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This chapter was updated by  
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[360-220] **General**  
 and the Supreme Court's  
 jurisdiction to appoint a receiver  
 to be just and convenient in  
 the interests of justice in  
 proceedings,<sup>3</sup> in which the  
 jurisdiction is conferred by  
 the Court of Chancery Act 1853  
 of Judicature Act 1875. The  
 court has jurisdiction to  
 appoint a receiver

Notes

- (1) (CTH) Fed Sup Ct  
 (NT) Sup Ct  
 (NSW) Sup Ct  
 (QLD) Sup Ct  
 (SA) Sup Ct  
 (TAS) Sup Ct  
 (VIC) Sup Ct  
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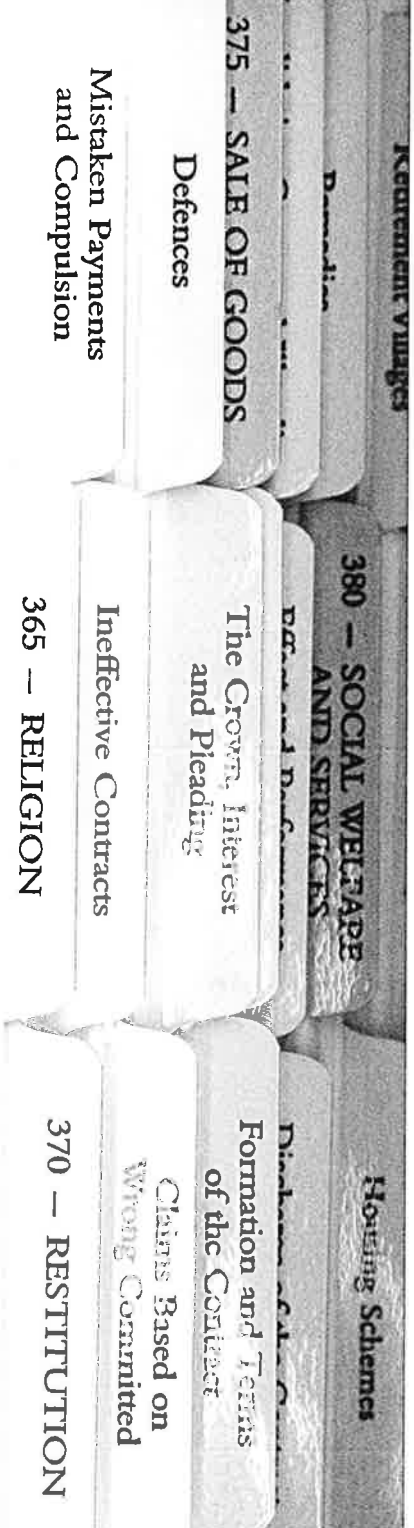
This chapter was updated by  
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(a) JURISDICTION

[360-220] **General equitable jurisdiction** The Federal Court of Australia and the Supreme Courts of the States and Territories all have a statutory jurisdiction to appoint a receiver 'in any case in which it appears to the court to be just and convenient so to do'.<sup>1</sup> A receiver may be appointed whenever the interests of justice require it.<sup>2</sup> This jurisdiction may be exercised at any stage of proceedings,<sup>3</sup> including during the trial<sup>4</sup> or after judgment.<sup>5</sup> Although the jurisdiction is conferred by statute, it is governed by the principles applied by the Court of Chancery prior to the enactment of the (UK) Supreme Court of Judicature Act 1873 (repealed).<sup>6</sup> A receiver will not be appointed unless the court has jurisdiction over the dispute between the parties.<sup>7</sup> The power to appoint a receiver includes the power to appoint a receiver and manager.<sup>8</sup>

Notes

- (CTH) Federal Court of Australia Act 1976 s 57(1)  
 (NT) Supreme Court Act 1979 s 69(1)  
 (NSW) Supreme Court Act 1970 s 67  
 (QLD) Supreme Court Act 1995 s 246  
 (SA) Supreme Court Act 1935 s 29(1)  
 (TAS) Supreme Court Civil Procedure Act 1932 s 11(12)  
 (VIC) Supreme Court Act 1986 s 37(1)  
 (WA) Supreme Court Act 1935 s 25(9).



