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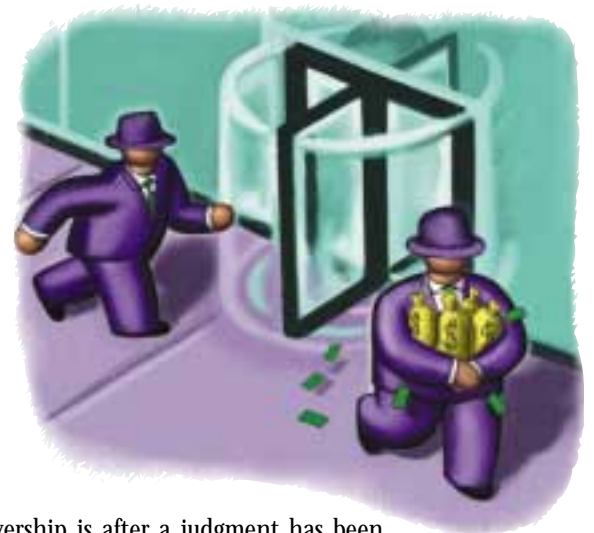
RECEIVERSHIP

NEWS



TOOLS FOR JUDGMENT CREDITORS

Post-Judgment Receiverships Enhance the Collection Process



BY BRYAN D. SAMPSON, ESQ.*

An often overlooked use for a receivership is after a judgment has been entered. California has several statutes which allow the appointment of a post-judgment receiver to aid in the collection process. For example, a post-judgment receiver may be appointed to:

1. Carry a judgment into effect;¹
2. Dispose of property according to a judgment or to preserve it pending appeal;²
3. Obtain the fair and orderly satisfaction of a judgment;³
4. Foreclose on a judgment debtor's interest in an alcohol beverage license;⁴
5. Aid in the enforcement of a family court's order;⁵
6. Enforce a judgment for the possession or sale of property;⁶
7. Enforce a judgment against a franchise interest;⁷
8. Enforce a judgment against a judgment debtor's partnership interest;⁸
9. Preserve the value of property levied upon;⁹ and
10. Aid in the enforcement of a limited civil case.¹⁰

To create and maintain a post-judgment receivership the applicant and the receiver follow the same rules and procedures as for a pre-judgment receivership with respect to the nomination process, posting of a bond, preparing an initial inventory, making monthly reports, preparing and filing fee applications, bringing applications for representation by counsel and preparing a final account. A post-judgment receiver may be appointed by noticed motion or by ex parte application, with subsequent confirmation hearing on an order to show cause from the court.¹¹

Publisher's and Editor's Comments:

BY ROBERT P. MOSIER, PUBLISHER AND KIRK S. RENSE, ESQUIRE, EDITOR

As we go to printing with our Fall, 2003 issue, the success of the new and improved California Receivership News ("RN") in both expanded content and increasing advertising revenue continues. This status update (to be presented at the CRF semi-annual board meeting in San Diego in September) quantifies our momentum:

ISSUE/DATE	NUMBER OF ARTICLES: RECEIVER ISSUES	NUMBER OF ARTICLES: HUMAN INTEREST	NUMBER OF TOMBSTONE ADS FROM RECEIVERS	NUMBER OF RECEIVERS ON "THE LIST"	TOTAL ADVERTISING DOLLARS PER ISSUE	TOTAL NUMBER OF PAGES	JUDGES STATEWIDE RECEIVING THE RN	CIRCULATION TO RECEIVERS AND CBF GROUPS
1st Issue 3/31	4	3	18	35	\$10,100	16	780	900
2nd Issue 6/30	4	3	18	45	\$11,875	16	780	1,700
3rd Issue 9/30	6	4	24	54	\$15,025	20	820	2,700

The numbers speak for themselves. We have grown to a 20-page (versus 16-page) publication to accommodate both additional articles and advertising. Circulation has been expanded beyond the receivership community and judges who appoint receivers to include segments of the California insolvency community (Bankruptcy Forum members) and other professional organizations, such as the Federal Bar Association. The Receivership News is also circulated in PDF format via e-mail to approximately 1,200 lenders and lenders' counsel throughout the US and to members of the Turnaround Management Association.

Our primary goal, as always, is to provide first-rate educational material for receivers, their counsel and judges, promoting (we hope) ever-greater professionalism in the receivership practice. But the publication has a social function as well—to provide timely personal information for and about CRF and receivership community members in an effort to promote a stronger, more cohesive professional community.

This success has been (and will continue to be) a cooperative effort. On the administrative end, Jeanne Sleeper, Kathleen Wood (JBS & Associates and the administrator for the California Receivers Forum) and Regina Roland from Studio-Eight are critical to the production and appearance of the magazine. Our outstanding contributing writers are key to the RN's success, and often call in to suggest timely topics.

Our professional columns (Ask the Receiver and The Receiver and Taxes) provide valuable substance for our members. Human interest isn't neglected, as found in the Publisher's Column, the quarterly Member Profile and Heard in the Halls. Of course our advertisers make all of this financially feasible, contributing mightily to the success of both the California Receivers Forum and the Receivership News. All these people and entities—our columnists, contributing writers, production staff and advertisers — should be proud of their contributions to our publication's growing success. Keep up the good work.

MR. MOSIER has served as a judicial receiver and federal trustee (among other assignments) in state and federal court for the past 18 years. He has worked as a turnaround specialist for the past 30 years.



Robert P. Mosier

MR. RENSE is a lawyer specializing in insolvency and in representing court-appointed fiduciaries, with more than 20 years' experience. He was a journalist before attending law school at the University of Southern California Law Center. Kirk is a former board member of the California Receivers Forum, LA/OC Chapter.



Kirk Rense



Receivership News

Published by
California Receivers Forum
954 La Mirada St.
Laguna Beach, CA 92651
949.497.3673 x 200

Publisher

Robert P. Mosier
Rmosier@Mosierco.com

Editor

Kirk S. Rense
KRense@renselaw.com

Associate Publishers

Peter Ito
Kenton Johnson
Beverly McFarland
Ron Oliner
Rob Warren, III

Contributing Columnists

Alan Mirman
Heard in the Halls
Peter Davidson
Ask the Receiver
Charles F. Rosen
Taxes and the Receiver

Officers

Mike Essary, President
Kyle Everett, Chair Elect
Edythe L. Bronston, Treasurer
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Marilyn R. Bessey, Project Manager

Receivership News is published quarterly by the California Receivers Forum, a not-for-profit association. Articles in this publication express the opinions of their authors and do not necessarily reflect the views of the directors, officers or members of the California Receivers Forum. Articles are intended as a source of general information and should not be construed as specific advice without further inquiry and/or consultation with professional counsel.

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It is important to note that the federal courts have their own rules and procedures which preempt state court rules.¹² For example, in state court the receiver's monthly reports are served only on the parties, while in federal court the monthly receiver reports must also be filed with the court. The procedural requirements for a state court receivership have been thoroughly covered by Ms. Edythe Bronston in her three-article series appearing in the *Receivership News*.¹³

A post-judgment receiver's duties and powers are similar to those of a pre-judgment receiver in many respects. He or she initially takes control of the judgment debtor's business and assets, prepares an inventory, identifies all assets and liabilities, and then files a preliminary report with the court, serving a copy on all parties. The principal difference is that the post-judgment receiver is then empowered to immediately begin liquidating receivership assets to apply proceeds to pay off the judgment creditor's judgment.

This duty to liquidate a judgment debtor's assets and pay the judgment creditor creates a potential conflict with the traditional duties of a receiver, i.e. to remain neutral and not operate for the benefit of any one party. California Rule of Court 1903. However the California appellate court drew an important distinction in *Morand v. Superior Court of City and County of San Francisco* (1974) 38 Cal. App. 3d 347, stating that a receiver in a post-judgment action does not work for the court, but solely for the judgment creditor. What the effect of this is on third party creditors, who also have claims against the judgment debtor, is yet to be resolved by case law under the newer California Rules of Court.

WHY USE A POST-JUDGMENT RECEIVER?

