

RECEIVERSHIPS AND DRAFTING REQUIREMENTS

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CHAPTER 11.2

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TABLE OF CONTENTS

I.	INTRODUCTION TO RECEIVERSHIPS	1
II.	DO YOU NEED A RECEIVERSHIP?	1
	A. Costs and Benefits of Homestead Receivership	1
	B. Selling the House of Horrors	1
	C. Business Receivership	1
III.	REQUESTING APPOINTMENT OF A RECEIVER	1
	A. Temporary Orders in Dissolution Cases	1
	1. Generally	1
	2. Applicant's Burden	2
	3. No Appointment of Receiver for Benefit of Third-Party Creditors	2
	4. No Appointment of Receiver on Petition of Business Entity or Individual	2
	5. Notice of Appointment	2
	6. Selected Appellate Cases	3
	B. To Effectuate Property Division	3
	1. Generally	3
	2. Selected Appellate Cases	4
	C. Temporary Orders During Appeal	5
	D. Chapter 9 Enforcement	5
	1. Generally	5
	2. Selected Appellate Cases	6
	E. Agreed Receivership Appointments	7
IV.	POWERS AND DUTIES OF RECEIVER	8
	A. Generally	8
	B. Qualifications	8
	C. Activities	8
	D. Ability to Bring Suits	8
	E. Receiver's Oath	8
	F. Receiver's Bond	8
	G. Custodia Legis	8
	H. Lis Pendens	9
	I. Inventory	9
	J. Receiver's Fees	9
	K. Receiver's Report	9
V.	CHALLENGING APPOINTMENT OF RECEIVER	10
	A. General Immunity	10
	B. Jury Trial	10
	C. Termination by Parties	10
VI.	APPEALING RECEIVERSHIP ORDER	10
	A. On Temporary Orders in Pending Case	10
	1. Interlocutory Appeal	10
	2. Findings of Fact and Conclusions of Law Required No Later Than Seven Days After Receiver Appointed	11
	3. Interlocutory Appeal Accelerated: Notice of Appeal Due Within Twenty Days After Receiver Appointed	11
	4. Standard of Review	11
	5. Certain Orders Not Appealable	11
	B. On Final Orders	11
	1. Generally	11
	2. Order Approving Receiver's Final Report and/or Final Fees Appealable	11
	C. On Temporary Orders During Appeal	12

D. Mandamus	12
VII. APPENDIX	12

RECEIVERSHIPS AND DRAFTING REQUIREMENTS

I. INTRODUCTION TO RECEIVERSHIPS

It is well settled in Texas that receivership is an extraordinarily harsh remedy and one that courts are particularly loath to use. *Independent Am. Sav. Ass'n v. Preston 117 Joint Venture*, 753 S.W.2d 749, 750 (Tex. App.—Dallas 1988, no writ); *Parness v. Parness*, 560 S.W.2d 181, 182 (Tex. Civ. App.—Dallas 1977, no writ); *Readhimer v. Readhimer*, 728 S.W.2d 872, 873 (Tex. App.—Houston [1st Dist.] 1987, no writ) (trial court abused discretion in appointing receiver in divorce case in which no evidence demonstrated that receivership was necessary for preservation and protection of property). *See Norem v. Norem*, 105 S.W.3d 213, 216 (Tex. App.—Dallas 2003, no pet.) (finding that Texas Family Code does not set out predicate to support receivership order, *Norem* rejected holding under *Readhimer* that appointment of receiver in dissolution case requires showing that parties' property is in danger and that less harsh remedy is unavailable). Judicial seizure and court management of any asset should be a last resort. *Rusk v. Rusk*, 5 S.W.3d 299, 306 (Tex. App.—Houston [14th Dist.] 1999, pet. denied); *see Parness*, 560 S.W.2d at 182.

II. DO YOU NEED A RECEIVERSHIP?

In a divorce case, subjects of a receivership can include the homestead, commercial property, businesses, and personalty. *Beaty v. Beaty*, 186 S.W.2d 88, 88 (Tex. Civ. App.—Eastland 1945, no writ). One common scenario in a divorce case involves the client who advises the home mortgage has not been paid in months, the home may or may not be upside down in what it is worth, and foreclosure is imminent. A reaction can be immediately to request the appointment of a receiver for the property. Under these and other scenarios, before a hasty trip to the courthouse with your motion, consider the following:

A. Costs and Benefits of Homestead Receivership

In the instance of a receivership for homestead, it is important to know what the home is worth. Has the home value decreased to the point it is worth less than the mortgage? Will the costs of receivership exceed the net proceeds from the sale of the home? Costs involved in a receiver's sale of the home can include the receiver's fees in addition to the realtor's fees and/or commissions, other typical closing costs, and attorney's fees. Costs of receivership can also include insurance, taxes, repairs, and maintenance during the pendency of the receivership. Add the missed note payments or a decrease in the value of the home and it is easy to see that if the equity in the home is small or nonexistent, there is little benefit of a receivership.

Assessing the value of the home is not always easy. A spouse may not always know the current balance of the note. Even if known, spouses may still dispute the selling price. A market analysis is a quick and cheap way to ascertain the home's value compared to other homes of comparable value in the area. However, a market analysis does not consider the specific condition of the home. If condition is an issue, then an appraisal may be necessary. An appraisal may provide a more thorough comparison of the home to past sales of comparable properties, but it will be more expensive, time consuming, and likely require the cooperation of the parties.

B. Selling the House of Horrors

The home's history often results in the home selling for less than a comparable property with no legal problems. The home may be in disrepair or damaged. Rooms may be partially or fully emptied of contents because a party moved out. As a result, the home is less attractive to potential buyers. The sale price may have to be lowered to rebate the cost of repairs or poor aesthetics. Further, prospective buyers are often unwilling to endure the delays, clouds on title, court hearings, and court approval of sale, unless the house is sold for drastically below market value.

C. Business Receivership

Imposing a receivership on a business is more complex than sale of a home through receivership. Can a receiver run the business on a day-to-day basis? Does it make sense to exclude a party from running the business? What if the party tries to scuttle the business? How might a receiver use the party's special knowledge or skills? In many cases, the receiver acts in a supervisory position, allowing the party to continue to operate the business. The receiver reviews the business records for accuracy and irregularities and may be involved in major decisions in the operation of the enterprise while marketing it for sale.