- A similar power derives from the general powers conferred on the High Court of Australia by (CTH) Judiciary Act 1903 ss 31, 32 and on the Supreme Courts of the Australian Capital Territory by (ACT) Supreme Court Act 1933 s 26.
2. *Commonwealth v ABC2 Group Pty Ltd* (2008) 69 ACSR 228; [2008] NSWSC 138; BC200811330.
  3. *Dowling v Hudson* (1851) 14 Beav 423; 51 ER 349 (jurisdiction exercised before appearance entered). See also *Groves v Mathew* (1897) 8 QLJ (NC) 583.
  4. *Beddow v Beddow* (1878) 9 Ch D 89 at 93; 47 LJ Ch 588 per Jessel MR; *Edwards & Co v Picard* [1909] 2 KB 903; (1909) 78 LJKB 1108; 101 LT 416. This is despite the reference in the relevant statutes to appointment 'by interlocutory order': *Re Prythersch Ptylth v Williams* (1889) 42 Ch D 590 at 600; 59 LJ Ch 79; 61 LT 799 per North J.
  5. *Ballabil Holdings Pty Ltd v Hospital Products Ltd* (1985) 1 NSWLR 155; 3 ACLC 27; *Anglo-Italian Bank v Davies* (1878) 9 Ch D 275 at 286 per Jessel MR.
  6. *North London Railway Co v Great Northern Railway Co* (1883) 11 QBD 30; 48 LT 65; *Holmes v Millage* [1893] 1 QB 551 at 557; (1893) 68 LT 205, CA. As to the Australian Capital Territory see (ACT) Supreme Court Act 1933 s 26(1).
  7. *JH Rayner (Mining Lane) Ltd v Dept of Trade and Industry* [1990] 2 AC 418; [1990] 3 WLR 969.
  8. *Australian Industry Development Corp v Co-op Farmers & Graziers Direct Meat Supply Ltd* [1978] VR 633; (1978) 3 ACLR 543. In the Federal Court of Australia and the Supreme Courts of most States and Territories this is recognised by the rules of court: (CTH) Federal Court Rules 2011 r 14.21; (ACT) Court Procedures Rules 2006 r 773(1); (NT) Supreme Court Rules r 39.01(2); (SA) Supreme Court Civil Rules 2006 r 4; (TAS) Supreme Court Rules 2000 r 5; (VIC) Supreme Court (General Civil Procedure) Rules 2005 r 39.01; (WA) Rules of the Supreme Court O 1 r 4.
- There are no equivalent provisions in New South Wales and Queensland.
- In relation to corporate appointments, (CTH) Corporations Act 2001 s 9 defines 'receiver' to include 'receiver and manager'. See also CORPORATIONS [120-125].

[360-225] **Special statutory jurisdiction** In addition to the general statutory power, specific statutory power to appoint a receiver is conferred upon the court:

- (1) where an investigation is being carried out, or a prosecution or civil proceeding has been commenced, under the (CTH) Corporations Act 2001;<sup>1</sup>
- (2) in respect of actual or threatened breaches of Chapter 7 of the (CTH) Corporations Act 2001, dealing with financial services and markets;<sup>2</sup>
- (3) upon application by a member<sup>3</sup> of a company if that member believes the affairs of the company<sup>4</sup> are being conducted in an oppressive, unfairly prejudicial or discriminatory manner against a member or members, or in a manner contrary to the interests of members as a whole;<sup>5</sup> and
- (4) in all States and Territories except South Australia, in respect of property of a solicitor in defined circumstances.<sup>6</sup>

#### Notes

1. (CTH) Corporations Act 2001 s 1323(1)(h). See generally *Australian Securities Commission v Cooke* (1996) 22 ACSR 580; 15 ACLC 435. The provision allows the

granting of les freezing order: ACSR 360; 25 and Investments ACLC 581; [2 receiver in suc and [360-315]