There are many reasons for a judgment creditor to employ a post-judgment receiver, rather than undertaking the more usual (and tedious) process of identifying and seizing a debtor's assets on its own. A post-judgment receiver often acts as a forensic accountant, and may quickly investigate, locate and seize a judgment debtor's assets within days of appointment. A judgment creditor standing alone may not be able to attain the same results, even after several months of investigation, subpoenas, levies, seeking and obtaining turnover orders, assignment orders and conducting judgment debtor examinations. A post-judgment receiver can immediately seize and review a judgment debtor's bank accounts, business equipment, financial records, computer data¹⁴ and even mail.¹⁵ While a judgment creditor's bank records subpoena takes weeks (or months) to elicit a response, a post-judgment receiver can immediately access the debtor's bank records with a copy of the court's order. A post-judgment receiver may use this information to quickly trace and recover hitherto unknown assets of a judgment debtor in other bank accounts. A post-judgment receiver may be able to recover assets located outside of California (or outside of the United States) with a demand letter, while a judgment creditor acting alone would have to follow the sister state or foreign money judgment procedures. The California Court of Appeals has held that it is entirely proper for a creditor or a receiver to utilize these procedures to aid in the collection of a money judgment.¹⁶

SPECIAL POST-JUDGMENT RECEIVER POWERS

A post-judgment receivership is very helpful where there has been a fraudulent conveyance of assets to avoid the judgment. A receiver may set aside the improper transfer and immediately recover the property¹⁷, often without filing a new lawsuit. A receiver may also seize control of a judgment debtor's corporation to preserve assets for application to a judgment.¹⁸ A receiver may replace corporate board members, if some or all members are judgment debtors.¹⁹ Alternatively, a receiver may be used to liquidate a judgment debtor's interest in a non-cooperative general or limited partnership.²⁰

In a recent San Diego County Superior Court case a post-judgment receiver was used to seize control of a Mexican business entity and to sell all of its real property located in Mexico. The receiver, with California court approval, first seized control of all the Mexican entity's shares held by the judgment debtors located in San Diego. Next, the receiver set a board meeting for the Mexican entity, noticing all parties. At the board meeting the receiver fired the judgment debtor board members and installed new board members. Finally, the receiver and the new board members coordinated the sale of the Mexican real property for the benefit of the California court judgment and the judgment creditor.

LIQUIDATING ASSETS

Once the assets are located and seized, a post-judgment receiver can assist in their sale.²¹ The costs of a receiver's sale of property

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A Primer on Receivers and Receiverships in a Nutshell

PART III: APPOINTING AND TERMINATING ORDERS AND TOPICS IN BETWEEN

(This is the third of a three-part analysis of receivership law and practice. The first installment dealt with the appointment process; the second with the types of receiverships and powers and qualifications of receivers. This installment looks at appointing orders, paying receivership expenses, ethics and related topics.)

BY EDYTHE L. BRONSTON*

APPOINTMENT LANGUAGE: SWEAT THE DETAILS

The appointing order establishes the parameters of a receiver's duties and powers. A plaintiff in drafting the order should consider the ultimate goals and any special circumstances. It is recommended that a draft of the order be submitted to both the client and the proposed receiver for comments. All loan documents should be carefully reviewed prior to drafting a complaint and motion for appointment of receiver, especially regarding notice requirements contained therein. Orders should include authorization to: take possession of books and records (both in hands of defendant and

third party); collect sums owing or coming due to defendant; enter into contracts and agreements necessary to maintain and preserve property; employ eviction service, without further order; pursue unlawful detainer actions; open bank accounts; pay obligations of the receivership estate; sell real or personal property (if loan documents allow and if circumstances so warrant), subject to confirmation by the court; employ specific agents, employees, and professionals (if warranted); institute and defend actions, upon court approval; operate the business at a loss if appropriate (in such a case, the order should address responsibility for financing); and should address tenant issues.

The Order should also include: a complete description, common and legal, of any real property involved; instructions to the receiver as to retention of excess funds; a provision authorizing the receiver to turn over real property (i) upon foreclosure, to the successful bidder, upon receipt of a copy of a trustee's deed; (ii) upon notice of cure of default or notice that plaintiff has accepted a deed in lieu of foreclosure; or (iii) upon receipt of a copy of the dismissal of the complaint; a method for determining the receiver's compensation; and a provision directing the receiver to file a bond as set by the court. Last, one should always check the Local Rules and California Rules of Court.

Continued on page 5...



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FINANCING AND PAYING RECEIVERSHIP EXPENSES

CCP §568 addresses receivership financing and expenses. A receiver's powers include the right to make transfers and do such acts as the court may authorize respecting property in receivership estate. These powers include the right to borrow money and issue receiver's certificates to carry out the primary object of the receiver's appointment; i.e., the care and preservation of the property. *Title Ins. etc. v. California Dev. Co.*, 171 Cal. 227, 231 (1917). This requires notice to all entities that might have an interest in the property, including mechanics' lien claimants and, therefore, the receiver should pull a title report and do a UCC search to ensure proper notice.

A receiver's certificate is evidence of a receiver's debt, backed by all assets of the receivership estate and by the court; *Gardner v. Grand Beach Co.*, 48 F.2d 491 (1931); *Atlantic Trust Co. v. Chapman*, 208 U.S. 360, 28 S.Ct. 406 (1902). Issuance requires court authorization, after notice; it is in the nature of an administrative claim and shares first priority position, pro rata with expenses of the receivership estate, securing the loan with all assets of the receivership estate.

THE CERTIFICATE TAKES PRECEDENCE OVER ALL EXISTING UNSECURED DEBT AND IS ANALOGOUS TO AN ADMINISTRATIVE CLAIM IN BANKRUPTCY.

There is case law that states that a court can actually order that receiver's certificates take priority as a senior lien on specific property (*Title Ins. v. Calif. Dev.*, supra). Presumably, in such a case, a lender can obtain title insurance to ensure that position, provided that there is evidence of proper notice. In this unlikely case, issuance requires full notice and is very unlikely, if present secured creditors object, unless the court can be convinced that such a "priming" lien is protecting the interests of the senior lienholder or that a health and safety issue exists.

ONLY THE ETHICAL NEED APPLY

The receiver is an agent of the Court, not the Plaintiff, and has a strong ethical charge. He or she must maintain the property to the benefit of all who may ultimately be proven to have an interest. The typical ordered goal is to preserve the status quo or maximize return to the estate and not to benefit any party while the action is pending. The receiver may not employ counsel without written, specific application. Where an appointing order or local rule allows for payment of all expenses of the receivership estate upon notice to interested parties, payment can be made to all employed professionals, but final approval of fees is required, after submission by noticed fee application. *California Rules of Court*, 1900 et seq.

DANGER: INTERVENING BANKRUPTCY

The Bankruptcy Code at 11 U.S.C. §543 requires turnover of property held by a custodian. Section 543(d) sets forth an exception which authorizes a custodian to remain in possession of property if to do so is in the best interests of creditors. Once a bankruptcy has been filed, a receiver should turn over property to the bankruptcy estate unless the plaintiff tells the receiver that an application for an order shortening time to hear a Section 543(d) motion is being immediately made. The receiver should not expose himself or herself to potential liability to the bankruptcy court. The receiver should confirm in writing to all interested parties that he/she has been requested by the plaintiff to retain possession of the property, as the plaintiff is making an ex parte application for an order shortening time for hearing under Section 543(d). In such a case, the receiver should not wait longer than ten days to turn over the receivership property, if the ex parte application has not been made. After turnover, the receiver should make a motion in Bankruptcy Court for approval and payment of his or her fees under 11 U.S.C. §543(c)(2).

Communications between a receiver and his or her counsel are presumed to be confidential. The attorney-client privilege is broad enough to maintain confidentiality even from the appointing judge. *Shannon v. Superior Court of Stanislaus County*, 217 Cal.App.3d 986, 266 Cal.Rptr. 242 (1990).

CLOSE THE ESTATE CAREFULLY

A court order is required to terminate the receivership, and it is important to check the court rules for any local requirements. The final report and account must be approved and the receiver's bond exonerated. In the report all of the receiver's services performed and fees requested must be itemized. *Hozz v. Varga*, 166 Cal.App.2d 539 (1958). Upon court approval of the receiver's final report and account, the receiver will be discharged and his or her bond exonerated. The happy effect of this court order is that subsequent action against the receiver by any and all parties who/which received notice of the hearing on the receiver's final report is barred. *Aviation Brake Sys. Ltd. v. Voorhis*, 133 Cal.App.3d 330, 183 Cal.Rptr. 766 (1982).



