceedings for insurance companies under Chapter 58, Art. 30. G.S. 1-507.7.

⁷⁷ *Sharpe*, 236 N.C. at 50; *King v. Premo & King, Inc.*, 258 N.C. 701, 715 (1963).

⁷⁸ G.S. 1-507.10.

⁷⁹ G.S. 1-507.11.

⁸⁰ G.S. 1-507.9.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Lowder v. All Star Mills, Inc.*, 309 N.C. 695, 701, 707 (1983).

King v. Premo & King, Inc., for example, the court reduced an allowance of attorney fees to an attorney receiver after finding that much of the work for which he was granted fees required no particular legal knowledge or skill and was simply the ordinary duty of a receiver.⁸⁴

The court may also allow payment to the receiver of the costs and expenses of administering the receivership.⁸⁵ This category can include any number of items necessary to do the work. Typically, however, it includes court costs related to receivership proceedings, reasonable fees for attorneys (or other professionals) the receiver has hired incident to the receivership, costs of conserving the property, costs of sales of the property, insurance premiums, clerical and accounting expenses, and tax payments.⁸⁶ Payments of fees and expenses are given priority over most other disbursements.⁸⁷

⁸⁴ 258 N.C. 701, 714–16 (1963).

⁸⁵ G.S. 1-507.9.

⁸⁶ *King*, 258 N.C. at 711–12.

⁸⁷ G.S. 1-507.9.

Receivers Incident to Corporate Dissolution and Winding Up

The General Statutes also provide for court appointment of receivers in actions brought to dissolve corporations under Chapter 55, non-profit corporations under Chapter 55A, and LLCs under Chapter 57D, and to facilitate inventory in partnerships as provided by Chapter 59.

Corporations and non-profit corporations. As discussed above, Chapter 1, Art. 38 permits a creditor to seek a court-ordered receivership of corporate property in connection with its underlying claims against an insolvent or similarly troubled corporation. In certain circumstances, a corporation may also be dissolved in a superior court action, and the court is authorized to appoint a receiver in connection with its dissolution order.

The proper basis for dissolution depends on the type of plaintiff. A court may order dissolution in an action filed by a creditor who has a judgment against the corporation for which execution has been returned unsatisfied; or when “the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent.”⁸⁸ In actions by the Attorney General, dissolution is permitted when the corporation exists as a result of fraud or when it persists in exceeding or abusing its statutory authority.⁸⁹ In actions by shareholders, the court may order dissolution of a corporation due to injury caused by irreparable management deadlock; where necessary to protect the rights and interests of the shareholder; for certain instances of shareholder voting deadlock; due to misapplication or waste of corporate assets; or where authorized by certain written shareholder agreements.⁹⁰ A corporation itself may also seek to have its voluntary dissolution continued under court supervision.⁹¹ Before dissolving a non-profit corporation, the court must consider whether there are reasonable alternatives; whether dissolution is reasonably necessary for the protection of the rights or interests of the members, if any; and, in the case of a charitable or religious corporation, whether dissolution is in the public interest.⁹²

In any action to dissolve a corporation or non-profit corporation, the court may “appoint a receiver with all powers and duties the court directs[.]”⁹³ The superior court has exclusive

⁸⁸ G.S. 55-14-30(3); G.S. 55A-14-30(a)(3).

⁸⁹ G.S. 55-14-30(1); G.S. 55A-14-30(a)(1)

⁹⁰ G.S. 55-14-30(1); *see, e.g., Garlock v. Southeastern Gas & Power, Inc.*, 2001 NCBC 10 (unpublished) (providing for appointment of receiver in connection with order dissolving corporation under Chapter 55). In a similar set of circumstances, non-profit corporations may be dissolved in actions by members or directors. G.S. 55A-14-30(a)(2).

⁹¹ G.S. 55-14-30(4); 55A-14-30(a)(4).

⁹² G.S. 55A-14-30(b).