2. (CTH) Corp-breaches relati [120-12740]; s
3. 'Member' is d
4. Including an : a resolution ( company: ibid
5. Ibid ss 232(d) ACSR 603; B restrictions or to consult or management; substantial ina and the holdi
6. (ACT) Lega (NT) Lega (NSW) Lega (QLD) Lega (TAS) Lega (VIC) Lega (WA) Lega There are nc

(b)

[360-230] **Applic** including a person : apply for the appo receiver may be ap appoint a receiver

#### Notes

1. *Topping v S*
2. *National Att* nom Bond i 457-8; (199 (CTH) Fed (ACT) Ce (NT) Su (NSW) U (VIC) Su There are i

granting of less drastic relief than the appointment of a receiver, such as an asset freezing order: *Australian Securities and Investments Commission v Burnard* (2007) 64 ACSR 360; 25 ACLC 1505; [2007] NSWSC 1217; BC200709265; *Australian Securities and Investments Commission v Carey (No 3)* (2006) 232 ALR 577; 57 ACSR 307; 24 ACLC 581; [2006] FCA 433; BC200602423. As to the court's power to appoint a receiver in such circumstances see CORPORATIONS [120-12735]; see also [360-235] and [360-315].

2. (CTH) Corporations Act 2001 s 1101B(4)(g), 1101B(9). As to actual or threatened breaches relating to trading or dealing in securities see further CORPORATIONS [120-12740]; see also [360-235] and [360-315].
3. 'Member' is defined in *ibid* s 231.
4. Including an actual or proposed act or omission by or on behalf of the company or a resolution (or proposed resolution) of members or a class of members of the company: *ibid* s 232(a)-(c).
5. *ibid* ss 232(d), 232(e), 233(1)(h); *McMillan v Toledo Enterprises Int'l Pty Ltd* (1995) 18 ACSR 603; BC9501938 (unfair conduct includes denial of access to company books; restrictions on access to finances of company not applying to other members; failure to consult or inform of company affairs and exclusion from important aspects of management; failure to keep books of account or keeping of accounts that contained substantial inaccuracies; fundraising practices that were oppressive to certain members; and the holding of invalid directors' meetings).
6. (ACT) Legal Profession Act 2006 s 494  
(NT) Legal Profession Act 2006 s 586  
(NSW) Legal Profession Act 2004 s 630  
(QLD) Legal Profession Act 2007 s 512  
(TAS) Legal Profession Act 2007 s 538  
(VIC) Legal Profession Act 2004 s 5.5.1  
(WA) Legal Profession Act 2008 s 489.  
There are no equivalent provisions in South Australia.

## (b) APPLICATION FOR APPOINTMENT

### (i) Entitlement

**[360-230] Application by party to action** Any party to an action, including a person served with notice of, or attending court in, the action, may apply for the appointment of a receiver.<sup>1</sup> However, in cases of emergency, a receiver may be appointed before an action is brought.<sup>2</sup> The court will not appoint a receiver except at the instance of a party who is before the court.<sup>3</sup>

#### Notes

1. *Topping v Se arson* (1862) 2 Hem & M 205; 71 ER 441.
2. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 at 541 sub nom *Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 1 ACSR 445 at 457-8; (1990) 8 ACLC 330 at 342; BC9000884, SC(VIC), Full Court. See further: (CTH) Federal Court Rules 2011 r 7.01  
(ACT) Court Procedures Rules 2006 r 706(2)(d)  
(NT) Supreme Court Rules rr 4.08, 39.02(1)  
(NSW) Uniform Civil Procedure Rules 2005 r 25.2(1)(e)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 rr 4.08, 39.02.  
There are no equivalent provisions in the other jurisdictions.

3. *McMeckan v Aitken* (1895) 21 VLR 65 at 69-70; 1 ALR 10 per Holroyd J.

