

**Cannabis Receiverships: The Alternative for State Legal  
Cannabis Businesses Seeking Financial Rehabilitation  
Locked Out of Bankruptcy Court by the Controlled  
Substances Act**

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#### INTRODUCTION

As of 2021, thirty-five states and the District of Columbia have legalized medical marijuana, and eighteen states have legalized recreational marijuana.<sup>1</sup> Even though the majority of states have legalized marijuana, it remains illegal federally.<sup>2</sup> This conflict between state and federal law has created a host of complicated legal issues. Despite these complex legal issues, the Institute on Taxation and Economic Policy estimates that in 2018, 300,000 jobs and over one billion dollars in tax revenue have been generated through the state legal cannabis industry.<sup>3</sup>

Each state has its own complicated and expensive licensing procedures.<sup>4</sup> Cannabis entrepreneurs spend significant resources complying with these procedures.<sup>5</sup> Even after expending all these resources, creating jobs, and complying with state law, cannabis

1. See generally Ryan C. Griffith, *A Breath of Fresh Air: A Constitutional Amendment Legalizing Marijuana Through an Article V Convention of the States*, 16 U. MASS. L. REV. 275 (2021).

2. 21 U.S.C. §§ 801–890.

3. David Cooper & Sebastian Martinez Hickey, *Ensuring the High Road in Cannabis*, ECON. POL'Y INST. (Sept. 20, 2021), <https://www.epi.org/publication/ensuring-the-high-road-in-cannabis-jobs/> [<https://perma.cc/9VM4-6E9B>]. See also Carl Davis, *State and Local Cannabis Tax Revenue Jumps 33%, Surpassing \$1.9 Billion in 2019*, INST. ON TAX'N & ECON. POL'Y: JUST TAXES BLOG (Mar. 10, 2020), <https://itep.org/state-and-local-cannabis-tax-revenue-jumps-33-surpassing-1-9-billion-in-2019> [<https://perma.cc/B7L5-EW6H>] (“Excise and sales taxes on cannabis [in the eight states that have legalized recreational marijuana] raised more than \$1.9 billion in 2019.”).

4. See, e.g., *Licensing Authorities Announce Withdrawal of Proposed Medical Cannabis Regulations*, CAL. DEP'T OF CANNABIS CONTROL (Sept. 29, 2017), <https://cannabis.ca.gov/2017/09/licensing-authorities-announce-withdrawal-of-proposed-medical-cannabis-regulations/> [<https://perma.cc/R2DV-KJPS>] (announcing California’s “three cannabis licensing authorities” development of regulations in light of California’s recent cannabis legalization).

5. See *Application and License Fees*, CAL. DEP'T OF CANNABIS CONTROL, <https://cannabis.ca.gov/applicants/application-license-fees> [<https://perma.cc/CFS5-9263>].

entrepreneurs are denied numerous rights that other businesses can access.<sup>6</sup>

The rights that cannabis businesses are denied include the right to use the Federal Deposit Insurance Corporation (“FDIC”) insured banks because the FDIC is a federal agency. FDIC’s status as a federal agency impacts cannabis businesses, because under federal law cannabis is illegal, which means agencies such as the FDIC cannot interact with cannabis businesses.<sup>7</sup> This is a major blow to cannabis businesses because FDIC banks offer businesses stability, loans, and are often a requirement for a business to obtain insurance, utilize payroll software, or offer retirement plans.<sup>8</sup> Unfortunately, because cannabis businesses are denied access to FDIC banks, they must deal with the headache of running an all cash business and the numerous limitations imposed by these restrictions, including drawbacks such as not offering 401(k) accounts and other retirement plans.<sup>9</sup> In addition to being denied access to banks, cannabis businesses cannot make federal tax deductions, which imposes more costs on cannabis entrepreneurs than other businesses face.<sup>10</sup> Furthermore, cannabis businesses cannot federally copyright or patent their intellectual property, which prevents cannabis entrepreneurs from having their products reproduced without permission.<sup>11</sup> These are only a few of the numerous issues facing cannabis entrepreneurs that other U.S. businesses do not have to deal with.

Taking all these issues into account, entering the cannabis industry is a major risk that often results in failure.<sup>12</sup> However, many cannabis

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6. Kellie Pantekoeck, *Can Marijuana Dispensaries Use Traditional Banks?*, FINDLAW (Apr. 21, 2020), <https://www.findlaw.com/cannabis-law/starting-a-cannabis-business/can-marijuana-dispensaries-use-traditional-banks-.html> [https://perma.cc/N52V-R99V].

7. James J. Black & Marc-Alain Galeazzi, *Cannabis Banking: Proceed with Caution*, AM. BAR ASS’N: BUS. L. TODAY (Feb. 6, 2020), [https://www.americanbar.org/groups/business\\_law/publications/blt/2020/02/cannabis-banking](https://www.americanbar.org/groups/business_law/publications/blt/2020/02/cannabis-banking) [https://perma.cc/G5XF-UKWW].

8. *Id.*

9. *See Cannabis Banking Options for Legal Marijuana*, WÜRK, <https://info.enjoywurk.com/cannabis-resource-center/cannabis-options-when-a-bank-says-no> [https://perma.cc/A3C3-8MJK].

10. *IRS 280E Tax Code: Cannabis Accounting, Deductions, & Strategy*, WÜRK, <https://info.enjoywurk.com/cannabis-resource-center/280e-tax-deductions-compliance-strategy-explained> [https://perma.cc/DLS4-47AG].