III. REQUESTING APPOINTMENT OF A RECEIVER

A. Temporary Orders in Dissolution Cases

1. Generally

Requesting the appointment of a receiver while a suit for dissolution of marriage is pending is governed by Texas Family Code section 6.502(a)(5). After a petition has been filed, the court, on the motion of any party or on the court's own motion, may appoint a receiver for the preservation and protection of the property of the parties. Tex. Fam. Code § 6.502(a)(5); *Norem v. Norem*, 105 S.W.3d 213, 216 (Tex. App.—Dallas 2003, no pet.). Section 6.502 allows a receiver to be appointed to effectuate the Court's orders when such an order is necessary and equitable "to protect" one or both spouses and "to preserve" their marital estate from

being lost to creditors. *See, e.g., In re C.F.M.*, 360 S.W.3d 654, 658 (Tex. App.—Dallas 2012, no pet.) (affirming order appointing receiver to take charge of husband's assets so that husband's court-ordered obligations, to pay interim support and attorney's fees, would be paid in a timely manner); *Norem*, 105 S.W.3d at 215, 217 (affirming order appointing receiver to take charge of husband's shares of corporate stock after husband defied court order to liquidate financial account and borrow money from IRA to pay interim attorney's fees); *Sparr v. Sparr*, 596 S.W.2d 164, 165 (Tex. Civ. App.—Texarkana 1980, no writ) (affirming appointment of pre-trial receiver to sell spouses' home); *Hursey v. Hursey*, 147 S.W.2d 968, 970 (Tex. Civ. App.—Dallas 1940, no writ) (affirming appointment of pre-trial receiver to manage rental properties, collect rent, and apply same as directed by court).

2. Applicant's Burden

The applicant's burden in requesting a receiver in a divorce proceeding is to make a proper showing of entitlement to a receiver. *Norem*, 105 S.W.3d at 216. For the trial court to appoint a receiver, there must be evidence that the receivership is for the protection and preservation of the property of the parties. *Id.* at 216; Tex. Fam. Code § 6.502(a). The burden of establishing the right to a receivership is by a preponderance of the evidence. *H & R Oils v. Pioneer Am. Ins.*, 541 S.W.2d 665, 668-69 (Tex. Civ. App.—Fort Worth 1976, no writ). The appointment of a receiver must be supported by evidence and not solely on the argument of counsel. Tex. Fam. Code § 6.502(a); *Tugman v. Tugman*, No. 13-08-00194-CV (Tex. App.—Corpus Christi May 22, 2008, no pet.) (mem. op.); *Stoker v. Stoker*, No. 12-07-00334-CV (Tex. App.—Tyler May 14, 2008, no pet.) (mem. op.).

The Texas Family Code controls the appointment of a receiver in a divorce case, and the requirements that exist under the Texas Civil Practice and Remedies Code do not apply. *Norem*, 105 S.W.3d at 216. There are no pleading requirements of insolvency of the party, inadequacy of a legal remedy, or equitable grounds. *Id.* Further, there is no requirement that the party seeking a receiver prove that the property is in danger of being lost, removed, or materially injured and that a less harsh remedy is not available. *Id.* A trial court appoints a receiver when it deems it necessary and equitable for the preservation and protection of the marital property. *Id.* This is the only evidence that must be presented. Section 6.502 gives trial courts the broadest discretion in granting temporary orders, including orders appointing a pre-trial receiver. *In re C.F.M.*, 360 S.W.3d at 658; *Norem*, 105 S.W.3d at 216. Under section 6.502(a)(5), the trial court's broad discretionary power to act as necessary for the preservation and protection of the parties' property serves the ultimate responsibility of the court to divide the community property in a just and

right manner, and its order cannot be disturbed unless there is a clear abuse of discretion. *Norem*, 105 S.W.3d at 216.

3. No Appointment of Receiver for Benefit of Third-Party Creditors

The appointment of a receiver under the Texas Family Code may not be for the benefit of third-party creditors. *Mallou v. Payne & Vendig*, 750 S.W.2d 251, 254 (Tex. App.—Dallas 1988, writ denied). Because the spouses are the only parties whose interests in the property the court may seek to protect through the appointment of a receiver under the Texas Family Code, a trial court's refusal to terminate a receivership upon the request of both spouses constitutes an abuse of discretion. *Id.* at 255. Further, it is improper to appoint a receiver over partnership property, which is not property of the spouses. *In re Gray Law, L.L.P.*, No. 02-05-00379-CV, at *4 (Tex. App.—Fort Worth Apr. 20, 2006, no pet.) (mem. op.).

4. No Appointment of Receiver on Petition of Business Entity or Individual

A court may not appoint a receiver for a corporation, partnership, or individual on the petition of the same corporation, partnership, or individual. Tex. Civ. Prac. & Rem. Code § 64.002(a). This section does not prohibit the appointment of a receiver over all or part of the marital estate in a suit filed under Title 1 or Title 5 of the Texas Family Code. *Id.* § 64.002(c)(2).

5. Notice of Appointment

Not later than the 30th day after the date a receiver is appointed under section 6.502(a)(5), the receiver shall give notice of the appointment to each lienholder of any property under the receiver's control. Tex. Fam. Code § 6.502(b). Not later than the seventh day after the date a receiver is appointed, the court shall issue written findings of fact and conclusions of law in support of the receiver's appointment. *Id.* § 6.502(c). If the court dispenses with the issuance of a bond between the spouses as provided by section 6.503(b) in connection with the receiver's appointment, the court shall include in the court's findings an explanation of the reasons the court dispensed with the issuance of a bond. *Id.*

The Texas Family Code requires notice only to the parties before the issuance of an order for receivership. *See* Tex. Fam. Code §§ 6.502(a), 6.709(a). By inference, section 6.502(b) only requires notice to lienholders after the appointment of the receiver because it requires the receiver to give notice of the receiver's appointment within 30 days to all lienholders of the property in the receiver's possession. Therefore, it is unclear whether the lienholder must be given notice before a hearing under the Texas Family Code. *But see Rusk v. Rusk*, 5 S.W.3d 299, 308 (Tex. App.—Houston [14th Dist.] 1999, no pet.) (notice provision of rule governing

receiverships is applicable to appointment of receivers in marriage dissolution cases involving fixed and immovable property).

6. Selected Appellate Cases

In re C.F.M., 360 S.W.3d 654 (Tex. App.—Dallas 2012, no pet.):

The appellate court in *C.F.M.* held that “property” under section 6.502(a)(5) includes both community and separate property. *Id.* at 659-60 (no error in placing all property under protection of receiver because section 6.502(a)(5) refers to “the property of the parties”). In *C.F.M.*, the husband had not identified any separate property by clear and convincing evidence. *Id.* at 659. But even if the husband had successfully identified separate property, Texas law would not limit the receiver to preserve and protect only community assets. *Id.* The Court in *C.F.M.* determined that section 6.502 speaks to “the property of the parties.” *Id.* It does not employ the terms “separate property” or “community property,” both of which are defined in the Texas Family Code. *Id.* The court went on to say that had the legislature intended to limit a receivership to community property, as the husband contended, it would have used its defined term to do so. *Id.*

The underlying issue in *C.F.M.* was management of property during the pendency of the divorce. The wife filed a motion for the appointment of a receiver after the husband had failed to comply with court orders to pay, among other items, spousal support, child support, expert fees, and the wife’s attorney’s fees. After three hearings, the trial court appointed a receiver after the court found that the husband repeatedly failed to comply with court orders, had sole control of the parties’ financial assets and accounts, his financial support was necessary to protect the wife and the children, and the husband was incompetent to manage his affairs. The court of appeals affirmed, finding that the appointment of a receiver would ensure that payments of fees and costs were timely and that any transfers of property had prior approval.