Edythe Bronston

* *EDYTHE L. BRONSTON* is a founding director and past president of the California Receivers Forum L.A./Orange County Chapter and a founding director of the state organization. She is an attorney practicing in Sherman Oaks, California and also acts as a receiver, court-appointed referee and mediator.

ASK THE RECEIVER

BY PETER A. DAVIDSON*

Have a receivership question you want answered? E-mail it to pdavidson@resllp.com and your question and the answer may appear in an upcoming column.

Q.: In an operating receivership with an impaired secured creditor, where there is no possibility of payment to unsecured creditors, is it necessary to notice unsecured creditors on motions?

A: The answer is "no" if the receivership is in state court; the answer is "maybe" if the receivership is in federal court. In a state court receivership, unlike in a bankruptcy case, notice of motions need only be sent to the parties to the receivership case. Creditors having claims against the entity in receivership or the receivership estate are not parties, and hence are not entitled to notice, unless they formally intervene. See generally, C.C.P. §1004, which refers to service on "parties". The only reason creditors in bankruptcy cases receive notices is that they are defined as "parties in interest" under the Bankruptcy Code and the Code and/or the Bankruptcy Rules require that they be given notice of certain motions. Additionally, the concept of a request for notice is confined to bankruptcy cases and implemented by Bankruptcy Rule 2002.

As to notice in a federal receivership, whether notice to creditors will be required depends on what federal district the receivership is in. In the Central District of California, Local Rule 66-8 provides that except as otherwise ordered by the Court, a receiver is to administer the estate "as nearly as possible in accordance with the practice in the administration of estates in bankruptcy". As a corollary of this, Local Rule 66-7 provides that a receiver is to give notice by mail not only to all parties to the action but "to all known creditors of the defendant" for certain specified motions, including petitions to confirm the sale of real and personal property; reports of the receiver; applications for instructions; fee applications; and motions to discharge the receiver. This requirement is often overlooked by federal receivers.

Where there is a significant creditor body in a district court receivership, the receiver should consider filing a motion limiting

notice to the parties and those requesting notice. In the Southern District of

California, Local Rule 66.1 requires notice to be given to "all interested parties". Similarly, the Northern District of California requires notice be given to "all interested parties" (Local Rule 66-6). The Eastern District of California does not have any specific notice rules in receiverships other than that the receiver's reports are to be served on "all parties" (Local Rule 66-232(e)).

Q.: Can a receiver be appointed at the request of a secured creditor holding a lien on accounts receivable for the limited purpose of collecting the receivables?

A: C.C.P. §564(b)(9) may support an action for specific performance of the provisions of loan documents, by way of a receivership. In addition, a receiver may be appointed to enforce a judgment (C.C.P. §564(b)(3)) and to collect a debt. (C.C.P. §568). However, many judges will not appoint receivers for these purposes without other specific showings, such as there is no other available remedy or the assets are being converted, transferred out of state, or secreted. In other words, "know your judge".

*PETER A. DAVIDSON, with Rein Evans & Sestanovich LLP located in Los Angeles, is a receiver and an attorney who specializes in representing receivers in state and federal court.



Peter A. Davidson



Maximizing Recoveries — The use of receiverships, assignments for the benefit of creditors and other remedies to maximize recoveries on asset-based loans was the topic of a 90-minute California Receivers Forum seminar co-sponsored by the California Bankers Association presented to Orange County bankers, receivers and receivers' counsel on September 10 at the Rutan and Tucker law offices. Presenters were, L-R: Kenton Johnson of Robb Evans & Associates, LLC; Alan Mirman, Esq. of Horgan Rosen Beckham & Coren, LLP; Peter Davidson, Esq. of Rein Evans & Sestanovich, LLP; Byron Moldo, Esq., also from Rein Evans & Sestanovich, LLP, and Moderator Douglas Morehead of Optima Asset Management Service, Inc. The program was repeated for a Los Angeles audience on September 24, 2003.

Continued from page 3.

are often substantially less than the sheriff's costs of sale. A receiver may seize, advertise and sell the judgment debtor's property at the location of the seized business, avoiding the sheriff's practice of moving the property to a secure storage facility and selling it at the next scheduled auction date.²² The moving and storage costs alone may make a sheriff's sale twice as costly as that of a post-judgment receiver. A post-judgment receiver also has more flexibility than the sheriff in directly contacting potential buyers, showing the assets to be sold and taking other steps to generate interest in the auction. The sheriff publishes notice of the sale, but typically does no more. A receiver can even conduct the sale in the courtroom, to immediately confirm the sale and transfer title. A sheriff only transfers title by a sheriff's deed or certificate, without the benefit of court approval.

TERMINATING A POST-JUDGMENT RECEIVERSHIP

A post-judgment receiver must provide a final report and account and obtain a court order to close the estate, just as for a pre-judgment receivership.²³ In addition, the court may sua sponte discharge the receiver at any time. A post-judgment receiver's discharge order become final upon entry, allowing a disputing party to file an appropriate appeal.²⁴

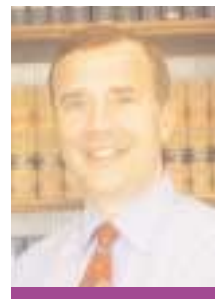
The receivership is terminated should the judgement debtor file for bankruptcy during the term of the receivership (except as necessary to preserve estate assets). Further, a receiver is deemed a custodian under bankruptcy law and as such is required to deliver all estate property to the trustee (or debtor in possession) in the bankruptcy case. The receiver/custodian may then apply to the bankruptcy court for reimbursement of receiver costs and fees by noticed motion.²⁵ Obviously a post-judgment receiver operating for the benefit of a judgment creditor should liquidate assets and either pay or transfer assets to the judgment creditor as quickly as possible in order to avoid having to cede the seized assets to a bankruptcy trustee.

To sum up, post-judgment receiverships to aid in collection are often overlooked by judgment creditors. The legal process, which is the same as for obtaining appointment of a pre-judgment receiver, is already well known by receivers. The benefits can be tremendous.

- 1. California Code of Civil Procedure §564(b)(3).
- 2. California Code of Civil Procedure §564(b)(4).

- 3. California Code of Civil Procedure §708.620.
- 4. California Code of Civil Procedure §708.630.
- 5. California Family Code §290.
- 6. California Code of Civil Procedure §564(b)(4).
- 7. California Code of Civil Procedure §708.920(b).
- 8. California Corporation Code §15522(1) and 16504(a); *Evans v. Galardi* (1979) 93 Cal. App. 3d 291, 293-294.
- 9. California Code of Civil Procedure §699.070 and §564(b)(9).
- 10. California Code of Civil Procedure §86(a)(8).
- 11. California Code of Civil Procedure §564, et seq. and California Rule of Court 1900, et seq.
- 12. F.R.C.P. 66; United States District Courts: Central District of California, Local Civil Rule 66-1; Eastern District of California, Civil Local Rule 66-232; Northern District of California, Civil Local Rule 66-1; Southern District of California, Civil Local Rule 66.1.
- 13. Edythe L. Bronston, *Receivership News*, Issue 9, p. 1 (Spring 2003); Edythe L. Bronston, *Receivership News*, Issue 10, p. 6 (Summer 2003); and Edythe L. Bronston, *Receivership News*, Issue 11, p. 4 (Fall 2003).
- 14. California Code of Civil Procedure §568.
- 15. *In re Crabtree* (E.D. Tenn. 1984) 37 Bankr. 426; DMM Issue 53, January 1, 1998, at 6.3; and John Evarts Tracy, *Corporate Foreclosures, Receiverships and Reorganizations* §160 (Callaghan 1929).
- 16. *Olsan v. Comora* (1977) 73 Cal. App.3d 642, 646-647.
- 17. *Burrows v. Jorgensen* (1958) 158 Cal. App. 2d 644, 647-652.
- 18. *Crocker National Bank v. O'Donnell* (1981) 115 Cal. App. 3d 264.
- 19. *Merlino v. Fresno Macaroni Manufacturing Company* (1944) 64 Cal. App. 2d 462, 466-467.
- 20. *Crocker Nat. Bank v. Perroton* (1989) 208 Cal. App. 3d 1.
- 21. California Code of Civil Procedure §568.5.
- 22. California Code of Civil Procedure §701.520, et seq.
- 23. California Rule of Court 1908.
- 24. *Aviation Brake Systems, Ltd. v. Voorhis* (1982) 133 Cal. App. 3d 230, 232.
- 25. 11 U.S.C. §543. ■

A post-judgment receiver also has more flexibility than the sheriff in directly contacting potential buyers, showing the assets to be sold and taking other steps to generate interest in the auction.