**[360-235] Application by public officials and bodies** The Australian Securities and Investments Commission ('ASIC') or any aggrieved person may apply for the appointment of a receiver<sup>1</sup> where an investigation is being carried out or a prosecution or civil proceedings have begun under the (CTH) Corporations Act 2001 (the 'Act').<sup>2</sup> ASIC may also apply where there have been or may be actual or threatened breaches of the provisions of the Act dealing with financial services and markets.<sup>3</sup>

Orders may also be made for the appointment of a receiver as a means of implementing the winding up of an unregistered managed investment scheme under section 601EE of the Act.<sup>4</sup>

#### Notes

1. A receiver or trustee may be appointed with respect to a natural person and a receiver or a receiver and manager with respect to a body corporate: (CTH) Corporations Act 2001 s 1323(1)(h). See generally *Australian Securities Commission v Cooke* (1994) 22 ACSR 580; 15 ACLC 435; *Australian Securities and Investments Commission v Carr* (No 3) (2006) 232 ALR 577; 57 ACSR 307; 24 ACLC 581; [2006] FCA 411; BC200602423.
2. (CTH) Corporations Act 2001 s 1323(1)(h). However the power is generally only to be used as a last resort (*Australian Securities and Investments Commission v Lee* (2005) FCA 508; BC200702465 at [12]), and other less drastic remedies may be ordered (*Australian Securities and Investments Commission v Burnard* (2007) 64 ACSR 360; 23 ACLC 1505; [2007] NSWSC 1217; BC200709265). As to an appointment in such circumstances see CORPORATIONS [120-12735]; see also [360-225]. As to ASIC generally see CORPORATIONS [120-250]-[120-355].
3. (CTH) Corporations Act 2001 s 1101B(4)(g), 1101B(9). As to actual or threatened breaches relating to trading in securities see CORPORATIONS [120-12740]; see also [360-225].
4. *Australian Securities and Investment Commission v Chase Capital Management Pty Ltd* (2001) 36 ACSR 778; 19 ACLC 476; [2001] WASC 27; BC200100135; *Australian Securities and Investment Commission v Takanui Pty Ltd* (No 2) (2002) 194 ALR 742; 43 ACSR 334; [2002] NSWSC 987; BC200206299.

**[360-240] Application on behalf of person under disability** Provision is made in some jurisdictions for the appointment by the court of a person called variously a receiver, a manager, a committee or a controller, with respect to the estate of a mentally ill or incapable person.<sup>1</sup>

#### Note

1. See, for example, *G.N.M v ER* [1983] 1 NSWLR 144 at 148 per Powell J. As to the management of affairs of a mentally ill person generally see MENTAL HEALTH AND INTELLECTUAL DISABILITY [285-65].

### (ii) Time of Application

**[360-245] Need for existing action** Generally, no appointment of a receiver may be made unless it is sought in a pending existing action,<sup>1</sup> but there are exceptions to this rule.<sup>2</sup>

#### Notes

1. *Salter v Salter* [1896] P 291;
2. See [360-230] note 2.

**[360-250] Ex parte application for receiver on an ex parte application in an emergency** and, where possible, given to the defendant.<sup>2</sup> This provision applies to applications for a receiver<sup>3</sup> and to applications for a receiver and manager<sup>4</sup> in view of the drastic effect of the appointment as to damages by the applicant otherwise provides.<sup>6</sup> The applicant must meet the receiver's costs, which gives the receiver a chance to put his or her case.

#### Notes

1. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* (1990) 8 ACLC 330; and Territories, express provision (ACT) Court Procedures (NT) Supreme Court Rules (VIC) Supreme Court (GWA) Rules of the Supreme Court.
2. *Pickwick International Inc* (GWA) 384 at 385; [1972] 1 WLR 1172.
3. *Corporate Affairs Commission v Bond Brewing Holdings Ltd* (1986) 11 ACLR 566 at 57.
4. *Re Potts; Ex parte Taylor* [1896] 1 WLR 1001; appointment in the case of a receiver and manager of equitable execution generally.
5. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* (1990) 8 ACLC 330; BC9000884; *Bond Brewing Holdings Ltd v Bond Brewing Holdings Ltd* (1990) 8 ACLC 722. However the court will not make an order for the undertaking where the public interest is not served. *Cometion Pty Ltd* [2000] NSW Commercial Agent.
6. See, for example, (CTH) Corporations Act 2001 s 1323(1)(h) expressly provided that the court may grant interim relief.
7. *Australian Securities Commission v Takanui Pty Ltd* (No 2) (2002) 194 ALR 742; 43 ACSR 334; Fed C of A.