Norem v. Norem, 105 S.W.3d 213 (Tex. App.—Dallas 2003, no pet.):

In *Norem*, the wife presented evidence that the value of the community estate had diminished

during the pendency of the divorce and that the husband had not followed orders to deliver property and pay attorney’s fees from community property. *Id.* at 217. Further, the evidence showed that the husband had moved, sold, transferred, and encumbered property in violation of court orders and injunctions. *Id.* The court determined that the evidence supported the appointment of a receiver. *Id.* Finding that the Texas Family Code does not set out a predicate to support a receivership order, the *Norem* court rejected the holding under *Readhimer* that appointment of a receiver in a dissolution case requires a showing that the parties’ property is in danger and that a less harsh remedy is unavailable. *Readhimer v. Readhimer*, 728 S.W.2d 872, 873 (Tex. App.—Houston [1st Dist.] 1987, no writ).

Ortiz v. Ortiz, No. 13-15-00556-CV (Tex. App.—Corpus Christi Oct. 20, 2016, no pet.) (mem. op.):

In *Ortiz*, the trial court appointed a receiver after three interim hearings, finding that the husband was diverting company funds for personal use, including fertility treatment when the couple was not trying to get pregnant. The husband made over \$26,000 in personal purchases with a business credit card, made over \$14,000 in payments to his personal credit card with corporate funds, and withdrew over \$72,000 from one of the businesses. The trial court considered less harsh remedies before resorting to receivership, first ordering the parties not to use business funds for personal expenses and later ordering the husband to reimburse the wife for personal expenses that he paid with business funds. The husband did not comply with either order. The court of appeals affirmed, holding that the evidence was sufficient to support a finding that the appointment of a receiver was necessary for the preservation and protection of the parties’ property.

B. To Effectuate Property Division

1. Generally

The trial court has broad authority to divide the marital estate in a manner it deems just and right. Tex. Fam. Code § 7.001. That authority includes the power to appoint a receiver. *See Rusk v. Rusk*, 5 S.W.3d 299, 306 (Tex. App.—Houston [14th Dist.] 1999, pet. denied); *Vannerson v. Vannerson*, 857 S.W.2d 659, 673 (Tex. App.—Houston [1st Dist.] 1993, writ denied). In *In re Marriage of Edwards*, for example, at the final

divorce trial, the trial court named a receiver to liquidate the community estate and pay the debts. 79 S.W.3d 88, 93 (Tex. App.—Texarkana 2002, no pet.). The court may order a homestead sale to accomplish a just and right property division between the parties to the divorce. *Mallou v. Payne & Vendig*, 750 S.W.2d 254, 257 (Tex. App.—Dallas 1988, writ denied).

2. Selected Appellate Cases

Rusk v. Rusk, 5 S.W.3d 299 (Tex. App.—Houston [14th Dist.] 1999, pet. denied):

After a request in final argument for appointment of a receiver, the trial court appointed a receiver to take charge of certain real and personal, separate and community property awarded to the husband until he satisfied payment of a \$150,000 judgment to the wife. The husband appealed and among other issues asserted that the trial court abused its discretion by appointing a receiver over property without proper notice or pleadings and with no showing that any property was in jeopardy of being lost, removed, or materially injured; divesting him of his separate property by placing it in receivership; and placing certain exempt properties in receivership for the purpose of satisfying the judgment.

The court of appeals held that the trial court abused its discretion in appointing the receiver without proper notice, citing Texas Rule of Civil Procedure 695, requiring three days' notice before a hearing on an application for appointment of a receiver to take possession of fixed and immovable property. It was also error for a receivership to be placed over the husband's separate property, depriving him from the use and enjoyment of the property.

Vannerson v. Vannerson, 857 S.W.2d 659 (Tex. App.—Houston [1st Dist.] 1993, writ denied):

The husband appealed from a post-answer default judgment and among many issues asserted that the trial court erred in appointing a receiver to sell the parties' marital residence and supervise the division of the personal property. He argued that receivership is a drastic remedy, to be exercised only in extraordinary circumstances and only in those situations in which the property is in present danger of being lost, removed, or materially injured, citing Texas Civil Practice & Remedies Code section 64.001(b). The court of appeals disagreed, finding that the relevant statute was the predecessor to Texas Family

Code section 7.001, under which the trial court has broad powers to enlist the aid of a receiver to effectuate its property division orders. There was no abuse of discretion in appointing a receiver based on this broad authority and because the marital residence could not be partitioned in kind.

Nelson v. Nelson, 193 S.W.3d 624 (Tex. App.—Eastland 2006, no pet.):

In *Nelson*, the trial court awarded to each spouse an undivided one-half interest in a 12.03-acre tract of land and conditionally appointed a receiver to sell the land if neither party was able to purchase the other party's interest after the decree was entered. Appellant asserted that the trial court abused its discretion by not considering whether the property was partitionable in kind and by appointing the receiver without notice. The court of appeals held that a trial court's discretion to appoint a receiver to sell a property should not be exercised until the trial court first determines if the property is subject to partition in kind, citing *Hailey v. Hailey*, 331 S.W.2d 299, 303 (Tex. 1960). The trial court's findings of fact and conclusions of law did not address whether the property could be partitioned in kind, or otherwise explain the basis for the court's ruling. Therefore, the conditional appointment of a receiver to sell the property constituted an abuse of discretion.

Allen v. Allen, No. 02-17-00031-CV (Tex. App.—Fort Worth Jan. 25, 2018, no pet.) (mem. op.):

In *Allen*, the court of appeals affirmed the trial court's appointment of a receiver to partition the parties' residence by sale. In the appeal, the wife asserted that the partition of the residence by sale divested her of her separate property interest in the residence, in violation of *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 138 (Tex. 1977) (holding that trial court may not in a decree divest one spouse of that spouse's separate realty and transfer title to the other spouse). The decree confirmed to each spouse an undivided one-half separate property interest in the residence. The trial court's appointment of a receiver to sell the residence arose from the husband's request to partition the residence by sale. The court of appeals held that the trial court had authority, under the general laws pertaining to partition suits between cotenants, to order, concurrently

with the divorce proceeding, that the residence be partitioned by sale. The trial court implicitly found that the residence was incapable of partition in kind and that equity required a partition by sale. Having the authority to order a partition by sale, the trial court was also authorized to appoint a receiver to accomplish the sale.