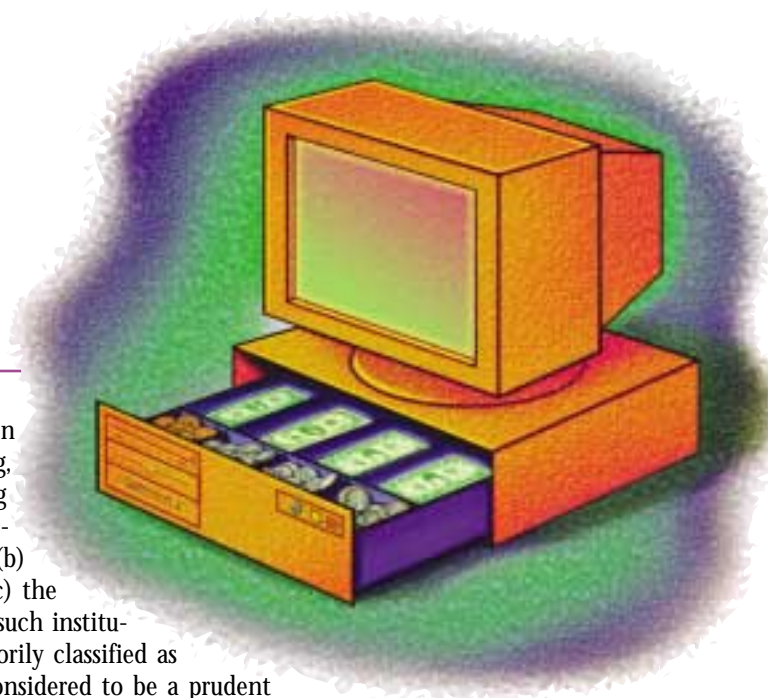


Bryan D. Sampson

BRYAN D. SAMPSON is a principal of Sampson & Associates in San Diego. He has specialized in judgment enforcement including post-judgment receiverships for the last 14 years in state courts, federal courts and in international matters.

Borrowing From a Private Money Lender

BY DAN HARKEY*



Court-appointed receivers and bankruptcy lawyers often administer/represent entities with a need for real estate financing, but their estates/clients cannot meet institutional underwriting standards. The primary credit decisions of mainstream institutional lenders are based upon (a) the potential borrower's credit, (b) the potential borrower's rating in a FICO scoring system, and (c) the potential borrower's income. Without prime credit, loans from such institutions generally are not available. But a potential loan derogatorily classified as sub-prime by institutional lending sources is, in many cases, considered to be a prudent lending transaction by private money lenders.

Private money lender underwriting focuses primarily upon the protective equity in the real property to secure the loan and, to a lesser extent, on the borrower's credit history. The circumstances surrounding a potential borrower's decision to file bankruptcy, or the placing of a receivership over a potential borrower's real estate assets, is taken into consideration by the private money lender. Most institutional banks simply decline outright to make such loans.

In many cases a court-approved private money loan is one alternative where a debtor-in-possession loan or a cram-down loan is needed, and such loans can usually be funded in a timely manner. Oftentimes the needs of such borrowers are unique. Receivers and bankruptcy lawyers working with a private money lender have the flexibility to structure a loan in such a manner to accomplish a troubled borrower's specific objectives.

A successful example of a privately funded loan is as follows:

A receiver for a failed real estate investment concern with 5600 investors was faced with administering seven disparate real properties throughout California encompassing a total of 3,500 acres. There was no cash in the estate. The properties were all designated for residential development. Each property had its own site/zoning/economic complexities; all had varying stages of property tax foreclosure threats. Given this profile and the fact such properties were in a receivership, the properties were not bankable among traditional lenders.

The receiver turned to private lending. The estate obtained court approval to borrow \$6.0 million on the properties in a series of loans tailored to each property to (1) fund the receivership estate, (2) pay delinquent property taxes to preserve the properties, and (3) allow the receiver enough time to prepare for sale and market the properties.

Interest-only loans with a five-year term were structured. The receivership estate set aside sufficient loan proceeds to make the interest payments and to pay property taxes for two years. The receiver was able to sell the properties and repay these loans, with one exception, within the two-year period, and the seventh property was sold (via conventional means) and the final loan was paid off within three years of the lending transaction (the interest payments on the final loan were kept current with the use of non-refundable deposits from the prospective sale). These private-money loans allowed the estate to operate while the properties were preserved and protected for investors and ultimately sold for their best market values.

Additional information is readily available to receivers and counsel needing money for troubled entities. A booklet entitled "Private Money Lending Overview" may be downloaded from www.pointcenter.com, under the Broker Education section, and DVD and VHS presentations on private money lending are available by request from www.pointcenter.com/pmbooklet.



Dan Harkey

*MR. HARKEY is president and founder of Point Center Financial, Inc., a private money lender with a \$25 million monthly loan volume for many types of sub-prime real estate loans. He is also president and founder of Escrow Professionals, Inc., National Financial Lending, Inc. and Investment Data.

Heard in the Halls

NOTES, OBSERVATIONS, AND GOSSIP RELAYED BY ALAN M. MIRMAN*

Welcome to the eleventh edition of *Heard in the Halls*, an informal compendium of thoughts, questions and information contributed by California Receivers Forum members, and not official Forum announcements. Don't rely on any quasi-official pronouncements in this column! Send me tidbits you would like to see in future issues, such as: procedures in various courtrooms, questions on legal issues, rank gossip, firm transitions and updates on practitioners, receivers, etc. Provide your input by telephone, mail, fax, or E-mail as follows: Alan M. Mirman, Horgan, Rosen, Beckham & Coren at 23975 Park Sorrento, Suite 200, Calabasas, California 91302. Phone: (818) 591-2121; Fax: (818) 591-3838; E-mail: amirman@horgan-rosen.com

Here is what we have Heard in the Halls . . .

- News from the Central California Chapter of the Forum — Chapter President Jim Lowe reports that on November 14 the Chapter will present a program with a local judge speaking about issues of importance to the bench in receivership cases. Also, Riley Walter of the Walter Law Group reports an increase in stipulated appointments of receivers in farm cases. Because of extremely depressed prices, farmers are agreeing to receiverships instead of filing Chapter 11 or 12 bankruptcy cases. Receivers are then borrowing, using receiver's certificates. The lenders of course retain the right to foreclose if the loan is not repaid. My question is this - what priority are the receivership certificates given? Are they junior to existing trust deeds? This is an area of controversy in the substandard housing field...
- David Pasternak of the LA/OC Chapter is involved in a very interesting case. We all drool over these deals - replete with mystery, fraud, and big stakes. David has been appointed receiver in a major case that involves dozens of properties, many of them luxury homes. Marshals raid buildings and find caches of weapons, stashes of cash, evidence of people living dual lives, etc. Assisting David in this web of intrigue are Board members Michael Wachtell as counsel, and Howard Grobstein as CPA.
- Dan Close, president of the San Diego Chapter, has been on the move. He moved his office east of Del Mar, and then went to China to perform a valuation of a company there for purposes of a fairness opinion. Not a bad gig. Bill Hoffman of that Chapter says receivership business at his company, Trigild International, Inc., is booming, and that he is looking for qualified receivers to join his team...
- Upcoming programs — In September the LA/OC Chapter is presenting two lunch programs on the relative benefits and costs of receiverships, assignments for the benefit of creditors, and other remedies. Do you, as members of the Forum, have suggestions or requests for any particular program content? If so, let me know and I will pass it along to your chapter...
- More optimistic news for receivers, this time from our Bay Area Chapter. Ron Oliner, past president, says not only that membership remains strong, but that the Chapter drew an unusually large crowd recently for a "Receivership 101" program. Active Board members Bruce Cornelius and Richard Rogan put on this program. Look for another program before year-end...
- Some more good reports about using auctions in conjunction with foreclosures as a tool to maximize value. Mike Walters at Tranzon is on a roll, and says that auction prices are beating appraised value in advertised foreclosure sales. Readers of this column - what is your experience with auctions, compared to other approaches? Write in with your views...
- From our Sacramento Chapter, we learn that long-time member Marilyn Bessey has made a big move, from First Bank to Fiduciary Deposit Management, Inc. Marilyn was instrumental in developing the "briefcase" of products for fiduciary professionals. For info, contact Marilyn, or contact our publisher to learn how to find out more...
- Here's another idea - next issue, I'd like to report on your "Best Moves/Worse Blunders" in receivership cases (your identity will be kept confidential if you request). These are likely anecdotes that will teach us a lesson, make us feel awed, or make us feel smug 'cause we'd never do something like that. Please, send in your entries now. Fame and fortune await...



