



# Enhanced Financial Transparency with Masters and Receivers

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# Overview of Presentation

- What is a Master or a Receiver?
- What benefit are they?
- When do you use them?
- How do you get one appointed?
- Elements required to get them appointed
- Practical Considerations
- Characteristics of Master or Receiver

# What is a Master or Receiver

- Court-appointed neutral party given some level of authority to take some action with respect to assets of a marital estate
- Used typically in more contentious cases
- Varying levels of oversight, from observation to complete control
  - Can be fact-finding access to records and documents on an ongoing basis
  - Can be ongoing supervision and control over the financial resources
  - Outright managerial control of the assets at issue

# What Benefit are They?

- There are a multitude of benefits for the parties arising from the use of a court-appointed officer, as follows:
- **Reliable and transparent financial reporting.** A court-appointed officer with access to financial and operational information can assure the accuracy and transparency of financial reporting. This neutral party can examine the use of business assets and determine propriety, inventory and evaluate assets, and facilitate valuation of the business.

# What Benefit are They?

- **Investigation and resolution of claims involving allegations of fraud or mismanagement.** An independent officer of the Court with full access to underlying information can investigate, evaluate and resolve these claims.
- **Facilitation of discovery.** The court-appointed officer is a neutral party who organizes information and makes it available to all parties.

# What Benefit are They?

**Avoid dissipation of assets.** The use of business resources is controlled by the court-appointed officer and avoids use by one partner or spouse to the detriment of the other. The involvement of a neutral party can reduce or eliminate baseless charges of impropriety by the non-controlling partner or spouse.

**Authority and enforcement.** The court-appointed officer can enforce the gathering and production of information, and utilize the authority of the Court to compel production by a reticent partner or spouse.

# What Benefit are They?

**Facilitating settlement.** By expediting the production of information and providing transparent reporting, the neutral court-appointed officer often facilitates settlement of disputed matters.

**Sale of assets.** The court-appointed officer is a neutral third party acting in the best interests of all parties and has the expertise to sell assets

# When Do You Use Them?

- When control parties are not cooperative
  - Cannot get information about the business or other assets such as real estate or valuable personal property
  - When there are concerns of wastage or dissipation of assets
    - By the non-control party if there is wastage
    - By the control party if there are unsubstantiated false allegations of impropriety
  - When there is evidence of past wastage, dissipation, or fraudulent conveyance of assets out of the estate
  - When a control party won't liquidate assets

# How do You Get One Appointed

- Motion
- Evidence that there is a need
- Order Appointing Receiver

# Elements Required for appointment

- Discovery rules
- Rule 66 or Rule 53 (Colorado Rules of Civil Procedure)
- Tailor authority in order to meet needs

# Practical Considerations

- Cost versus benefit
- Effect on the business
  - Most concerns come at the Control (Receiver) level
  - Loan agreements
  - Customers/Vendors/ Employees
- Court-appointed party a neutral party
  - Reports to court
  - Does not work solely for moving party
- Closely-held partnerships
  - Consideration of rights of business partners

# Characteristics of Masters and Receivers

- Reputable, neutral, fair, calm, experienced at neutral appointments
- Collection and distribution of relevant factual information
- Fiduciary duty to the court, not to the parties – independent quasi-judicial authority
- Decision-making and fact-finding authority creates ability to break impasses
- Power and authority to compel the production of documents and information
- Creation of an evidentiary record

# Elements of an Order

- Clear delineation of authority and responsibility
- Compelling turnover or access by controlling party
  - Show cause option for court appointed person if control party non-cooperative
- Definitive due dates for reporting back to court
- Rules for providing information to parties
- Exculpation for professional
- Detailed description of officer's duties, responsibilities, power, authority, and scope of appointment
- Since appointment generally limited to complicated matters, provide extensive, detailed specifications for all aspects of officer's role
- Enlarge officer's powers based on reasonably anticipated needs of the case
- Specifically note powers delegated to officers, such as authority to issue subpoenas, adjudicate contempt.