Brawley v. Huddleston, No. 02-11-00358-CV (Tex. App.—Fort Worth Dec. 6, 2012, no pet.) (mem. op.):

The trial court appointed a receiver to sell a property. At a subsequent hearing about the receiver's fees, the receiver testified about her fees and the problems that she had encountered dealing with the spouses when attempting to perform her duties as receiver. Although she acknowledged that both spouses' attorneys had told her not to proceed with the sale of the property, she explained that she only takes instructions from the trial court and that she had continued to perform services as receiver because she was abiding by the order of the court to do so.

The appellate court determined that because there was no testimony or evidence relating to whether the appointment of a receiver was necessary for the preservation and protection of the property, *see* Tex. Fam. Code section 6.502(a)(5), the appointment of the receiver was reversed and rendered.

C. Temporary Orders During Appeal

Under Texas Family Code section 6.709(a)(3), during an appeal, the trial court may appoint a receiver for the preservation and protection of the property of the parties. The trial court retains jurisdiction to enforce such an order unless the appellate court supersedes the order. Tex. Fam. Code § 6.709(b). After an appeal is perfected, the trial court retains jurisdiction for sixty days to conduct a hearing and sign an original temporary order. *Id.* § 6.709(i).¹ The trial court retains jurisdiction to modify and enforce a temporary order under section 6.709 unless the appellate court, on a proper showing, supersedes the trial court's order. *Id.* § 6.709(j). On the motion of a party or on the court's own motion, after notice and hearing, the trial court may modify a previous temporary order rendered under section 6.709 if the circumstances of a party have materially and

substantially changed since the rendition of the previous order, and modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal. *Id.* § 6.709(k).

D. Chapter 9 Enforcement

1. Generally

A trial court has inherent authority to appoint a receiver to enforce its orders. *See Young v. Young*, 765 S.W.2d 440, 444 (Tex. App.—Dallas 1988, no writ); *Elliott v. Elliott*, 422 S.W.2d 757, 758 (Tex. Civ. App.—Fort Worth 1967, writ dismissed). The court that renders a decree of divorce “retains the power” to enforce the property division in the decree or in an agreement incident to divorce that was approved by the court. Tex. Fam. Code § 9.002; *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011). The court may enforce the division of property made or approved in the divorce decree by rendering further orders “to assist in the implementation of or to clarify the prior order.” Tex. Fam. Code. § 9.006(a). It may also “specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.” *Id.* § 9.006(b); *see also Walston v. Lockhart*, 62 S.W.3d 257, 259 (Tex. App.—Waco 2001, pet. denied). However, “[a]n order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of the property.” Tex. Fam. Code § 9.007(a); *see Young*, 765 S.W.2d at 444; *Sloan v. Sloan*, 474 S.W.2d 272, 275 (Tex. Civ. App.—Waco 1971, no writ); *Elliott*, 422 S.W.2d at 758-59. An order that “amends, modifies, alters or changes the actual, substantive division of property made or approved in a final divorce decree” is unenforceable and beyond the court's power. *Elliott*, 422 S.W.2d at 758-59; *McDowell v. McDowell*, 705 S.W.2d 345, 347 (Tex. App.—Dallas 1986, no writ) (appointment of receiver to enforce property division, when appointment changed time at which property would be sold, held unenforceable modification).

In a post-divorce petition for enforcement, the application should first state one or more causes of action within the jurisdiction of the court and then allege facts that would entitle the applicant to relief. *Associated Bankers Credit Co. v. Meis*, 456 S.W.2d 744, 749 (Tex. Civ. App.—Corpus Christi 1970, no writ). Generally, the application must show the necessity for the appointment, the probability of ultimate recovery by the applicant, and accurately describe the property to be placed in receivership. *Id.*

¹ Reminder: When deadlines are at stake, review the current statute or rule! Do not rely on the time limits for issuing temporary orders during an appeal set out in *Fuentes v. Zaragoza*, 534 S.W.3d 658 (Tex. App.—

Houston [1st Dist.] 2017, no pet.), which opinion predates the 2017 amendments to Texas Family Code section 6.709.

2. Selected Appellate Cases

Perry v. Perry, 512 S.W.3d 523 (Tex. App.—Houston [1st Dist.] 2016, no pet.):

In *Perry*, the court of appeals held that the trial court improperly modified the division of property when it, in a post-divorce order, appointed a receiver to sell a house in the receiver's sole discretion and upon terms and conditions determined by the receiver. *Id.* at 529. The decree had not specified by when or for how much the house must be sold. Under the rules of contract construction, when construing an agreement to avoid forfeiture, the court may imply terms that can reasonably be implied. If a divorce decree orders that property be sold, but fails to specify a price, the law presumes that the parties intended a reasonable price. Likewise, if the decree fails to specify a time for performance, the law implies a reasonable time. Because the divorce decree's provisions did not specify by when or for how much the house had to be sold, the law provided these two missing terms: the house had to be sold at a reasonable time and for a reasonable price. *Id.* at 528. By appointing a receiver to sell the house "in his sole discretion ... upon terms and conditions determined by him," the trial court improperly modified the division of property in the decree of divorce. *Id.* at 528-29.

In re Lewis, 223 S.W.3d 756 (Tex. App.—Texarkana 2007, orig. proceeding):

The parties' decree awarded each party an undivided one-half separate property interest in a tract of land. The decree also included that a receiver would be appointed to sell the mobile home and improvements on the land. The trial court appointed a receiver to take and sell a list of property. The receiver was not ordered to take possession of or sell the land. After the land was sold at auction, the receiver filed a motion for authority to sell the real estate "in his hands as Receiver." The trial court authorized the sale of the land.

The husband filed a mandamus action. Because the decree did not provide for sale of the land, the trial court was not authorized to order the receiver to sell the land as part of an enforcement action. Although the decree provided for partition of the land, it did not order sale of the land. The trial court abused

its discretion by issuing orders approving the sale of the husband's separate property.

Young v. Young, 765 S.W.2d 440 (Tex. App.—Dallas 1988, no writ):

In *Young*, the trial court, in an enforcement and clarification action, appointed a receiver to divide undivided property. *Id.* at 442. The appellant asserted that it was error to appoint a receiver because there was no evidence that the property was in danger of being lost, removed, or injured (citing Tex. Civ. Prac. & Rem. Code § 64.001(b)). The court of appeals disagreed, saying that the applicable statute was the predecessor to Texas Family Code chapter 9. Finding that a trial court has broad powers to enlist the aid of a receiver to effectuate its orders and judgments, the court of appeals found no error in the appointment of a receiver. *Id.* at 444.

McDowell v. McDowell, 705 S.W.2d 345, 347 (Tex. App.—Dallas 1986, no writ):

In a post-decree action, the wife sought to clarify and enforce the terms of the decree awarding the marital residence to the husband and one-half of the proceeds of the sale of the property to the wife. The decree provided that the property would be sold on the husband's remarriage or death, if the husband did not occupy the property as his sole residence for a period of six months or more, or when the youngest child turned 18 or was otherwise emancipated, none of which events had occurred. The trial court granted the wife's motion and rendered an order appointing a receiver to sell the property immediately and to divide the proceeds equally between the husband and the wife. The husband appealed. The court of appeals held that the appointment of a receiver to sell property was an impermissible modification of the decree. The entry of the order of sale was beyond the trial court's power and unenforceable.