⁹³ G.S. 55-14-31(c)(corporations); 55A-14-31(c)(non-profit corporations).

jurisdiction over corporate dissolution actions,⁹⁴ and the superior court is the proper division for dissolution actions in which receiverships are appointed, regardless of the amount in controversy.⁹⁵

Before appointing a receiver, the court must notify all parties (and other interested parties the court designates) and hold a hearing.⁹⁶ Individuals, domestic corporations, and foreign corporations authorized to transact business in North Carolina may be appointed as receivers,⁹⁷ and the court may appoint more than one receiver in a given case.⁹⁸ The court may require the receiver to post a surety or non-surety bond in an amount the court directs.⁹⁹ The court may also “from time to time during the receivership... order compensation paid and expense disbursements or reimbursements made to the receiver and his counsel from the assets of the corporation or proceeds from the sale of the assets.”¹⁰⁰ Presumably the original receivership order may provide a fixed schedule of periodic payments; this approach prevents the judge from having to issue serial payment orders.

The court may direct a receiver in a corporate dissolution action to wind up and liquidate or to manage the business and its affairs, as appropriate.¹⁰¹ The statute does not attempt to list all the powers the court may confer upon the receiver, but states generally that the court may authorize, *without limitation*, the power:

- To dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;
- To sue and defend in his own name as receiver of the corporation in all courts of this State; and
- To exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.¹⁰²

⁹⁴ G.S. 55-14-30; G.S. 55A-14-30.

⁹⁵ G.S. 7A-249.

⁹⁶ G.S. 55-14-32(a); 55A-14-32(a).

⁹⁷ G.S. 55-14-32(b); 55A-14-32(b) (specifying “business or nonprofit corporation”).

⁹⁸ G.S. 55-14-32(a); 55A-14-32(a).

⁹⁹ G.S. 55-14-32(b); 55A-14-32(b).

¹⁰⁰ G.S. 55-14-32(e); 55A-14-32(e).

¹⁰¹ G.S. 55-14-32(a); 55A-14-32(a); *see* Bradley v. Bradley, 206 N.C. App. 249, 258 (2010) (appointment of receiver was appropriate to wind up and liquidate defendant closely-held corporation in dissolution action by minority shareholder).

¹⁰² G.S. 55-14-32(c); 55A-14-32(c).

Once a court appoints a receiver in connection with a dissolution, the court has “exclusive jurisdiction over the corporation and all of its property wherever located.”¹⁰³ If a receiver for a corporation dies, any actions against that receiver do not abate due to the receiver’s death but instead continue against the receiver’s successor, or, if none, against the corporation or its successor.¹⁰⁴ The trial court’s decision to appoint or deny appointment of a receiver incident to dissolution is reviewed for abuse of discretion.¹⁰⁵

LLCs. The superior court may dissolve an LLC in a proceeding brought by either the Attorney General or an LLC member.¹⁰⁶ After dissolution, an LLC is required to wind up its affairs.¹⁰⁷ In connection with the dissolution and winding up, the court “may appoint one or more persons to serve as receiver with powers and duties the court may grant under G.S. 57D-6-04.”¹⁰⁸ The receiver must then “manage the business of the LLC pending the court’s decision on dissolution and if dissolution is decreed by the court...wind up the LLC.”¹⁰⁹ The court may require the receiver to post a surety or non-surety bond in amount the court directs.¹¹⁰

Before appointing a receiver, the court must hold a hearing after providing (or requiring the dissolution petitioner to provide) notice to all parties and any other interested persons the

¹⁰³ G.S. 55-14-32(a); 55A-14-32(a). Once a corporation files for bankruptcy, however, the receivership is stayed and the property in question reverts to the debtor to be disposed of in accordance with federal law and the orders of the federal bankruptcy judge.

¹⁰⁴ G.S. 1A-1, Rule 25(e).

¹⁰⁵ *Bradley*, 206 N.C. App. at 257–58.

¹⁰⁶ G.S. 57D-6-02. The statute allows dissolution in proceedings brought by:

(1) The Attorney General, if it is established that (i) the LLC obtained its articles of organization through fraud or (ii) the LLC continued to exceed or abuse the authority conferred on it by law 20 or more days after the date the Attorney General delivered to the LLC written notice of the LLC’s unauthorized acts.