Alan M. Mirman

*ALAN M. MIRMAN is a partner in the Calabasas law firm of Horgan, Rosen, Beckham & Coren, LLP, and specializes, not surprisingly, in creditor's rights. His practice includes various aspects of provisional remedies, representation of receivers, litigation, loan and lease documentation, etc.

EDYTHE L. BRONSTON

Law Office of Edythe L. Bronston
Tel: 818.528.2893
ebronston@bronstonlaw.com

Is pleased to announce her appointment
as Receiver for

the Marriage of Hazlewood, a family
law receivership

Superior Court
County of Los Angeles

**WELDON L. BROWN,
CPM/RECEIVER**

Weldon L. Brown Company, Inc.
Tel: 909.682.5454
weldon@weldonbrown.com

Is pleased to announce the
completion of his duties as Receiver for

Steven Atwater, Eric Dickerson v.
Brand on Hill LLC, a real property
foreclosure and disposition
receivership

Superior Court
County of Riverside

**LOUIS A. FRASCO
MANAGING MEMBER**

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Tel: 818.725.2500
william.nix@coldwellbanker.com

Is pleased to announce the sale of
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Ray & Bergman

**LOUIS A. FRASCO,
MANAGING MEMBER**

Coldwell Banker Realtors
Real Property/Insolvency Group
Tel: 818.725.2500
william.nix@coldwellbanker.com

is pleased to announce the sale of
a residential property for

David Seror, Esq., Receiver, Rein
Evans & Sestanovich LLP

WILLIAM J. HOFFMAN

Trigild International, Inc.
Tel: 858.720.6700
bill.hoffman@trigild.com

Is pleased to announce his appointment
as Receiver for

Best Western Rio Rancho Inn, a
rents and profits receivership

13th Judicial District Court, State
of New Mexico

WILLIAM J. HOFFMAN

Trigild International, Inc.
Tel: 858.720.6700
bill.hoffman@trigild.com

Is pleased to announce his appointment
as Receiver for

Magnolia Apartments,
a rents and profits receivership

Superior Court
County of Los Angeles

WILLIAM J. HOFFMAN

Trigild International, Inc.
Tel: 858.720.6700
bill.hoffman@trigild.com

Is pleased to announce his appointment
as Receiver for

Blend, Inc., an operating company
receivership

Superior Court,
County of Monterey

WILLIAM J. HOFFMAN

Trigild International, Inc.
Tel: 858.720.6700
bill.hoffman@trigild.com

Is pleased to announce his appointment as
Receiver for

Camelot Hotel & Diamond Inn, a
rents and profits Receivership

Sauk County Circuit Court
State of Wisconsin

ROBB EVANS

Robb Evans & Associates LLC
Tel: 818.768.8100
kenton.johnson@robbevans.com

Is pleased to announce his appointment as
Receiver for

Millennium Diamonds,
a 100% recovery for the secured
creditor receivership

Superior Court
County of Los Angeles

ROBB EVANS

Robb Evans & Associates LLC
Tel: 818.768.8100
kenton.johnson@robbevans.com

Is pleased to announce his appointment
as Receiver for

CenDyne, Inc., an equity
receivership

Superior Court
County of Orange

BEVERLY N. MCFARLAND

The Beverly Group, Inc.
Tel: 916.408.3755
beverlygroup@att.net

Is pleased to announce her appointment as
Chapter 11 Trustee for

Levey Properties LLC,
Levey Properties, Inc.,
Redwood Empire
Restaurants, Inc.,
25 Taco Bells et al.

U.S. Bankruptcy Court
Northern District
of California

EVERET MILLER

Condev, Inc.
Tel: 818.979.0010
everetmiller_jmkenv@hotmail.com

Is pleased to announce his availability for
appointment as Receiver

on contaminated
properties

Los Angeles/Orange County
Receiver Community

ROBERT P. MOSIER

Mosier & Company, Inc.
Tel: 714.432.0800
rmosier@mosierco.com

Is pleased to announce his appointment
as Examiner to investigate allegations
by a creditor in a matter of

El Toro Materials, Inc.

Federal Bankruptcy
Court, Santa Ana

ROBERT P. MOSIER

Mosier & Company, Inc.
Tel: 714.432.0800
rmosier@mosierco.com

Is pleased to announce the
completion of his duties as
Receiver for

Bellaqua (Breathing Observation
Bubble), a sale of intellectual prop-
erty in satisfaction of a judgment
receivership

Superior Court
Santa Ana

DAVID J. PASTERNAK

Pasternak Pasternak & Patton, A
Law Corporation
Tel: 310.553.1500
djp@paslaw.com

Is pleased to announce that the California
Court of Appeal
has affirmed an award of fees and
a lien to him and his client

Receiver David Wald, in Mei Ling v.
California Breeze Homeowners'
Association an operating company
and rents and profits receivership

Superior Court
County of Los Angeles

JAMES L. PEERSON

Peergroup Corporation
Tel: 323.954.7575
jim@peergroupcorp.com

Is pleased to announce the
completion of his duties as
Receiver for

Tempco Disaster Services, Inc., an
operating company and Rents and
Profits Receivership

Superior Court
County of Los Angeles

THEODORE G. PHELPS

Audigators
Tel: 714.734.0479
tphelps@audigators.com

Is pleased to announce his appointment
as Receiver for

the Marriage of Nekovie, a family
law receivership

Superior Court
County of Orange

DAVID L. RAY

Saltzburg Ray & Bergman LLP
Tel: 310.481.6700
dlr@srblaw.com

Is pleased to announce his
appointment as Receiver for

the Estate of George J. Claypool
re Bureau 21, Inc., a corp dissolution
of audio-text service bureau
receivership

Superior Court
County of Los Angeles

Nonparty's Assets at Risk in SEC Fraud Receivership

BY DAVID J. PASTERNAK, ESQ.*

In a recent securities fraud receivership case, the Ninth Circuit Court of Appeals held that the inherent equitable power of a federal court allows it to freeze the assets of a nonparty when that nonparty is dominated and controlled by a defendant against whom relief has been obtained in a securities fraud enforcement action. *Securities and Exchange Commission v. Hickey*, 2003 DJDAR 7451 (July 8, 2003).

The SEC sued John Hickey, Mamie Tang and several corporate entities controlled by Hickey and Tang, alleging that they had defrauded investors in a limited partnership. The District Court appointed a receiver over the limited partnership on the day the complaint was filed.

Later, the SEC obtained a summary judgment ordering Hickey to disgorge \$1.1 million.

The SEC thereafter brought a contempt proceeding against

Hickey for his failure to pay the \$1.1 million summary judgment. The Court held Hickey in contempt, finding that a real estate brokerage owned in the name of Hickey's mother was actually operated under Hickey's control. The brokerage had apparently been created after the filing of the SEC suit. The District Court then froze the real estate brokerage's assets, allowing it to pay rent, utilities, wages, and insurance without limitation. The brokerage appealed, asserting that the District Court abused its discretion when it froze the brokerage's assets.