Shultz v. Shultz, No. 05-18-00876-CV (Tex. App.—Dallas June 18, 2019, no pet.) (mem. op.):

In *Shultz*, the decree provided that if the marital residence was not sold within the prescribed period of time, a specific person was appointed the receiver to sell the property. The property was to be sold at a price agreed to by the spouses. The trial court appointed a receiver, but the receivership order did not

incorporate that the spouses must agree to the sales price.

The receiver filed a report of sale and motion for confirmation of sale, asking that the court confirm the sale of the marital residence to the wife for \$900,000. The receiver did not seek the husband's agreement on the sales price. The husband filed an emergency motion for continuance seeking discovery on the purchase price, asserting that higher offers for the property had been tendered. The trial court denied the motion. At the confirmation hearing, the receiver testified about his reasoning for accepting a sales price of \$900,000 from the wife instead of accepting a \$965,000 offer. The husband testified that he was not kept informed on the sale and was not allowed to inspect the house so that he could determine the value. A real estate agent testified that she had clients interested in the property, but neither the receiver nor his agent returned her calls or answered her inquiries. The trial court confirmed the sale of the property.

The husband appealed on ground that the decree was improperly modified. The court of appeals agreed. The trial court was required to adhere to the literal language of the unambiguous divorce decree. The provision providing for the appointment of a receiver did not give the receiver the power to set the price; rather, the decree required mutual agreement by the parties on the price. The trial court's failure to adhere to the value imposed on the property in the decree improperly modified the division of property. The trial court's orders appointing the receiver and confirming the sale of property were vacated. The case was remanded.

Moseley v. Grandee, No. 02-18-00123-CV (Tex. App.—Fort Worth Jun. 21, 2018, no pet.) (mem. op.):

In *Moseley*, the husband was ordered to make an equalization payment to the wife and did not do so. The wife filed a motion for enforcement. The husband asserted ambiguity and requested clarification. The court appointed a receiver. The husband appealed, asserting that because he acted in good faith in interpreting the decree and not paying the judgment (asserting that he consulted with two lawyers), the trial court abused its discretion in appointing a receiver. The court of appeals affirmed, holding that the trial court

did not abuse its broad discretion by appointing a receiver to effectuate the decree's equalization judgment.

Vats v. Vats, No. 01-12-00255-CV (Tex. App.—Houston [1st Dist.] 2012, no pet.) (mem. op):

In *Vats*, the wife filed a petition for enforcement of the property division, asserting that the husband failed to make a good-faith effort to sell two parcels of land in India, which the decree stated would be sold and that neither party would obstruct the sale. The wife further asserted that the husband had impeded the sale and requested the trial court to request and authorize the Indian court to appoint a receiver in India to take control of the properties and sell or auction them and distribute the proceeds. The trial court ordered as the wife requested. The husband appealed, asserting that the trial court's order improperly attempted to engage the jurisdiction of a foreign court. The court of appeals disagreed and affirmed. The trial court's order was permissive in nature, stating only that the Indian court was "requested and authorized" to order the parties to sell the properties. The order sought to expedite a ruling by an Indian court to reduce the wife's wait for a final judgment. Further, the order was not a substantial modification of the decree. The decree was clear that the parties intended to sell the property. The trial court's order merely specified a more precise manner of effectuating the property division.

E. Agreed Receivership Appointments

Parties to a dissolution proceeding can agree to the appointment of a receiver. *See generally* Tex. R. Civ. P. 11; Tex. Fam. Code § 6.502. However, if an agreement is reached to appoint a receiver, the appointment shall not be set aside if one of the parties becomes dissatisfied with the receivership or the receiver unless there is evidence of accident, fraud, mistake, collusion, or a change of conditions. *Logan v. Mauk*, 126 S.W.2d 513, 515 (Tex. Civ. App.—Amarillo 1939, writ dismissed); *see also In re Marriage of Davis*, 418 S.W.3d 684 (Tex. App.—Texarkana 2012, no pet.). In *Davis*, a receiver was appointed pursuant to the parties' Rule 11 Agreement, entered into while the divorce was pending, to preserve and sell assets of a horse farm, Fox Crest Farm, LLC. The husband complained on appeal that the receiver was not qualified, but he waived that complaint because he requested the appointment of the specific receiver and did not raise any disqualification issue until four months after the receiver's appointment.

IV. POWERS AND DUTIES OF RECEIVER

A. Generally

A receiver is a non-party and disinterested in the outcome of the case, appointed by the court to receive and preserve the property or fund in litigation *pendente lite*. Tex. Civ. Prac. & Rem. Code § 64.021(b); *Wiley v. Sclafani*, 943 S.W.2d 107, 110 (Tex. App.—Houston [1st Dist.] 1997, no writ); *Chemical Eng'g Serv., Inc. v. Tomlinson*, 750 S.W.2d 375 (Tex. App.—Beaumont 1988, no writ); *Harmon v. Schoepple*, 730 S.W.2d 376, 381 (Tex. App.—Houston [14th Dist.] 1987, no writ). A receiver is an officer of the court charged with carrying out the court's orders. *Ex parte Griffiths*, 711 S.W.2d 225, 226 (Tex. 1986). All favorable presumptions must be indulged as to the rectitude of the receiver's official conduct. *DeWitt v. Republic Nat'l Bank of Texas*, 168 S.W.2d 710, 716 (Tex. Civ. App.—Dallas 1943, writ ref'd w.o.m.). The receiver is not appointed for the benefit of the applicant but "to receive and preserve the property for the benefit of all parties interested therein." *Sloan v. Sloan*, 474 S.W.2d 272, 275 (Tex. Civ. App.—Waco 1971, no writ); *Abilene Sav. Ass'n v. Roderick*, 418 S.W.2d 695, 696 (Tex. Civ. App.—Eastland 1967, no writ).

B. Qualifications

The receiver must be both a Texas resident and qualified voter. Tex. Civ. Prac. & Rem. Code § 64.021(a); *Pena v. Sell*, 760 S.W.2d 811, 812 (Tex. App.—Amarillo 1988, no writ). Residency must be maintained during the pendency of receivership. Tex. Civ. Prac. & Rem. Code § 64.021(c). If these qualifications are not met, the receivership is void as to property in Texas. *Id.*

Although the receiver does not have to be a licensed professional of any kind, such a person may be preferred because of the professional's expertise and potential cost savings. It is also a good idea to inquire as to whether the court has a pre-approved list of receivers.

C. Activities

Subject to the control of the court, a receiver may:

- (1) take charge and keep possession of the property;
- (2) receive rents;
- (3) collect and compromise demands;
- (4) make transfers; and
- (5) perform other acts in regard to the property as authorized by the court.