**[360-255] Application by plaintiff to seek the appointment of a receiver** The court may appoint a receiver to the plaintiff,<sup>1</sup> although the plaintiff or she has acknowledged service.

Notes

1. *Salter v Salter* [1896] P 291; (1896) 75 LT 7.
2. See [360-230] note 2.

**[360-250] Ex parte applications** The court has power to appoint a receiver on an ex parte application but will do so only in cases of real emergency<sup>1</sup> and, where possible, will require that at least informal notice be given to the defendant.<sup>2</sup> This principle applies equally to applications by public bodies<sup>3</sup> and to applications for appointment of a receiver by way of equitable execution.<sup>4</sup> In view of the drastic nature of such an appointment, an undertaking as to damages by the applicant will generally be required<sup>5</sup> unless legislation otherwise provides.<sup>6</sup> The applicant should also, initially, give an undertaking to meet the receiver's costs, which should be reserved until the defendant has had a chance to put his or her case.<sup>7</sup>

Notes

1. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 at 541 sub nom *Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 1 ACSR 445 at 457-8; (1990) 8 ACLC 330 at 342; BC9000884, SC(VIC), Full Court. In some States and Territories, express provision is made for such applications: (ACT) Court Procedures Rules 2006 r 767 (NT) Supreme Court Rules r 39.02(2) (VIC) Supreme Court (General Civil Procedure) Rules 2005 r 39.02 (WA) Rules of the Supreme Court O 51 r 1(3).
2. *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd* [1972] 3 All ER 384 at 385; [1972] 1 WLR 1213 at 1215 per Megarry J.
3. *Corporate Affairs Commission v Glauber Co Ltd* (1985) 3 ACLC 492 at 495 per Cohen J, SC(NSW); *Corporate Affairs Commission (NSW) v Lombard Nash International Pty Ltd* (1986) 11 ACLR 566 at 571; 5 ACLC 269 at 273 per Young J, SC(NSW).
4. *Re Potts; Ex parte Taylor* [1893] 1 QB 648; [1891-94] All ER Rep Ext 1544. As to appointment in the case of equitable execution see [360-310], [360-385]. As to equitable execution generally see PRACTICE AND PROCEDURE [325-10000]-[325-10010].
5. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 sub nom *Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 1 ACSR 445; (1990) 8 ACLC 330; BC9000884, SC(VIC), Full Court (affirmed *National Australia Bank Ltd v Bond Brewing Holdings Ltd* (1990) 169 CLR 271; 92 ALR 49; 64 ALJR 239; 1 ACSR 722). However the court retains a discretion and may decline to require an undertaking where the public interest is involved: *Reuters Australia Pty Ltd v The Credit Connection Pty Ltd* [2000] NSWSC 221; BC200001168 (an application under the (NSW) Commercial Agents and Private Inquiry Agents Act 1963 (repealed)).
6. See, for example, (CTH) Corporations Act 2001 ss 1101B(6), 1323(4), where it is expressly provided that the court must not require such an undertaking as a condition of granting interim relief.
7. *Australian Securities Commission v Aust-Home Investments Ltd* (1993) 116 ALR 523; 11 ACSR 136, Fed C of A.