The Court of Appeals agreed that the brokerage was not Hickey's alter ego under California law because Hickey did not own any portion of the brokerage. He merely controlled it. Under California law, control without ownership is insufficient to establish an alter ego relationship. *Riddle v. Leuschner*, 51 Cal. Id 574 (1959).

Instead, the Court of Appeals held that a federal court has inherent equitable power to reach third parties in securities fraud enforcement cases. In doing so, the Court of Appeals emphasized Hickey's total dominance and control over the brokerage. He controlled the entire business, and not just its cash.

Hickey raises a number of interesting questions. First, while the Court of Appeals repeatedly emphasized that its holding was based in part on the nature of the case as a governmental enforcement action, one can question whether the holding should be limited to SEC cases. Why can't a receiver appointed in a federal securities fraud case at the behest of defrauded individuals similarly reach assets in the hands of third parties controlled by the wrongdoers to satisfy a disgorgement judgment? Similarly, while the Hickey court repeatedly mentioned its reliance on securities fraud cases, the same logic could extend to cases brought by the Federal Trade Commission, the Commodities Futures Trading Commission, or other similar federal regulatory agencies.

In short, Hickey may prove useful for both plaintiffs and receivers to reach third party assets in future federal cases beyond SEC enforcement actions.

*MR. PASTERNAK, a member of Pasternak, Pasternak & Patton, a Century City law firm, is a founding Co-Chair of the L.A./Orange County branch of the California Receivers Forum. He serves as a receiver, provisional director and partition referee, and represents the same as counsel.



David J. Pasternak

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Federal Tax Liens and the Receiver

BY CHARLES F. ROSEN, ESQ.*

(This is Part One of a two- part series on handling Federal Tax Liens in a Receivership.)

It is not uncommon that a receiver will be appointed over real and/or personal property assets of a taxpayer against whom a Notice of Federal Tax Lien has been filed. What are the rights/priorities of that tax lien against the interests of a receivership estate and other parties who may claim an interest? The sobering answer that the tax liability may remain a lien on the property even if it is conveyed by the receiver, may become a

lien against the receivership estate, or worst of all worlds, may become a lien against the receiver personally, if the lien is not properly handled. The careful receiver will take the time to identify and properly handle federal tax liens to avoid such consequences.

CREATION AND NOTICE OF A TAX LIEN

A Federal Tax Lien is created automati-

cally when (1) an assessment has been made against a taxpayer for unpaid taxes, (2) the taxpayer has been given a notice of demand for payment of that assessed tax liability, and (3) the taxpayer has failed to pay the tax liability. Internal Revenue Code sec. 6321. [Unless otherwise stated, all code references are to the Internal Revenue Code, Title 26 U.S. Code.] Recordation is not required for

Continued on page 14...

THOMAS A. SEAMAN, CPA, RECEIVER

Thomas Seaman Company
Tel: 949.222.0551
tom@thomasseaman.com

Is pleased to announce his appointment
as Receiver for

Regions Medical Center, a partnership
dispute receivership

Superior Court
County of Orange

ROBERT C. WARREN III

Investors' Property Services, Inc.
Tel: 714.708.0180
rob@investorshq.com

Is pleased to announce his appointment
as Receiver for

Udoma, a rents and profits
receivership

Superior Court
County of Los Angeles

DOUGLAS P. WILSON

Douglas Wilson Companies
Tel: 619.641.1141
dwilson@douglaswilson.com

Is pleased to announce his
appointment as Receiver for

the Auld Course,
an operating company receivership

Superior Court
County of San Diego

DOUGLAS P. WILSON

Douglas Wilson Companies
Tel: 619.641.1141
dwilson@douglaswilson.com

Is pleased to announce his
appointment as Receiver for

The Inn at Morgan Hill,
an operating company receivership

Superior Court
County of Santa Clara

DOUGLAS P. WILSON

Douglas Wilson Companies
Tel: 619.641.1141
dwilson@douglaswilson.com

Is pleased to the completion of his duties as
Receiver for

UFC Seafood and Food Company,
Inc.,
an operating company receivership

Superior Court
County of Los Angeles

ANDREW R. ZIMBALDI

Alden Management Group
Tel: 714.751.7858

Is pleased to announce his
appointment as Receiver for

Hudson vs Hedazi,
an equity receivership

Superior Court
County of Orange

Continued from page 13.

the tax lien to exist. The tax lien lasts ten years from the date of assessment (sec. 6502), but may be extended for a variety of reasons, including "for the period the assets of the taxpayer are in the control or custody of the court . . . and for 6 months thereafter." Sec. 6503(b). If the Federal tax lien is valid at the time the receivership is created over a taxpayer's property, the running of the lien is tolled until the court removes the property from its jurisdiction, and is extended another six months thereafter (assuming that the tax lien has not been properly removed from the property during the receivership.)

But though a Federal tax lien - commonly referred to as a 'secret lien' - may exist, it is not effective against certain parties until public notice of the tax lien has been filed or recorded. These protected parties are commonly referred to as 'priority' lienors, and include purchasers of the property, holders of perfected security interests in the property, mechanic's lienors, and judgment lien creditors. Sec. 6323(a).

There are also some 'super-priority' creditors whose claims may be superior to the Federal tax lien EVEN IF the Notice of Federal Tax Lien has been filed. These include securities, motor vehicles, personal property purchased at retail, personal property purchased at casual sale, personal property subject to a possessory lien, real property tax liens, residential property subject to a mechanic's lien, attorneys' liens, certain insurance contracts and deposit-secured loans. However, every priority and super-priority lienor must meet exacting criteria for their lien to 'prime' a filed Notice of Federal Tax Lien.


A Notice of Federal Tax Lien must be recorded in the proper government office in order for it to be fully effective. With respect to real property, or an interest in real property, it must be recorded in the county where the real property is located. If the property is other than real property (personal property, either tangible or intangible), it must be recorded " . . . in one office within the State (or county, or other governmental subdivision), as designated by the laws of such State . . ." Sec. 6323(f). California has adopted the Uniform Federal Lien Registration Act and codified it at Code of Civil Procedures sec. 2100 (C.C.P. sec. 2100, et seq.). This requires that a Federal tax lien with respect to personal property is to be recorded either in the county where an individual taxpayer (that is, a real person) resides or was last known to reside, or for a partnership, corporation, LLC, trust, or decedent's estate with the California Secretary of State.

If any property subject to a Federal tax lien is within a receivership estate the receiver should carefully review sec. 6323(b) of the Internal Revenue Code, the Treasury Regulations further defining these liens (see Treas. Reg. 301.6323(a) et seq.), and the substantial body of case law that has been developed from sec. 6323.

INVESTIGATING THE GOVERNMENT LIEN

Before doing anything with respect to government liened property, the receiver should secure a copy of the actual recorded notice of tax lien, and, if possible, secure from the I.R.S. a transcript of the account on which the tax lien is based, and a demand from the I.R.S. setting out the current balance due on the lien. The notice of the lien will be in the public record, easily secured from the local county

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 Phone: 949-222-2999 Fax: 949-222-2989
 Email: info@squarmilner.com Website: www.squarmilner.com

THE LIST

WHILE THERE IS NO COURT-APPROVED LIST OF RECEIVERS, THE FOLLOWING IS A PARTIAL LIST OF RECEIVERS WHO ARE MEMBERS OF THE CALIFORNIA RECEIVERS FORUM AND HAVE CONTRIBUTED TO THIS PUBLICATION.