Tex. Civ. Prac. & Rem. Code § 64.031. The duties of a receiver are imposed as of the date the order is signed. *Conner v. Guemez*, No. 02-10-00211-CV (Tex. App.—Fort Worth Nov. 24, 2010, no pet.) (mem. op.). The receiver must act within the powers conferred by the order, and the order must operate within the confines of

the statute. *Ex parte Hodges*, 625 S.W.2d 304, 306 (Tex. 1981). If the receiver needs additional instructions, the receiver should file with the court a motion requesting the needed instructions.

D. Ability to Bring Suits

A receiver may bring suits in the receiver's official capacity without permission of the appointing court. Tex. Civ. Prac. & Rem. Code § 64.033. Unless inconsistent with Chapter 64 of the Civil Practice & Remedies Code or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver. *Id.* § 64.004.

E. Receiver's Oath

Before a person assumes the duties of a receiver, the person must be sworn to perform the duties faithfully. *Id.* § 64.022. The oath is prepared and filed with the court.

F. Receiver's Bond

The receiver is also required to execute a bond in an amount fixed and approved by the appointing court, "conditioned on faithful discharge" of the receiver's duty. *Id.* § 64.023. However, the receiver is not required to post a bond in all dissolution cases. Tex. R. Civ. P. 695a; Tex. Fam. Code § 6.503(b); *see Poston v. Poston*, 572 S.W.2d 800, 804 (Tex. Civ. App.—Houston [14th Dist.] 1978, no writ). When the receivership affects third parties, a failure of the court to set the bond and the receiver's failure to post the bond may make the receivership reversible. *King Land & Cattle Corp. v. Fikes*, 414 S.W.2d 525, 525 (Tex. Civ. App.—Fort Worth 1967, no writ); *O'Connor v. O'Connor*, 320 S.W.2d 384, 391 (Tex. Civ. App.—Dallas 1959, writ dismissed); *Bell v. Bell*, 204 S.W.2d 527, 528 (Tex. Civ. App.—San Antonio 1947, no writ).

G. Custodia Legis

Property held by a receiver is in *custodia legis* ("in the custody of the law"). *Moody v. State*, 538 S.W.2d 158, 161 (Tex. Civ. App.—Waco 1976, writ ref'd). Consequently, the receivership property is not subject to foreclosure, attachment, garnishment, sequestration, levy, or sale under execution, unless the creditor receives the permission of the court in which the receivership is pending. *Huffmeyer v. Mann*, 49 S.W.3d 554, 560 (Tex. App.—Corpus Christi 2001, no pet.); *First S. Props., Inc. v. Vallone*, 533 S.W.2d 339, 341 (Tex. 1976). The receivership suspends the rights of other parties until the court having custody of the property enforces those rights. *Id.* at 343.

Whenever a court has appointed a receiver for an individual, corporation or partnership, the jurisdiction of that court attaches to the property of said individual, corporation or partnership, although the receiver has not

qualified, or taken possession of the property. *Huffmeyer*, 49 S.W.3d at 559-60 (citing *Riesner v. Gulf, C. & S.F. Ry. Co.*, 36 S.W. 53, 54 (Tex. 1896)); *see also Cline v. Cline*, 323 S.W.2d 276, 282 (Tex. Civ. App.—Houston [1st Dist.] 1959, writ ref'd n.r.e.). The appointment of the receiver relates back to the presentation of the application to the judge and the judge's recognition of the same by setting it down for hearing. *Huffmeyer*, 49 S.W.3d at 560 (citing *Baylor Univ. v. Chester Sav. Bank*, 82 S.W.2d 738, 744 (Tex. Civ. App.—Waco 1935, writ ref'd)).

When a trial judge has determined that the matter will be investigated and will appoint a receiver at some future date, the property is thereafter considered in the custody of the law, and is not liable to the possession or jurisdiction of any other court. *Huffmeyer*, 49 S.W.3d at 560 (citing *La Rue Holding Co. v. Essex*, 45 S.W.2d 319, 320 (Tex. Civ. App.—Fort Worth 1931, no writ)).

Receivers have no greater right to the property than the right of the property's owner at the time the receiver was appointed. *In re Renfro*, 273 S.W. 813, 814 (Tex. 1925). Consequently, the receiver does not have the power to take possession of property if a stranger to the litigation has possession of the property. *Ex parte Britton*, 92 S.W.2d 224, 226 (Tex. 1936). In that situation, the receiver can either bring suit to gain possession of the property or the receiver can make the third party a party to the proceeding in which the receivership is pending. *Id.*

A court is also limited in its ability to appoint a receiver for shares in a corporation. In *Norem v. Norem*, 105 S.W.3d 213 (Tex. App.—Dallas 2003, no pet.), the trial court appointed a receiver at the request of the wife for the community property shares in corporations operated and controlled by the husband. The husband was not the sole shareholder of the corporations at issue, and there was no evidence admitted regarding what rights the shareholders held. The court authorized the receiver to call meetings, elect the board of directors, sell corporate property, and negate corporate contracts. The court of appeals found that the trial court abused its discretion in granting certain rights to a receiver of corporate shares, when there was no evidence of the powers of the husband's shares. The court may limit a receiver's rights and powers to less than that of a shareholder but may not grant the receiver rights or powers of which there is no evidence that the shareholder possesses. *Id.* at 217.

H. Lis Pendens

In the case of a receivership over real property, it may also be necessary to file a Notice of *Lis Pendens* reflecting the appointment. A Notice of *Lis Pendens* may avoid potential miscommunications and added expense to undo a foreclosure. "No one has the authority, even under a prior deed of trust or execution, to sell property held in *custodia legis* by a duly

appointed receiver, unless the sale is authorized by the court in which the receivership is pending." *First S. Prop. Inc. v. Vallone*, 533 S.W.2d 339, 341 (Tex. 1976). The lien is not extinguished, but the enforcement of the lien is suspended until enforcement is approved by the court having custody. *American Bank/West Side v. Haven*, 728 S.W.2d 102, 104 (Tex. Civ. App.—Fort Worth 1987, no writ).

I. Inventory

A receiver is required to file an inventory as soon as possible after appointment. Tex. Civ. Prac. & Rem. Code § 64.032. Although the Texas Family Code does not require an inventory, a careful receiver will comply.