**[360-255] Application by defendant** A defendant may ordinarily only seek the appointment of a receiver after acknowledging service, and on notice to the plaintiff,<sup>1</sup> although the defendant may be able to apply ex parte once he or she has acknowledged service.<sup>2</sup>

Mistaken Payments and Compulsion

Defences

365 - RELIGION

Ineffective Contracts

The Crown, Interest and Pleading

370 - RESTITUTION

Claims Based on Wrong Committed

Formation and Terms of the Contract



Notes

1. (CTH) Federal Court Rules 2011 r 8.01.
2. *Ibid* r 14.21. See also *ibid* r 1.36. For circumstances under which the application will be made in open court or in chambers see (CTH) Federal Court of Australia Act 1976 s 17.
3. (NSW) Uniform Civil Procedure Rules 2005 r 6.4(2)(f) (summons)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 4.05 (originating motion).
4. (NSW) Supreme Court Act 1970 s 11  
(VIC) Supreme Court Act 1986 s 4(1).
5. (ACT) Court Procedures Rules 2006 rr 35, 767  
(NT) Supreme Court Rules r 4.06 (originating motion)  
(QLD) Uniform Civil Procedure Rules 1999 r 10 (application)  
(SA) Supreme Court Civil Rules 2006 r 34 (summons)  
(TAS) Supreme Court Rules 2000 r 90 (application in chambers)  
(WA) Rules of the Supreme Court O 4 r 1, O 51 r 1 (summons).
6. As to *ex parte* applications see [360-250].
7. (CTH) Federal Court Rules O 19 r 2  
(ACT) Court Procedures Rules 2006 r 767  
(NSW) Uniform Civil Procedure Rules 2005 r 6.2(3)  
(QLD) Uniform Civil Procedure Rules 1999 r 31(5)  
(SA) Supreme Court Civil Rules 2006 r 39  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 6.02.  
There are no express provisions in the Northern Territory, Tasmania and Western Australia; however, note the following provisions:  
(NT) Supreme Court Rules r 46.03  
(TAS) Supreme Court Rules 2000 r 531.  
(WA) Rules of the Supreme Court O 9 r 1.
8. *Re Lloyd; Allen v Lloyd* (1879) 12 Ch D 447; 41 LT 171.

**[360-266] Application in existing proceedings** Application for the appointment of a receiver in proceedings which are already on foot is made by motion in the proceedings.<sup>1</sup>

A receiver may be appointed on appeal even though the appointment was not sought in the court below.<sup>2</sup>

Notes

1. *Norton v Gover* [1877] WN 206. See:  
(CTH) Federal Court Rules 2011 r 17.01 (interlocutory application)  
(ACT) Court Procedures Rules 2006 rr 766, 6006  
(NT) Supreme Court Rules r 4.02 (summons)  
(NSW) Uniform Civil Procedure Rules 2005 r 18.1  
(QLD) Uniform Civil Procedure Rules 1999 r 31  
(SA) Supreme Court Civil Rules 2006 r 131 (application)  
(TAS) Supreme Court Rules 2000 r 524 (application)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 4.02 (summons)  
(WA) Rules of the Supreme Court O 4 r 2, O 51 r 1.
2. *Hyde v Warden* (1876) 1 Ex D 309.

(iv) Evidence in Support

**[360-270] Affidavits** The affidavit or affidavits in support of the application to appoint a receiver must set out the evidence on which it is alleged to be

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just and convenient that an appointment be made, and the cogency of the evidence required will vary according to the degree of urgency and the extent of the appointment sought.<sup>1</sup> In most jurisdictions, the affidavits may be sworn before or after the commencement of the proceedings.<sup>2</sup>

## Notes

1. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 at 539, *nom Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 1 ACSR 445 at 455; (1990) 8 ACLC 330 at 340; BC9000884, SC(VIC), Full Court.
2. (CTH) Federal Court Rules 2011 r 29.01  
(ACT) Court Procedures Rules 2006 r 6714  
(NT) Supreme Court Rules r 43.07  
(SA) Supreme Court Civil Rules 2006 r 162(10)  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 43.07.  
There are no equivalent provisions in the other jurisdictions. However the courts have a general power to allow the use of an affidavit despite any irregularity:  
(NSW) Uniform Civil Procedure Rules 2005 r 35.1  
(QLD) Uniform Civil Procedure Rules 1999 r 436  
(TAS) Supreme Court Rules 2000 r 506  
(WA) Rules of the Supreme Court O 37 r 5.