AREA	PHONE	E-MAIL	AREA	PHONE	E-MAIL
BAY AREA			LOS ANGELES/ORANGE COUNTY		
David A. Summers	925-933-2875	Davidsummers8@aol.com	* George R. Monte	626-930-0083	montegr@aol.com
Robert M. Rouse	650-802-1629	brouse@wres.com	* Douglas C. Morehead	949-852-0900	doug@optimaasset.com
* Donald G. Savage	510-547-2247	donald.savage@worldnet.att.net	* Robert P. Mosier	714-432-0800	rmosier@mosierco.com
SACRAMENTO VALLEY			* Leon J. Owens	310-826-9838	leonjowens@aol.com
* Beverly N. McFarland	(916) 408-3755	beverlygroup@att.net	* David J. Pasternak	310-553-1500	djp@paslaw.com
Kevin J. Whelan	(916) 408-3755	beverlygroup@att.net	* James L. Peerson	323-954-7575	jim@peergroupcorp.com
FRESNO AREA			Theodore G. Phelps	714-734-0479	tphelps@audigators.com
Clifford E. Bressler	559-298-1089	cliffordbressler@earthlink.net	Gary A. Plotkin	818-906-1600	gplotkin@prnlaw.com
* Steve Franson	559-930-8119	steve@stevefranson.com	* David L. Ray	310-481-6700	dlr@srblaw.com
James S. Lowe III	559-924-4214	jslowe@lemooren.net	* Les Rodin	818-788-5800	lr@rodincompany.com
* Hal Kissler	559-435-1756	hkissler@mancoabbott.com	Victor Sampson	818-725-2500	sampson@lycos.com
LOS ANGELES/ORANGE COUNTY			Thomas A. Seaman	949-222-0551	tom@thomasseaman.com
* Edythe L. Bronston	818-528-2893	ebronston@bronstonlaw.com	Eric Shaw	310-827-0076	eric@nycreditinc.com
* Weldon L. Brown	909-682-5454	weldon@weldonbrown.com	* Steven M. Speier	949-809-3184	sspeier@squarmilner.com
* Weldon "Bud" Brown	909-682-5454	bud@weldonbrown.com	* William E. Turner	714-228-9153	wturner145@aol.com
Robert Crane	949-515-5840	r.crane@sbcglobal.net	David D. Wald	310-979-3850	dwald@waldrealtyadvisors.com
Richard Dennis	818-990-7733	rick@carrick.com	* Robert C. Warren III	714-708-0180	rob@investorsHQ.com
Richard K. Diamond	310-277-0077	rkd@dgdk.com	* Richard Weissman	818-226-5434	rweissman@rwreceiver.com
James H. Donell	310-207-8481	james.donell@jalmar.com	J. Scott Williams	949-263-2600	jswilliams@bbklaw.com
Steve Donell	310-207-8481	steve.donell@jalmar.com	* Adrian Young	909-945-4586	adrian@delmar1.com
Howard M. Ehrenberg	213-626-2311	hehrenberg@skbr.com	Andrew R. Zimbaldi	714-751-7858	azimbaldi@aldenmanagement.com
Robb Evans & Associates	818-768-8100	robb_evans@robbevans.com	SAN DIEGO AREA		
Burdette "Bud" Garvin	909-387-0901	awlbudgarvin@aol.com	M. Daniel Close	858-792-6800	dclose@cts.com
* David A. Gill	310-277-0077	dag@dgdk.com	* Mike Essary	858-560-1178	calsur@aol.com
* Gary Haddock	310-306-6789	garyhaddock@playavistausa.com	* Martin Goldberg	858-560-7515	marty@cni4you.com
* Nigel W. Hamer	818-382-7500	nigel@thehamergroup.com	William J. Hoffman	858-720-6700	bill.hoffman@trigild.com
Gary R. Holme	323-466-9761	garyholme@usa.net	* Richard M. Kipperman	619-668-4500	rmk@corpmgt.com
Mary Keshishian	818-990-7733	mary@carick.com	Thad L. Meyer	858-713-9345	tmeyer@allianceturnaround.com
* Timothy Kuhn	818-990-3700	timothykuhn@cs.com	Douglas P. Wilson	619-641-1141	dwilson@douglaswilson.com
* Randal James Lee	"323-930-2671, ext. 11"	rjlee@ccim.net	* The asterisk indicates those receivers who completed a comprehensive 16-hour course on receivership administration and procedures presented at Loyola Law School in April 2000		
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recorder, the California Secretary of State, or from a title insurance company. Securing a copy of the transcript of account (usually called a 'literal transcript' but known in I.R.S. internal jargon as a MFTRA-X transcript) or a demand for the balance due may be a little more difficult. Non-public records of a taxpayer are restricted by law but may be disclosed in certain limited situations, as provided in sec. 6103. A written request for a transcript of the account should be directed to the nearest IRS Disclosure Office. In California, Disclosure Offices are located in Los Angeles, Oakland, Laguna Niguel, and San Jose.

More often than not, when contacting the Service you will need to convince the Service employee of your right to receive this information. In your request for the transcript of the account or demand you should reference Internal Revenue Code sec. 6103(e)(4)(B), which states that such records may be disclosed to a receiver "... if the Secretary [of the Treasury] finds that such . . . receiver, in his fiduciary capacity, has a material interest which will be affected by information contained therein." Your letter should state why you have a need for the information. You should also attach to the request a copy of your order of appointment by the court.

RESOLVING THE GOVERNMENT LIEN

If the receiver is selling real property, the proposed sale price either will or will not pay the tax lien in full. If full payment will result, the receiver should have the escrow officer send a written request to the local I.R.S. "lien desk" for a demand. In the past a standard beneficiary demand statement from the escrow officer was sufficient to get the necessary information. However, of late the

Service has been attempting to follow its own more complicated procedures. Thus it may be necessary for the escrow officer to attach to the request for a demand an I.R.S. Form 12180, Third Party Contact Authorization Form signed by the receiver, with a copy of the receiver's order of appointment attached.

If the sale will not result in full payment of the tax lien but the receiver wishes to go forward with the sale, it will be necessary to file with the Service an application for a discharge of the tax lien, in order to protect the buyer's title and to satisfy the buyer's title company. Procedures to obtain a discharge of the unpaid portion of the tax lien are found at sec. 6325(b) and I.R.S. Pub. 783 (don't fret, the publication is only two pages long). The application is actually a letter, which should reference all of the information requested in Pub. 783. The application, to be signed under penalty of perjury, should also reference and have the following attached to it:

- a. A preliminary title report and all supplements to it;
- b. Escrow instructions;
- c. A copy of all beneficiary demands from lienors that are senior to the tax lien;
- d. Two independent appraisals of the property; (Note: Unless it is highly specialized property, only one appraisal need be a formal document prepared by a qualified appraiser whose qualifications have been attached to the appraisal. The other appraisal may be informal, such as from a qualified real estate broker in the area who is familiar with the type of property being sold.)

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Continued from page 14.

- e. A copy of the order appointing the receiver;
- f. An estimated escrow closing statement;
- g. A copy of the proposed title transfer document;
- h. Copies of all state and Federal tax liens.

If the receiver is refinancing rather than conveying the real property, the receiver should make application to the Service to subordinate the tax lien to the new borrowing. These procedures are found at sec. 6325(d) and I.R.S. Pub 784. Again, the application is actually a letter, which should reference all of the information requested in Pub. 784 and have attached to it the documents in the list set out above, plus a copy of all loan documents (i.e. loan disclosure statement, estimated loan settlement, or estimated closing statement).

A Conditional Letter of Federal Tax Lien Discharge [or Subordination] will be issued, usually with a life span of sixty (60) days, within which the transaction must be completed, if the application for a discharge or subordination is accepted. After the sale or refinancing is completed, a certified escrow closing statement and other requested documentation must be given to the Service, at which time the government will issue a recordable discharge or subordination document. Don't worry. Title companies will accept the conditional letter and will allow title to transfer and the title to be insured. The I.R.S. does it in two steps because of past bad experiences in which escrow officers or others did not adhere to what was required of them and paid parties who were not legally senior to the tax lien. This two-step process provides the government with a bet-

ter mechanism for retaining its lien rights without further assurances that only that which should have been paid, was actually paid.

YES, BUT, CAN A RECEIVERSHIP BE FUNDED FROM PROCEEDS OF TAX-LIENED PROPERTY?

Fortunately for receivers and receivership estates, reasonable costs of administering the receivership proceeding are allowed to prime a previously-recorded Federal tax lien. See, 31 U.S.C. sec 3713; Colorado Wool v. Monahan, 66 F2d 313 (10th Cir 1933); Kennebec Box v. O.S. Richards Corp., 5 F2d 951 (2nd Cir 1925). Note well that the receiver should make an application to the court and secure an order allowing payment of receivership fees and costs before a sale of tax-liened property is consummated, so that those expenses of the receivership may be deducted and paid from the sale (or refinancing) proceeds before funds are allocated to the tax lien. These allowed receivership expenses should be included in the estimated escrow closing statement that is provided to I.R.S. as part of the required application for a tax lien discharge or subordination.



