

Legislative Studies and Reports

1. Source: McKinney General Corporation Law § 156.
 2. Changes: Reworded.
- Comment: General Corporation Law § 156 limited the authority of the attorney-general to receivers of an insolvent corporation. This has been changed in the belief that authority to act as provided in this section should exist in all receiverships under the article.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1214.
Removal of receiver, see CPLR 6405.

Library References

Corporations ↯511, 558, 621(8), 622(5), 671. C.J.S. Corporations §§ 1357, 1487 et seq., 1752, 1757, 1928, 1929.

§ 1215. Resignation by receiver; filling any vacancy

(a) A receiver may petition the court appointing him for an order to show cause why he should not be permitted to resign.

(b) The petition shall be accompanied by a verified account of all the assets of the corporation received by him, of all payments or other disposition thereof made by him, of the remaining assets of the corporation in respect to which he was appointed receiver and the situation of the same, and of all his transactions as receiver. Thereupon, the court shall grant an order directing notice to be given to the sureties on his official bond and to all persons interested in the property of the corporation to show cause, at a time and place specified, why the receiver should not be permitted to resign. Such notice shall be published once in each week for six successive weeks in one or more newspapers as the court shall direct. If it shall appear that the proceedings of the receiver in the discharge of his trust have been fair and honest and that there is no good cause to the contrary, the court shall make an order permitting such receiver to resign. Thereupon he shall be discharged and his powers as receiver shall cease, but he shall remain subject to any liability incurred prior to the making of such order. The court, in its discretion, may require the expense of such proceeding to be paid by the receiver presenting the petition.

(c) Any vacancy created by resignation, removal, death or otherwise, may be filled by the court, and the property of the receivership shall be delivered to the remaining receivers or, if there are none, to the successor appointed by the court. The court may summarily enforce delivery by order in the action or special proceeding in which the receiver was appointed.

(L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, §§ 157, 158, 167; repealed by L.1973, c. 451, § 2.

For history of said section 167, see derivation note under section 1206.

Said sections 157, 158, formerly 274 and 275; renumbered 157 and 158, re-

spectively, L.1929, c. 650. Sections 274 and 275 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 85 and R.S., pt. 2, c. 5, tit. 1, art. 8, §§ 49, 51-56, 60, 62, respectively.

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1. Source: McKinney General Corporation Law §§ 157, 158 and 167.
 2. Changes: Combined and reworded.
- Comment: Paragraphs (a) and (b) are derived from General Corporation Law § 158 and paragraph (c) from Gen. Corp.L. § 157 and the final two sentences of General Corporation Law § 167. The remaining portion of General Corporation Law § 167 has been transferred to § 1206.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1215.

Library References

Corporations ↯511, 558, 621(8), 671. C.J.S. Corporations §§ 1357, 1487 et seq., 1752, 1928, 1929.

Notes of Decisions

1. Permission to resign

Where it appears that no property of the corporation ever came into the hands of the receiver and the order appointing him has been vacated and set aside, it

has been held that he is entitled to his discharge. *People v. Bushwick Chemical Co.*, 1892, 63 Hun 633, 18 N.Y.S. 542, 45 N.Y.St.R. 329, affirmed 133 N.Y. 694, 31 N.E. 627.

§ 1216. Final accounting; notice; duty of attorney-general

(a) Within one year after qualifying, the receiver shall apply to the court for a final settlement of his accounts and for an order for distribution, or, upon notice to the attorney-general, for an extension of time, setting forth the reasons therefor. If the receiver has not so applied for a settlement of his accounts or for such extension of time, the attorney-general or any creditor or shareholder may apply for an order that the receiver show cause why an accounting and distribution should not be had, and after the expiration of eighteen months from the time the receiver qualified, it shall be the duty of the attorney-general to apply for such an order on notice to the receiver.

(b) Before presenting a final account, the receiver shall give notice of his intention to file it by publication, under subparagraph (a)(1) of section 1207 (Duties of receiver upon appointment), setting

forth the time and place of filing and presentation to the court. The receiver shall also give not less than eight days' written notice to the sureties on his official bond.

(c) Upon presentation of such account, the court shall hear the allegations, objections and proofs of all parties interested and allow or disallow such account, in whole or in part, and make a final order. The court may refer the account and the hearing, in whole or in part, to a referee who shall report thereon to the court. (L.1961, c. 855.)

Historical Note

Derivation. Gen.Corp.Law of 1929, §§ 155, 188 to 190; repealed by L.1973, c. 451, § 2. 268 derived from CCP, § 2431b, added L. 1906, c. 293.