**[360-275] Consent and fitness of nominee** A person will not be appointed as a receiver unless he or she has first consented to so act, either personally in court or in writing.<sup>1</sup> The consent is generally witnessed and verified by the affidavit of the attesting witness.<sup>2</sup> In most cases, an affidavit to the effect that the nominee is a fit and proper person is required.<sup>3</sup> If there are competing nominees, both of whom are fit, the nominee of the applicant is usually preferred.<sup>4</sup> The receiver may be discharged if such an affidavit is found to contain misleading statements.<sup>5</sup> In the case of an appointment to the assets of a corporation, the nominee must be a registered liquidator and must not be related to the corporation in various specified ways.<sup>6</sup>

## Notes

1. *Watt v McCumie* (1899) 5 ALR (CN) 13. See also:  
(ACT) Court Procedures Rules 2006 r 766(1)  
(NT) Supreme Court Rules r 39.04  
(QLD) Uniform Civil Procedure Rules 1999 r 267(1)  
(TAS) Supreme Court Rules 2000 r 447  
(VIC) Supreme Court (General Civil Procedure) Rules 2005 r 39.04.  
There are no equivalent provisions in the other jurisdictions.
2. For a form of consent and affidavit verifying see *Court Forms, Precedents and Pleadings* — *New South Wales*, Vol 3, RECEIVERS, Pr 450.15, 450.20.
3. *National Australia Bank Ltd v Bond Brewing Holdings Ltd* [1991] 1 VR 386 at 536, *nom Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 1 ACSR 445 at 472-3; (1990) 8 ACLC 330 at 353; BC9000884, SC(VIC), Full Court; *Re Haydon Silkstone Colliery Co Ltd* (1883) 53 LJ Ch 352. For a form of affidavit of fitness see *Court Forms, Precedents and Pleadings* — *New South Wales*, Vol 3, RECEIVERS, Pr 450.20.
4. *Parkinson v Morkaya* [2008] NSWSC 1183; BC200809837 at [3] per Brereton J. See also [360-350].
5. *Re Church Press Ltd; Victoria House Printing Co Ltd v Church Press Ltd* (1917) 116 LT 247 at 249 per Eve J, Ch D.

6. (CTH) Corporations Act 2001 s 471(1), (2). See also *Re Pollnow Pty Ltd* (1990) 1 ACSR 445 at 446, generally *Jenner v Jenner* (1990) 1 ACSR 445. As to appointment of a receiver to the assets of a corporation, see *Re Church Press Ltd* (1917) 116 LT 247. See also *Re Church Press Ltd* (1917) 116 LT 247.

(c) G

**[360-280] Enforcement of a secured creditor's right to sell** The court will appoint a receiver to enforce the suit of a secured creditor or not the statutory power of sale if there is no express provision for the sale of the document.<sup>3</sup> Thus an appointment of a principal<sup>4</sup> or interest<sup>5</sup> in the document is an event that renders the appointment enforceable. The court will appoint a receiver if those relied on in instituting the suit are not to be made pending the hearing of the application, or after the account,<sup>10</sup> or after the order absolute.<sup>12</sup> The application of a substituted trustee to possession, unless that trustee is satisfied or the court is satisfied that the receiver may also be appointed, the receiver's powers are

## Notes

1. That is, the position of a secured creditor.
2. *Tillett v Nixon* (1990) 1 ACSR 445 at 446.
3. *McMahon v Nicholson* (1990) 1 ACSR 445 at 446, respect to corporations.
4. *Hopkins v Wore* (1990) 1 ACSR 445 at 446.
5. *Bissill v Bradford* (1990) 1 ACSR 445 at 446.
6. *Hodson v Tea* (1990) 1 ACSR 445 at 446.
7. *Re Carshalton* (1990) 1 ACSR 445 at 446.
8. *Borough of Par* (1990) 1 ACSR 445 at 446.
9. *Tillett v Nixon* (1990) 1 ACSR 445 at 446.
10. *Re Crompton* (1990) 1 ACSR 445 at 446.
11. *Weston v Levy* (1990) 1 ACSR 445 at 446.
12. *Wills v Luff* (1990) 1 ACSR 445 at 446.
13. *Collie v Merla* (1990) 1 ACSR 445 at 446. Warren J.