(2) A member, if it is established that (i) it is not practicable to conduct the LLC’s business in conformance with the operating agreement and this Chapter or (ii) liquidation of the LLC is necessary to protect the rights and interests of the member.

¹⁰⁷ G.S. 57D-6-07(a), (b).

¹⁰⁸ G.S. 57D-6-03(c). When no managers or other officials remain to wind up the LLC, a person owning or controlling the last member’s interest may apply to the superior court for appointment of a receiver to handle the wind up. G.S. 57D-6-07(c). Venue and notice requirements for the application are set forth in the statute. *See id.*

¹⁰⁹ G.S. 57D-6-04(a); *see, e.g., Battles v. Bywater, LLC*, 2014 WL 5512304 (N.C. Super.Ct. 2014)(unpub’d) (appointing receiver pending outcome of LLC dissolution action due to “persisting management deadlock...and allegations of corporate mismanagement and malfeasance[.]”).

¹¹⁰ G.S. 57D-6-04(b).

court designates.¹¹¹ In the receivership order, the court must describe the receiver’s powers and duties, which should depend on the purpose and breadth of the receivership, and which may include any of the following:

- (1) Dispose of all or any portion of the assets of the LLC wherever located, at a public or private sale.
- (2) Sue and defend in the receiver's own name as receiver of the LLC.
- (3) Exercise all of the powers of the LLC to the extent necessary to manage the business of the LLC or wind up the LLC following dissolution.¹¹²

The court is also authorized to “order the LLC to compensate the receiver and reimburse the receiver's expenses, including the fees and expenses of attorneys and other professionals retained by the receiver.”¹¹³ If the court orders payment of expenses and fees, it is common for the order also to allow these payments to be made periodically, particularly when the receivership is likely to last a few months or longer.

Partnerships. The Uniform Partnership Act, Chapter 59 of the General Statutes, allows the court to appoint a receiver when a surviving partner fails to make or allow the required inventory of the partnership’s assets after the death of a partner.¹¹⁴ Upon appointment, the receiver must “proceed to wind up the same and dispose of the assets thereof in accordance with law.”¹¹⁵ Chapter 59 specifies no additional procedures for such receiverships. As much as possible, then, the general provisions for receiverships in Chapter 1, discussed above, should govern.

¹¹¹ G.S. 57D-6-04(a).

¹¹² G.S. 57D-6-04(c). The court is expressly authorized to amend the order as necessary “from time to time.” *Id.*

¹¹³ G.S. 57D-6-04(d).

¹¹⁴ G.S. 59-77.

¹¹⁵ *Id.*

Receiverships to Aid in Execution or Enforcement of Judgment

In general. Receivers may also be created *after* judgment “to carry the judgment into effect”;¹¹⁶ or

- To dispose of the relevant property according to the judgment;
- To preserve the property while appeal is pending; or
- When the judgment creditor has attempted to execute on the judgment, the execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.¹¹⁷

The jurisdictional and procedural requirements of G.S. 1-501 through 1-505, discussed above, generally apply to these post-judgment receiverships, and the provisions of G.S. 1-507.1 to G.S. 1-507.11 apply “as near as may be.”¹¹⁸

Unsatisfied judgment executions. When a creditor’s judgment execution has been returned unsatisfied, and the creditor commences proceedings supplemental to execution under Chapter 1, Article 31, a court may appointment a receiver if necessary to facilitate enforcement of the judgment. Such receiverships are governed by G.S. 1-363 through 1-366, which contain procedural requirements not found in the general receivership provisions in G.S. 1-501 through 1-505. G.S. 1-363 provides that,

The court or judge having jurisdiction over the appointment of receivers may also by order in like manner, and with like authority, appoint a receiver in proceedings under this Article of the property of the judgment debtor, whether subject or not to be sold under execution[.]¹¹⁹

Property that falls within the homestead and personal property exemptions, however, may not be made part of the receivership.¹²⁰

The court’s decision to appoint or deny appointment of a post-judgment receiver is reviewed for abuse of discretion. A court’s appointment of a receiver “is always appropriate”, however, when it appears, and the record shows, “that a judgment debtor has property that might be applied to the payment of its debt.”¹²¹ In *Massey v. Cates*,¹²² the Court of Appeals reiterated that

¹¹⁶ G.S. 1-502(2).