Charles Rosen, Esq.

**CHARLES F. ROSEN, ESQ. of the Law Offices of A. Lavar Taylor has substantial tax expertise involving receiverships and bankruptcy. For more than twenty years Mr. Rosen served as a bankruptcy advisor for the Special Procedures branch of the Internal Revenue Service*



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Contacts:

Ron Oliner and Shawn Christianson - San Francisco

Michael Wachtell - Los Angeles

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Beverly McFarland and The Beverly Group

(When the RN asked Beverly McFarland, the featured professional for our Fall 2003 issue, for a profile of her background we had no idea we would receive two fascinating success stories - one about a girl from a Lithuanian neighborhood in a Chicago suburb, and the second about a company called The Beverly Group, that grew from a start-up in 1983 to quickly become a major asset management, consulting, liquidation and court-appointed fiduciary firm. This article begins with the personal story, told largely in Ms McFarland's own words. RN's few insertions are italicized.)

I was born and raised until my teen years in Roseland, Illinois, in a Lithuanian and Ukrainian neighborhood. My mother and father were first generation Americans and Lithuanian was spoken in our home along with English. My grandfather spoke seven languages, he said, and then would add, "none of them vell!"

World War II brought interesting changes to our life. My father was in the 8th Infantry, stationed in Germany, a part of the military police force. After a year or so the dreaded telegram arrived, saying that he was missing in action (which I still have). However, like most strong ethnic families in that day, my mother regrouped, we moved in with my beloved aunt and uncle in the same neighborhood and continued on with our lives. Life was exciting with my aunt, uncle, all the cousins, my sister and I along with our grandfather in one house and one bathroom.

From a child's perspective, news of the war was boring, but "Inter-Sanctum" and the "Shadow" on the radio were pretty exciting and food was very memorable. Spam, Lipton's noodle soup, oatmeal, potatoes and an occasional chicken along with a chunk of lard with a package of orange colored stuff to mix in it (aka butter) were the mainstream diet during the war.

My mom was the original "Rosie the Riveter" type during the war. She needed to earn more money with my father missing in action or dead - funds were cut back until his status was resolved. My uncle worked for a company which manufactured military tanks and offered to teach my 100 pound, 5' 2" mom all about them so she could apply for a civil service job with the company. Well, she passed the exam and quickly became a supervisor of tanks prior to shipment overseas with the assistance of my future stepfather.

I remember my kindergarten class in a Lithuanian Catholic School and Sister Rosalia (my teacher) looking out the window commenting on a woman inappropriately dressed in slacks. It happened to be my mother coming home from work. I defended my mother's honor by kicking the Nun in the shins and promptly getting expelled from kindergarten. My mom ended up a hero and I was so proud! She calmly went to the principal and was allowed to bring pictures of her tanks and other army stuff that kindergarten kids greatly enjoyed to my class to explain the role that women were filling during the war during the absence of most of the fathers in my class.

I was taught by my very large and loving family that nothing was outside your



Beverly McFarland

**BEVERLY N. MCFARLAND IS THE CEO
AND FOUNDER OF THE BEVERLY
GROUP, INC. LOCATED FOR THE FIRST
20 YEARS OF BUSINESS IN THE DOWNTOWN SACRAMENTO AREA. THE
COMPANY RECENTLY RELOCATED TO
THE CITIES OF ROCKLIN
AND LINCOLN, CALIFORNIA.**

reach if you worked hard enough and smart enough to get it!

(Ms McFarland married James F. Whelan, an Air Force pilot, at 19, had two children — Nanette and Kevin — and lived the life of a military family, moving 22 times in 18 years. After the marriage ended she began a career working in real estate and sales, business evaluations and loans in 1971 and, turnarounds and workouts for financial institutions in 1981.)

The very best training I received was as a V.P. in the commercial/industrial loan department of Home Savings of America. They were superior in their underwriting of loans and training and subsequently survived the RTC days until their acquisition. My territory was an awesome area stretching from the Oregon border to Bakersfield and Napa to Reno. The L. A. loan committee was tough to please - if the land was not paved with concrete or blacktop, the loan could not be very good - cows were definitely out!

Continued on page 19 ...

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Continued from page 18.

One day, I received a call from State Savings and Loan Association in Stockton, California. They needed a real estate investment officer to work in their real estate investment department (REI) in Stockton, a fancy name for an asset management and "trash for cash" workout department. What a fun and exciting job that was! Serving as a V.P., I managed millions of dollars of loans, soliciting lines of credit from customers from California to Washington, D. C. and everywhere in between.

After closing millions in workouts and being a part of the transition team when State became American Savings and Loan Association, I decided that I needed more money to assist with the college expenses of the University of Southern California for my son, Kevin, and the University of California campuses at Santa Barbara and Davis for my daughter, Nanette. With \$10,000 from a very dear, supportive lady friend, Dr. Pat in 1983, I formed The Beverly Group about the same time as I married David McFarland.

(At this point Ms McFarland's story and that of The Beverly Group merge, with a big assist from the late, lamented Resolution Trust Corporation, the RTC.)

We were the first asset management contractor to be awarded a contract by the RTC in the West. Setting up offices and information systems across the country became my husband David's responsibility. The company's awesome responsibilities required training and managing personnel for about 1,000-plus assets from receiverships resulting from failed savings and loans, through our offices in Sacramento, Denver, Colorado and Tampa, Florida. The RTC contracts were awarded to us within months of each other.

Kevin J. Whelan, TBG's president and CFO, managed from \$1 million to \$3 million dollars a month in cash transactions, plus all Sacramento and Denver operations. He is my business partner and co-owner of the company for nearly 18 years, although, as he points out, "we have been together for 40-plus years," as he is my son.

I helped to coordinate all aspects of the contracts, spending a substantial part of the time in Washington, D. C. with various government entities through the years, and on airplanes (about 400,000 miles). We all took part in the (too numerous to remember) Senate investigations (i.e. largely of poor developers who, through no fault of their own, cost the taxpayers billions of dollars). I even was the star of an RTC training movie as "Ms. Model Contractor", except the producer kept asking me questions about the operations of the RTC and I kept laughing until tears flowed. It took all day to make a 20-minute movie.

TBG has performed asset management on real estate, operating businesses and (not so secured) loan portfolios for the Federal Government and financial institutions in excess of \$4 billion in due diligence contracts, and more than \$3 billion in asset management and disposition contracts nationwide. The firm has serviced government contracts for the FSLIC, FHLB, FDIC, FADA, RTC and performed consulting agreements for a host of others.

More recently, TBG and its principals serve as receivers, referees and chapter 11 trustees in the federal and state courts. This chapter of life with The Beverly Group, Inc. has also been great fun. We have specialized in large equity and regulatory receiver-

ships over the years and have substantial experience in operating numerous types of businesses, including FCC and other government-regulated facilities. TBG also has been appointed as liquidating agent by U. S. Bankruptcy Courts. I have served as a chapter 11 trustee in real estate and operating business cases throughout California, with my latest case involving two corporations, one LLC, individuals and 25 Taco Bell franchise restaurants. We are "definitely" having fun now!

When I think about who and what are the most important things in my life, I can easily say my husband David, my companion and best friend for more than 20 years; my daughter Nanette; my son Kevin; and my three beautiful grandchildren whom I adore, Heather, Ryan and CJ. I am also thankful for the wonderful spouses that my children have chosen. Nanette and her husband Dr. Taz Curtis, operate successful optometric offices in Sacramento. Kevin's wife, Sandra, began working for TBG in its infancy, earned her college degree, and was promoted to an asset management position during the RTC days. I liked her right away as we share the same birthday (I am just a couple of years older), and we both have naturally curly hair (only hers is blond).

I look at myself as a very simple person with a very strong will and a God-given ability to be successful at my type of business. My philosophy is always look around the corner for the next opportunity, but remember to take a little time to evaluate what is important to you personally. Equally important, never forget those who helped you along the way!

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\$3 Million**



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**SOLD at
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