

Receiverships are covered under both the federal *Bankruptcy and Insolvency Act* as well as Alberta's *Business Corporations Act*. Each piece of legislation sets out the rights and responsibilities of the parties.

Types of Receiverships

A creditor may have a receiver appointed either **privately** or by a **Court order**.

Lenders often complete security agreements with borrowers as a condition to loaning money. A security agreement will usually provide the lender with authority to appoint a receiver in the event of a default by the borrower (debtor). There must be a default under a security agreement before a receiver can be appointed. Security agreements can involve covenants as well as obligations. A debtor employer can be placed into receivership for default of a covenant (e.g., not spending enough on upkeep) even without a default of an obligation (e.g., repayment of a loan).

Where a security agreement contains no provisions for the appointment of a receiver, then no right to appoint a private receiver exists. However, a secured creditor can still apply for a Court appointed receiver.

A secured creditor will generally proceed with a Court appointed receiver, rather than a private appointment, when:

- the case is likely to be a complex receivership with contentious issues to resolve;
- the situation involves foreign jurisdiction, e.g., an American subsidiary is involved;
- the case involves a fairly large business, generally with numerous complex issues.

Receivership or Bankruptcy

It is more common for a creditor to proceed by way of bankruptcy instead of receivership. A creditor generally chooses a bankruptcy over a receivership to:

- Reverse priorities. Generally in a receivership, section 109 of the *Employment Standards Code* gives employee earnings priority over secured creditors. This reverses in a bankruptcy, where the secured creditors have priority over employee earnings.
- Increase authority. Unlike a receiver, a trustee in a bankruptcy has extensive powers. This is particularly useful in investigations where fraudulent activity has been alleged.

Receiverships and bankruptcy proceedings usually occur concurrently, especially where large companies are involved.

Receiverships are covered under both the federal *Bankruptcy and Insolvency Act* and *Alberta's Business Corporations Act*. Each piece of legislation sets out the rights and responsibilities of the parties. Where there is a conflict between the two, the *Bankruptcy and Insolvency Act* will prevail.

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- Contact our Information Centre at: **427-3731**
(Toll-free in Alberta by dialing 310-0000, then 780-427-3731)
- Visit our Web site at: www.gov.ab.ca/hre/employmentstandards

Role of Employment Standards in receiverships

A receivership has **no effect** on the jurisdiction of Employment Standards to accept and investigate complaints, but **does** affect the way in which complaints are resolved.

In a receivership, the investigating officer will:

- contact the receiver and provide details of all claims received to date (send copies of complaint forms);
- notify the receiver of their obligation to pay employees under the *Code's* deemed trust provisions;
- ask the receiver to advise how they propose to assess and pay the amounts owing to employees in question, and to notify Employment Standards of any payments made to these employees;
- ask the receiver to contact the investigating officer if they require assistance in assessing the amounts owed to employees.

A receivership must be registered with the Office of the Superintendent of Bankruptcy (OSB). Contact the OSB to determine:

- whether a receiver has been appointed for a company;
- the date of appointment;
- the name of the receiver.

Office of the Superintendent of Bankruptcy
Edmonton ph. 780/495-2476, fax 780/495-2466

Office of the Superintendent of Bankruptcy
Calgary ph. 403/292-5607, fax 403/292-5188

Priorities

In a receivership, the deemed trust provisions in section 109 of the *Code* provide employees with priority over secured creditors up to \$7,500.00 per employee for wages, overtime, vacation and general holiday pay owing. Note: termination pay is **not** included in this listing.

This priority over secured creditors under section 109 of the *Code* is subject to a “purchase money security interest” (pmsi) as defined in the *Personal Property Security Act*. A typical example of a ‘pmsi’ is a loan provided to purchase a specific item where the loan funds are directly applied to the purchase of the asset, e.g., a bank loan applied directly to the purchase of a vehicle. It must be noted that there are special registration and timing requirements to create a ‘pmsi’.

Status of termination pay

An employee is entitled to termination pay even if their employment terminates because of a receivership. A claim for termination pay has no special priority under section 109 of the *Code* and will receive the same consideration in asset-division as any other unsecured creditor.

Responsibility for payment of earnings in a receivership

Employers involved in a receivership will be in one of the following situations:

- Employees whose employment terminates upon appointment of the receiver. In this case, the debtor business is responsible for employee earnings.
- Employees who continue to work after a receiver is appointed. In this case, all employee earnings after the receivership are the responsibility of the receiver. Any arrears in employee earnings prior to the receivership will be paid by the receiver out of the assets of the business, if any.
- Employees who are newly hired and work exclusively for the receiver. In this case, the receiver is responsible for employee earnings.

In a receivership, employee earnings often exceed the employer’s business assets. Where the business assets are insufficient to cover employee earnings, Employment Standards will attempt to collect any shortfall under the deemed trust provisions in section 109 of the *Code*. Corporate directors may also be personally liable under the provisions of section 112 of the *Code*.