¹¹⁷ G.S. 1-502(3).

¹¹⁸ G.S. 1-502.

¹¹⁹ G.S. 1-363.

¹²⁰ *Id.* These statutory exemptions, and the process by which a debtor may designate them, are set out in G.S. 1C-1601 *et seq.*

¹²¹ *Lone Star Industries, Inc. v. Ready Mixed Concrete of Wilmington, Inc.*, 68 N.C. App. 308, 309 (1984).

¹²² 2 N.C. App. 162 (1968).

Indeed, a receiver is appointed almost as of course, where it appears that the judgment debtor has, or probably has, property that ought to be so subjected to the satisfaction of the judgment, after the return of the execution unsatisfied. The receivership operates and reaches out in every direction as an equitable execution, and it is the business of the receiver, under the superintendence of the court, to make it effectual by all proper means.¹²³

A judgment creditor must demonstrate that a receivership is appropriate through “evidence tending in a reasonable degree to show” the debtor has property subject to execution.¹²⁴ The showing need not be conclusive or certain.¹²⁵ The creditor may make its showing through “affidavits and other written or documentary evidence.”¹²⁶ The Court of Appeals has also held that verified pleadings may operate as affidavits in this context.¹²⁷ The evidence may or may not result from responses to discovery obtained in the underlying supplemental proceedings.¹²⁸

Before appointing a receiver, the court also should determine whether there are any other supplemental proceedings pending against the debtor; if so, the plaintiff in those proceedings should be notified of the pending appointment and of any subsequent proceedings relating to the receivership.¹²⁹ Only one receiver may be appointed under this Article over the property of a judgment debtor.¹³⁰

Upon appointing a receiver, the court must file the order with the clerk in the county of judgment, the clerk must include the order in the underlying file, and the court must provide the receiver a certified copy of the order.¹³¹ Title to the property subject to the receivership becomes vested in the receiver from the time the order of appointment is entered.¹³² If, however, the court has also entered a post-judgment restraining order as provided in G.S. 1-

¹²³ *Massey*, 2 N.C. App. at 165 (quoting *Coates v. Wilkes*, 92 N.C. 376, 383 (1885)).

¹²⁴ *Doxol Gas of Angier, Inc. v. Howard*, 28 N.C. App. 132, 135 (1975) (citations omitted).

¹²⁵ *Id.*

¹²⁶ *Id.* at 134; *see also* G.S. 1A-1, Rule 43(e) (also noting that the court may direct that a motion “be heard wholly or partly on oral testimony or depositions.”).

¹²⁷ *Id.* at 135.

¹²⁸ *See* G.S. 1-352 to 1-360.

¹²⁹ G.S. 1-363.

¹³⁰ *Id.*; *see also* *Corbin v. Berry & McGowan*, 83 N.C. 27 (1880) (noting that the limitation is to prevent conflicts between courts that may have concurrent jurisdiction).

¹³¹ G.S. 1-364. The statute requires the clerk to file the order in “a book to be kept for that purpose...to be called Book of Orders Appointing Receivers of Judgment Debtors.” No such book exists in the modern system of court recordkeeping.