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6. (Cth) Corporations Act 2001 s 418. This provision applies to court as well as private appointments: *Garden Meews-St Leonards Pty Ltd v Butler Pollnow Pty Ltd (No 2)* (1984) 9 ACLR 117 at 119; BC8400237 sub nom *Garden Meews-St Leonards Pty Ltd v Butler Pollnow Pty Ltd (No 3)* (1984) 2 ACLC 651 at 653 per McLelland J, SC(NSW). See generally *Jenner v Selmoore Pty Ltd* (1997) 74 FCR 526; 23 ACSR 552; 15 ACLC 970. As to appointment of a qualified receiver of a corporation by the court see CORPORATIONS [120-12710] note 7.

(c) GROUNDS FOR APPOINTMENT

**[360-280] Enforcement of security** The court will appoint a receiver at the suit of a secured creditor whose security has become enforceable whether or not the statutory power<sup>1</sup> is available,<sup>2</sup> and notwithstanding that there is express provision for the appointment of a receiver made in the security document.<sup>3</sup> Thus an appointment will be made on default in the payment of principal<sup>4</sup> or interest<sup>5</sup> or on the occurrence or non-occurrence of any other event that renders the security enforceable.<sup>6</sup> A receiver will be appointed if enforceability is established at the hearing even if it is on grounds different to those relied on in instituting proceedings, or not in existence at that time.<sup>7</sup> The court will appoint a receiver to collect rent and manage the security where an immediate sale would not be advantageous.<sup>8</sup> An appointment will readily be made pending the hearing of an action for foreclosure<sup>9</sup> or for the taking of an account,<sup>10</sup> or after the making of an order for foreclosure nisi,<sup>11</sup> but not after an order absolute.<sup>12</sup> Nor will an appointment generally be made on the application of a subsequent mortgagee where the prior mortgagee is in possession, unless that mortgagee has notice of and consents to the appointment, or the court is satisfied that nothing remains due to the prior mortgagee.<sup>13</sup> A receiver may also be appointed in aid of a private appointment where the private appointee's powers are uncertain.<sup>14</sup>

Notes

1. That is, the power contained in the various property statutes: see [360-25].
2. *Tillett v Nixon* (1883) 25 Ch D 238; [1881-85] All ER Rep 427.
3. *McMahon v North Kent Ironworks Co* [1891] 2 Ch 148. As to specific instances with respect to corporations see CORPORATIONS [120-12710].
4. *Hopkins v Worcester and Birmingham Canal Proprietors* (1868) LR 6 Eq 437; 37 LJ Ch 729.
5. *Bissill v Bradford Tramways Co* [1891] WN 51.
6. *Hodson v Tea Co* (1880) 14 Ch D 859 (the presentation of a winding-up petition).
7. *Re Carshalton Park Estate Ltd* [1908] 2 Ch 62.
8. *Borough of Parramatta v Powell* (1906) 22 WN (NSW) 218.
9. *Tillett v Nixon* (1883) 25 Ch D 238; [1881-85] All ER Rep 427.
10. *Re Crompton & Co Ltd* [1914] 1 Ch 954.
11. *Weston v Levy* [1887] WN 76.
12. *Wills v Luff* (1888) 38 Ch D 197; 57 LJ Ch 563; 36 WR 571.
13. *Collie v Merlaw Nominees Pty Ltd (in liq)* [2001] VSC 60; BC200100899 at [13] per Warren J.

Mistaken Payments and Compulsion

Defences

Ineffective Contracts

365 - RELIGION

370 - RESTITUTION

Wrong Committed