J. Receiver's Fees

A receiver's fees are considered court costs and are governed by the rules applicable to awarding court costs. *Hill v. Hill*, 460 S.W.3d 751, 767 (Tex. App.—Dallas 2015, pet. denied) (citing *Jones v. Strayhorn*, 321 S.W.2d 290, 293 (Tex. 1959)). Those rules provide that the trial court is responsible for adjudicating which party or parties will bear the costs of court. *Diggs v. VSM Fin., L.L.C.*, 482 S.W.3d 672, 674 (Tex. App.—Houston [1st Dist.] 2015, no pet.); *see Tex. R. Civ. P.* 131, 141. Fees and expenses of a receiver are entitled to top priority. *Jones*, 321 S.W.2d at 293; *State v. B & L Landfill, Inc.*, 758 S.W.2d 297, 300 (Tex. App.—Houston [1st Dist.] 1988, no writ); *Jordan v. Burbach*, 330 S.W.2d 249, 252 (Tex. Civ. App.—EI Paso 1959, writ ref'd n.r.e.). Further, the attorney's fees and related expenses incurred by a receiver also constitute "court costs." *Jordan*, 330 S.W.2d at 252; *Mid-Continent Supply Co. v. Conway*, 240 S.W.2d 796, 807 (Tex. Civ. App.—Texarkana 1951, writ ref'd n.r.e.). To the extent a receivership generates any earnings, the receiver, along with the receiver's attorney's fees, are entitled to be preferentially paid from those earnings. *Shell Petroleum Corp. v. Grays*, 87 S.W.2d 289, 293 (Tex. Civ. App.—Waco 1935, writ dism'd). That same priority also applies in cases in which the receiver sells the entire corpus of the receivership. *See, e.g., Mid-Continent Supply*, 240 S.W.2d at 807.

As long as the order appointing the receiver is not void, the receiver is entitled to be paid even if it is subsequently determined that the receivership is adjudged to be wrongful. *See Shell Petroleum*, 87 S.W.2d at 293; *Payne v. Little Kar Co.*, 266 S.W. 597, 598 (Tex. Civ. App.—Waco 1924, writ dism'd w.o.j.).

K. Receiver's Report

The receiver's final report may be contained within another pleading, such as the receiver's application to confirm sale. The final report is a requirement of case law only. *See generally Bergeron v. Sessions*, 561 S.W.2d 551, 553 (Tex. Civ. App.—Dallas 1977, writ ref'd n.r.e.); *Harrington v. Schuble*, 608 S.W.2d 253,

256 (Tex. Civ. App.—Houston [14th Dist.] 1980, no writ). The report should explain what was done by the receiver, account for all remaining property in the receiver's possession, account for expenses paid, and request the court to: direct the payment of expenses (including the receiver's fees) and the disposition of the proceeds, confirm all acts of the receiver, discharge the receiver and the receiver's surety (if any), and release the receiver of any liability.

V. CHALLENGING APPOINTMENT OF RECEIVER

A. General Immunity

Absolute immunity extends to all judicial acts unless such acts fall clearly outside of the judge's subject-matter jurisdiction. *Hawkins v. Walvoord*, 25 S.W.3d 882, 890 (Tex. App.—El Paso 2000, no pet.); *Garza v. Morales*, 923 S.W.2d 800, 802 (Tex. App.—Corpus Christi 1996, no writ). When judges delegate their authority or appoint persons to perform services for the court, their judicial immunity may follow that delegation or appointment. *Hawkins*, 25 S.W.3d at 891; *Byrd v. Woodruff*, 891 S.W.2d 689, 707 (Tex. App.—Dallas 1994, writ dismissed by agr.).

In Texas, judicial immunity applies to officers of the court who are integral parts of the judicial process, such as court-appointed receivers. *Hawkins*, 25 S.W.3d at 891; *Byrd*, 891 S.W.2d at 707. Court-appointed receivers are entitled to share in the appointing judge's absolute immunity, provided that the challenged actions were taken in good faith and were within the scope of the authority granted to the receiver. *Davis v. Bayless*, 70 F.3d 367, 373 (5th Cir. 1995); see also *Brewer v Hill*, 453 F. Supp. 67, 69 (N.D. Tex., 1978); *Byrd*, 891 S.W.2d at 708; *Conner v. Guemez*, No. 02-10-00211-CV, at *3 (Tex. App.—Fort Worth Nov. 24, 2010, no pet.) (mem. op.) (receiver functioning as arm of court in divorce case protected by derived judicial immunity).

A receiver is not required to have infallible judgment in transacting the receivership business, but is required only to exercise the same degree of discretion in discharging the duties of the receivership as the ordinarily prudent person of business would exercise in the management of the receiver's own affairs. *Morrow v. De Vitt*, 160 S.W.2d 977, 985 (Tex. Civ. App.—Amarillo 1942, writ refused w.o.m.). Thus, a receiver acting within the authority granted is not personally responsible for any loss accruing during the operation of the receivership business unless the receiver acted in bad faith or failed to use ordinary care and discretion in the management of the business. *Harrisan v. Coutret*, 157 S.W.2d 454, 456 (Tex. Civ. App.—San Antonio 1942, writ refused).

A receiver's actions may be set aside if the court finds them sufficiently irregular. *Harrington v. Schuble*, 608 S.W.2d 253, 256 (Tex. Civ. App.—Houston [14th Dist.] 1980, no writ) (setting aside receiver's actions for

failure to provide notice to all interested parties and failure to set hearing and hearing on application for sale of property).

B. Jury Trial

A party is not entitled to a jury trial on the factual issue of whether a receiver should be appointed, nor is a party entitled to have a jury decide virtually any other issue in a receivership proceeding. Such power lies solely within the court's discretionary powers. *Moody v. State*, 538 S.W.2d 158, 161 (Tex. Civ. App.—Waco 1976, writ refused); *Bergeron*, 561 S.W.2d at 269.

C. Termination by Parties

The court must terminate an order for a receivership if requested to do so by both spouses, because the only purpose of the receivership is to protect the spouses in the dissolution proceeding and preserve their property. *Mallou v. Payne & Vendig*, 750 S.W.2d 251, 255 (Tex. App.—Dallas 1988, writ denied).

VI. APPEALING RECEIVERSHIP ORDER

A. On Temporary Orders in Pending Case

1. Interlocutory Appeal

An order appointing a receiver on temporary orders can be subject to an interlocutory appeal. Tex. Fam. Code § 6.507. The filing of an interlocutory appeal will not automatically stay the appointment of the receiver. See, e.g., *Fuentes v. Zaragoza*, 534 S.W.3d 658, 666 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (appellant requested that court of appeals stay temporary orders, including appointment of receiver). Failure to challenge the appointment of a receiver under section 6.502 by interlocutory appeal can waive the right to challenge the appointment. *Sclafani v. Sclafani*, 870 S.W.2d 608, 611 (Tex. App.—Houston [1st Dist.] 1993, writ denied) (appeal of receivership order must be exercised within 20 days after order entered; complaint on appeal 5 years after receivership order entered waived), but see *Brawley v. Huddleston*, No. 02-11-00358-CV, at **7-8 (Tex. App.—Fort Worth Dec. 6, 2012, no pet.) (mem. op.) (direct appeal from interlocutory order available because a person “may” pursue an interlocutory appeal under Tex. Civ. Prac. & Rem. Code § 51.014(a)). The appointment of a receiver will not be disturbed on appeal, absent a clear abuse of discretion. *Chase Manhattan Bank v. Bowles*, 52 S.W.3d 871, 879 (Tex. App.—Waco 2001, no pet.); *Smith v. Smith*, 681 S.W.2d 793, 795 (Tex. App.—Houston [14th Dist.] 1984, no writ).