¹³² *Id.*

358, the receiver is vested with the property from the time of service of the restraining order.¹³³ Before a receiver may be vested with any *real property*, a certified copy of the appointment order must be recorded “on the execution docket” (in the judgment index, in modern practice) in the clerk’s office in the county where the real property is located and in the county of the debtor’s residence.¹³⁴ A receiver appointed under this Article may bring an action against a third party in possession of the debtor’s property if that third party claims an interest in the property or denies the debt.¹³⁵ After notice to the third party,¹³⁶ the court may enter an order forbidding the third party from transferring or disposing of the property “till a sufficient opportunity is given to the receiver to commence and prosecute the action to judgment and execution.”¹³⁷ The court may modify this order any time after requiring “such security as he directs.”¹³⁸

A court’s order granting or denying a post-judgment receivership in interlocutory and therefore generally not immediately appealable.¹³⁹ A debtor whose property has been placed in a post-judgment receivership may have a difficult time arguing for immediate appealability based on a substantial right. The Court of Appeals has stated that protection of the defendant’s business or assets is of greater concern in pre-judgment receivership where there has not been a final determination of the plaintiff’s claims. The court noted that, in a post-execution receivership, “if the sheriff [had] found any property upon which to levy, he could have seized that property to satisfy the judgment; certainly, a successful levy would have caused more harm to the business than the receivership as ordered by the trial court.”¹⁴⁰

The most difficult aspect of post-judgment receiverships may be how to shift the fees and expenses of the receiver to the defendant/debtor. Often there is little unencumbered property of the debtor with which the receiver’s fees may be paid. In addition, the authority by which the court orders the receiver to be compensated out of debtor’s assets is unclear. Presumably if the entity whose property is in receivership is an insolvent corporation (and the court so finds), the court could allow compensation as permitted in G.S. 1-507.9. It appears that this fee provision may also apply in other receiverships; G.S. 1-502 notes that the provisions of G.S. 1-507.1 through 1-507.11 apply “as near as may be, to receivers appointed

¹³³ *Id.*; G.S. 1-363.

¹³⁴ G.S. 1-365.

¹³⁵ G.S. 1-366; *Ross v. Ross*, 119 N.C. 109 (1896).

¹³⁶ *Coates Bros. v. Wilkes*, 94 N.C. 174 (1886).

¹³⁷ G.S. 1-366.

¹³⁸ *Id.*

¹³⁹ *Batesville Casket Co., Inc. v. Wings Aviation, Inc.*, 214 N.C. App. 447, 453 (2011).

¹⁴⁰ *Id.* at 457.

hereunder.”¹⁴¹

Corporate dissolution actions by creditors. In addition to seeking a receivership through the supplemental proceedings statutes, as just discussed, a creditor of a corporation or non-profit corporation whose execution has been returned unsatisfied may file an action to have the debtor judicially dissolved.¹⁴² As a remedy ancillary to the dissolution proceeding, the court may appoint a receiver.¹⁴³ The provisions governing this type of receivership are discussed above.

¹⁴¹ Alternatively, G.S. 32-59 seems to apply to receivers of non-corporate debtors, as it governs compensation of “fiduciaries other than trustees under a trust.” The provision states that,

Unless otherwise provided by the General Statutes or by the instrument creating the fiduciary relationship, fiduciaries other than trustees under a trust shall be entitled, upon written request to the clerk of superior court, to reasonable compensation in an amount to be determined by the clerk after taking into consideration the factors set forth in G.S. 32-54(b) and to reimbursement for expenses properly incurred in the administration of the fiduciary relationship.

It is unclear, however, how a clerk of court would have authority to issue such an order in a receivership created by order of a superior or district court judge.

¹⁴² G.S. 55-14-30(3) (corporations); G.S. 55A-14-30(a)(3) (non-profit corporations).

¹⁴³ G.S. 55-14-31(c); 55A-14-31(c).