Said section 155, formerly 227, added L. 1909, c. 240, § 40; renumbered 155, L. 1929, c. 650. Section 227 derived from CCP, § 175, amended L. 1877, c. 416; L. 1896, c. 94.

Said section 188, formerly 268; renumbered 188, L. 1929, c. 650. Section 269 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, § 87. Said section 190, formerly sections 270 and 271; renumbered 190, L.1929, c. 650. Sections 270 and 271 derived from R.S., pt. 3, c. 8, tit. 4, art. 3, §§ 89, and 88, respectively.

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1. Source: McKinney General Corporation Law §§ 155, 188, 189 and 190. Comment: Derivative General Corporation Law sections are retained without substantial change.
2. Changes: Consolidated.

Cross References

Comparable provisions, see Not-For-Profit Corporation Law § 1216.

West's McKinney's Forms

Notice of intention by receiver to file accounts for final settlement, see BCL Forms § 12:32.
Order of reference of account of receiver, see BCL Forms § 12:33.

Library References

Corporations ⇨511, 558, 622(5), 687. C.J.S. Receivers § 365 et seq.
Receivers ⇨190 et seq.
C.J.S. Corporations §§ 1357, 1487 et seq., 1757, 1892.

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1. Necessity of accounting

A receiver when called to account cannot take advantage of the fact that the order by which he was appointed was void, where he has claimed to act and has acted in pursuance of such order; in such a case it has been said that he was a receiver de facto, for the time being and cannot escape an accounting for the moneys which came into his hands. *O'Mahoney v. Belmont*, 1875, 62 N.Y. 133.

Upon the theory that the court will not authorize a useless and expensive ceremony, a receiver will not be required to file an account where it appears that he has never been in possession of any corporate assets, as in such a case there is nothing to account for. *Lyons v. Atlanta Hill Gold Mining, etc., Co.*, 1891, 60 Hun 578, 14 N.Y.S. 533.

2. Time for final account

In view of pendency of action by permanent receiver of corporation undergoing dissolution against former owner of 50% of stock in corporation for waste and mismanagement, trial court's direction that the permanent receiver file his final account within 30 days after service of copy of the order was premature. *In re Hardan Realty, Inc.*, 1972, 38 A.D.2d 841, 331 N.Y.S.2d 181.

3. Hearing

Creditors have a right to be present at the hearing before a referee to pass on the accounts of the receiver: the taking of an account by a former receiver of a defendant corporation is one in which the creditors have an interest, indeed a double interest, one in obtaining an actual statement of property received and money paid out or expenses incurred, and another in the delivery of the property unappropriated which the receiver possesses at the time of the accounting; indeed, all persons having any interest in the estate which the receiver represents have a right to be present and be examined on any subject pertinent to the inquiry which springs out of the proceed-

ings itself. *Greason v. Goodwillie-Wyman Co.*, 1883, 38 Hun 138.

4. Order of reference—Generally

A reference was proper to take and state the account of a receiver appointed under section 2429 of the Code of Civil Procedure, [now section 1202] upon the voluntary dissolution of a corporation. *Matter of Home Book Co.*, 1908, 60 Misc. 560, 112 N.Y.S. 1012.

There should, before the order of reference is made in such cases, be presented a full and definite account, itemizing with particularity the various claims made by the receiver, verified also by his oath; and the reference should relate specifically to the claims presented in that form. *People v. Columbia Car Spring Co.*, 1878, 12 Hun 585.

5. — Fees

As to the payment of the fees of the referee it has been held that the court has power in the first instance to order that his fees be paid directly out of the fund, although the making of such an order is largely a matter of discretion. *Atty. Gen. v. Continental Life Ins. Co.*, 1883, 93 N.Y. 45.

6. — Rights of receiver

The receiver may appear before the referee, file exception to his report, and appeal from any order or decree, made at any stage of the proceedings, affecting the funds in his charge. *Atty. Gen. v. North America Life Ins. Co.*, 1880, 82 N.Y. 172.

It is the practice of the Supreme Court before passing upon the accounts of receivers to submit them to a referee where large sums must be accounted for; so it has been decided that where an order appointing receivers has been vacated and they apply for fees and commissions it should be ordered that their accounts and the objections thereto be referred, and that the referee report thereon with an opinion covering the question of the receivers' right to compensation and the amount thereof. *People v. Oriental Bank*, 1909, 129 App.Div. 865, 114 N.Y.S. 440.

An instruction to a referee, directed to take and state the accounts of a receiver, to "make all such just allowances as