Note: If you request a *de novo* hearing of an appointment of a receiver by an associate judge, a proposed order or judgment of the associate judge is in full force and effect and is enforceable as an order or judgment of the referring court, *except for an order providing for the appointment of a receiver*. Tex. Fam. Code § 201.013(a).

2. Findings of Fact and Conclusions of Law Required No Later Than Seven Days After Receiver Appointed

If a receiver is appointed on temporary orders, the trial court must issue findings of fact and conclusions of law no later than seven days after the receiver is appointed. Tex. Fam. Code § 6.502(a)(5).² If the trial court dispenses with the issuance of a bond between the spouses as provided by Texas Family Code section 6.503(b) in connection with the receiver's appointment, the court *shall* include in the court's findings an explanation of the reasons the court dispensed with the issuance of a bond. *Id.*

3. Interlocutory Appeal Accelerated: Notice of Appeal Due Within Twenty Days After Receiver Appointed

An appeal from an interlocutory order, which in the family law context is limited to the appointment of a receiver, must be accelerated. Tex. Fam. Code § 6.507; Tex. R. App. P. 28.1. Accelerated appeals are given preference over other appeals and are put on a faster track in the appellate court. *See* Tex. R. App. P. 26.1. An accelerated appeal is perfected by filing a notice of appeal in the trial court, Tex. R. App. P. 25.1(a), within 20 days after the order appointing the receiver is signed. Tex. R. App. P. 26.1(b). Filing a motion for new trial, any other post-trial motion, or a request for findings of fact and conclusions of law will not extend the time to perfect an accelerated appeal. Tex. R. App. P. 28.1(b).

4. Standard of Review

An appellate court reviews an appointment of a receiver for an abuse of discretion. *Sheikh v. Sheikh*, 248 S.W.3d 381, 386 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Moyer v. Moyer*, 183 S.W.3d 48, 51 (Tex. App.—Austin 2005, no pet.); *Vannerson v. Vannerson*, 857 S.W.2d 659, 673 (Tex. App.—Houston [1st Dist.] 1993, writ denied).

5. Certain Orders Not Appealable

a. Order Denying Appointment of Receiver

An order denying the appointment of a receiver is an interlocutory order not subject to appeal. *Holman v. Stephen F. Austin Hotel*, 599 S.W.2d 679, 679 (Tex. Civ. App.—Austin 1980, writ dismissed); *but see Balias v. Balias, Inc.*, 748 S.W.2d 253, 255 (Tex. App.—Houston [14th Dist.] 1988, writ denied) (holding that denial of appointment of receiver appealable if appointment is sole issue) (op. on reh'g).

b. Order Dissolving Receivership

An order dissolving a receivership also is not appealable. *Waite v. Waite*, 76 S.W.3d 222, 223 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

c. Order Directing Receiver to Sell Receivership Property

An order directing a receiver to sell receivership property is an interlocutory order not subject to appeal, but it may be challenged in a mandamus action. *See Plaza Court, Ltd. v. West*, 879 S.W.2d 271, 275-76 (Tex. App.—Houston [14th Dist.] 1994, orig. proceeding).

d. Property Sold After Appeal Perfected Renders Appeal Moot

When a court appoints a receiver to sell real property, and the real property is sold after the appellant has perfected its appeal, the appeal of the appointment of the receiver becomes moot. *See Beard v. Beard*, 49 S.W.3d 40, 72 (Tex. App.—Waco 2001, pet. denied) (concluding that appeal of appointment of receiver was moot when real property that was sole subject of receivership had been foreclosed upon after appellant perfected appeal).

B. On Final Orders

1. Generally

Procedures for the appeal of the appointment of a receiver in a final order are the same as with appeals of other final orders. Usually, a notice of appeal must be filed within thirty days after the judgment is signed. Tex. R. App. P. 26.1. The notice must be filed within ninety days after the judgment is signed if any party timely files a motion for new trial, a motion to modify the judgment, a motion to reinstate after a dismissal for want of prosecution, or a request for findings of fact and conclusions of law if findings and conclusions are required by the Texas Rules of Civil Procedure or, if not required, could be properly considered by the appellate court. Tex. R. App. P. 26.1(a).

2. Order Approving Receiver's Final Report and/or Final Fees Appealable

An order approving the receiver's final report and order to discharge receiver are appealable. *Theatres of America, Inc. v. State*, 577 S.W.2d 542, 547 (Tex. Civ. App.—Tyler 1979, no writ). An order approving the final receiver's fees is also appealable. *Pink v. State*, 105 S.W.2d 265 (Tex. Civ. App.—Austin 1937), *aff'd*, 124 S.W.2d 981, 987 (Tex. 1939).

² For a great example of Findings of Fact and Conclusions of Law supporting the appointment of a receiver on temporary orders, see Appendix 2 to Chris

Nickelson's *Findings of Fact and Conclusions of Law*, State Bar of Texas Advanced Family Law Drafting 12 (2015).

C. On Temporary Orders During Appeal

A temporary order issued during an appeal under Texas Family Code section 6.709 is not subject to interlocutory appeal. Tex. Fam. Code § 6.709(m).

D. Mandamus

Occasionally, mandamus may be available to challenge receivership orders authorizing the seizure and sale of assets. *See, e.g., Plaza Court, Ltd v. West*, 879 S.W.2d 271, 275-76 (Tex. App.—Houston [14th Dist.] 1994, no writ) (finding that the parties in receivership had no adequate remedy by appeal because their assets could have been completely disposed of by the receiver before the conclusion of appeal); *Sheikh v. Sheikh*, 248 S.W.3d 381, 394 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (post-judgment order appointing master in chancery, even one that is embedded in turnover and receivership order, is interlocutory and unappealable but may be challenged by mandamus).

Mandamus will not issue when there is a clear and adequate remedy by a normal appeal, because mandamus is intended to be an extraordinary remedy available only in limited situations. *Plaza Court, Ltd.*, 879 S.W.2d at 275-76. A writ of mandamus will issue to correct a clear abuse of discretion when there is no adequate appellate remedy. *In re North Cypress Med. Ctr. Oper. Co.*, 559 S.W.3d 128, 130 (Tex. 2018); *In re State Farm Lloyds*, 520 S.W.3d 595, 604 (Tex. 2017).

VII. APPENDIX

Attached to this paper are the following sample forms:

- A. Motion to Appoint Receiver
- B. Sample Order: Appointment of Receiver on Temporary Orders
- C. Sample Order: Post-Decree Appointment of Receiver
- D. Checklist for the sale of a residence by a receiver