Other Statutes Authorizing Receivers in Specific Actions

In addition to the statutes discussed above, a number of other statutes authorize the courts to appoint receivers in the context of specific causes of action and proceedings. These provisions include:

- **Chapter 75 violations. G.S. 1-502(5).** A receiver may be appointed in cases in which restitution is sought for violations of G.S. 75-1.1 (unfair or deceptive trade practices).¹⁴⁴ The procedure set forth in G.S. 1-501 to 1-505 and, where applicable, 1-507.1 to 1-507.11, apply to these receiverships.
- **Partitions. G.S. 1-502(6).** A receiver may be appointed in partition of real property cases pursuant to G.S. 46-3.1. G.S. 46-3.1 provides that
Pending final determination of the proceeding, on application of any of the parties in a proceeding to partition land, the court may make such orders as it considers to be in the best interest of the parties, including but not limited to orders relating to possession, payment of secured debt or other liens on the property, occupancy and payment of rents, and to include the appointment of receivers pursuant to G.S. 1-502(6).
The procedure set forth in G.S. 1-501 to 1-505 and, where applicable, 1-507.1 to 1-507.11, apply to these receiverships.
- **Adult Guardianships: estates without guardians. G.S. 35A-1294.** When a ward's guardian is removed, resigns, or stops serving without making an accounting of the ward's estate, a proceeding is required to compel one.¹⁴⁵ If there is no successor guardian, the clerk may appoint
some discreet person as a receiver to take possession of the ward's estate, to collect all moneys due the ward, and to secure, lend, invest, or apply the same for the benefit and advantage of the ward, under the direction of the clerk until a successor guardian is appointed. The accounts of the receiver shall be returned, audited, and settled as the clerk may direct. The receiver shall be allowed such amounts for his time, trouble, and responsibility as seem to the clerk reasonable and proper. Such receivership may continue until a suitable guardian can be appointed.¹⁴⁶
When another guardian is appointed, the guardian may apply to the clerk to direct the receiver to return the property.¹⁴⁷

¹⁴⁴ See, e.g., Blue Ridge Pediatric & Adolescent Medicine, Inc., 2012 NCBC 51 (unpub'd).

¹⁴⁵ G.S. 35A-1294(a).

¹⁴⁶ G.S. 35A-1294(b).

¹⁴⁷ G.S. 35A-1294(c).

- **Uniform Fraudulent Transfers Act. G.S. 39-23.7.** In connection with a creditor’s action for relief against a debtor’s transaction under this Act, the court may provide a number of provisional remedies, including “appointment of a receiver to take charge of the asset transferred or of other property of the transferee.”¹⁴⁸
- **Foreclosures: actions to enjoin on equitable or other legal grounds. G.S. 45-21.35.** If a court enjoins a foreclosure sale under G.S. 45-21.34, the court may order a resale. Pending the resale, the court may appoint a receiver to preserve the property and/or its rents and profits.¹⁴⁹
- **North Carolina Consumer Finance Act. G.S. 53-187.** Receiverships of defendant’s property are authorized in actions by the Commissioner of Banks seeking to enjoin violations of the Act. The receiver may take possession of
 - the property and business of the defendant, including books, papers, documents and records pertaining thereto or so much thereof as the court may deem reasonably necessary to prevent violations of this Article through or by means of the use of said property and business.
 In addition, the receiver “shall have such powers and duties as to custody, collection, administration, winding up, and liquidation of such property and business as shall from time to time be conferred upon him by the court.”
- **Alimony and post-separation support. G.S. 50-16.7.** Receivers may be appointed in actions to secure alimony and post separation support “as provided in Article 38 of Chapter 1[.]”¹⁵⁰
- **Child support. G.S. 50-13.4.** Receivers may be appointed in actions to secure child support “as provided in Article 38 of Chapter 1[.]”¹⁵¹
- **Solicitation of contributions. G.S. 131F-23.** Receivers may be appointed by the superior court in connection with injunctions to prevent further violations of the statutes governing solicitation of contributions.¹⁵²

¹⁴⁸ G.S. 39-23.7(a)(3)b.; *see, e.g.*, Maloney v. Alliance Dev. Grp., LLC, 2006 NCBC 11 (unpub’d) (denying receiver where plaintiff could not show that he was defendant’s creditor nor that the transfer was fraudulent).

¹⁴⁹ G.S. 45-21.35.

¹⁵⁰ G.S. 50-16.7(g).

¹⁵¹ G.S. 50-13.4(f)(6).

¹⁵² G.S. 131F-23(c).

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