11. James W. Wright, Jr., *Difficulties Face Cannabis Patents, Trademarks, and Other Forms of Intellectual Property*, BRADLEY (Apr. 30, 2019), <https://www.bradley.com/insights/publications/2019/04/difficulties-face-cannabis-patents-trademarks-and-other-forms-of-intellectual-property> [https://perma.cc/24GT-74PZ].

12. *See, e.g.,* Michael Roberts, *Marijuana Business Failure Rate of 40 Percent Not Bad, Says Industry Expert*, WESTWORD (Mar. 7, 2013), <https://www.westword.com/news/marijuana-business-failure-rate-of-40-percent-not-bad-says-industry-expert-5830875?storyPage=2> [https://perma.cc/8BAX-DDG2].

businesses could avoid failure if bankruptcy protection were available.<sup>13</sup> All other companies in the United States can utilize bankruptcy laws to seek financial rehabilitation.<sup>14</sup> Two of the most famous businessmen in American history, Walt Disney and Henry Ford, sought bankruptcy protection not once, but twice.<sup>15</sup> Without bankruptcy protection, neither Disney nor Ford would have become the major companies they are today.<sup>16</sup> Disney and Ford took the route hundreds of American companies take each year to financially rehabilitate their companies by preserving their assets and keeping their businesses afloat through federal bankruptcy protection.<sup>17</sup>

Unlike companies such as Ford or Disney that utilized federal bankruptcy protection to weather temporary financial storms and now help fuel the American economy, state legal cannabis businesses have no shelter from a bankruptcy storm.<sup>18</sup> Instead, state legal cannabis entrepreneurs must jump through more legal hoops than Walt Disney or Henry Ford were required to in order to earn their first dollar; such obstacles include applying for expensive cannabis licenses, in addition to normal business licenses, and then being unable to use banks, make tax deductions, or protect their intellectual property.<sup>19</sup> After figuring out these initial hoops, cannabis entrepreneurs are left in the cold without bankruptcy protection if a financial storm strikes because they cannot file bankruptcy to protect themselves from creditors as every other business can.<sup>20</sup>

Cannabis businesses are not entitled to bankruptcy protection because the federal government classifies cannabis as a Schedule I Drug.<sup>21</sup> Due to this classification, numerous cannabis businesses that could have weathered financial difficulties are forced to collapse because they are shut

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13. See generally Mark A. Salzberg, *Cannabis and Bankruptcy: 2020 in Review*, 11 NAT'L L. REV. 34 (Feb. 3, 2021), <https://www.natlawreview.com/article/cannabis-and-bankruptcy-2020-review> [<https://perma.cc/UT7Y-9YAJ>].

14. See Kathryn Judge, *Can Bankruptcy Help Businesses Survive COVID-19?*, FORBES (May 4, 2020), <https://www.forbes.com/sites/kathrynjudge/2020/05/04/can-bankruptcy-help> [<https://perma.cc/A4U2-QUKR>].

15. Ethan Trex, *Seven Famous People Who Survived Bankruptcy*, CNN, <https://www.cnn.com/2008/LIVING/personal/11/19/mf.successful.people.survived.bankruptcy/> [<https://perma.cc/764H-PJZ6>].

16. See Judge, *supra* note 14.

17. *Id.*

18. See Salzberg, *supra* note 13.

19. See Pantekoeck, *supra* note 6.

20. See Salzberg, *supra* note 13.

21. *Drug Scheduling*, U.S. DRUG ENF'T ADMIN., <https://www.dea.gov/drug-information/drug-scheduling> [<https://perma.cc/3GCH-C9S8>].

out of bankruptcy court.<sup>22</sup> This has resulted in the unnecessary loss of jobs, tax revenue, and the accessibility of medicine to countless Americans.<sup>23</sup>

Considering this lack of protection for cannabis businesses, a struggling cannabis company may have no choice but to dissolve since bankruptcy is not an option. However, cannabis businesses facing financial difficulties have access to a state law remedy known as receivership. In California, receivership is codified at California Code of Civil Procedure 564 et seq. and can be utilized by cannabis businesses to preserve their assets and seek financial rehabilitation.<sup>24</sup> This article will explore how cannabis businesses suffer by being unable to utilize federal bankruptcy and explore state law receiverships as an alternative remedy to help cannabis businesses weather financial storms.

Cannabis businesses are no stranger to receivership. For example, cannabis businesses have utilized the receivership remedy to resolve partnership disputes.<sup>25</sup> Another example is a Colorado court that authorized a receiver to obtain state cannabis licenses for an unlicensed cannabis company.<sup>26</sup> These cases exemplify ways receivers can be utilized to help rehabilitate struggling cannabis companies that are locked out of bankruptcy court. However, while receivership is an ancient remedy, using receivership to rehabilitate state legal—but federally illegal—cannabis businesses is an innovation, which cannabis entrepreneurs are just beginning to utilize.

## I. THE LIMITATIONS AND DIFFERENCES BETWEEN A RECEIVERSHIP AND A BANKRUPTCY

### A. How Bankruptcy Protection Works and Why It Is Important

One reason bankruptcy protection is so beneficial to businesses is the automatic stay.<sup>27</sup> The automatic stay provides debtors with powerful protection from creditors from almost all debts except for a few exceptions irrelevant to this article.<sup>28</sup> This means a debtor's assets, such as property, vehicles, and bank accounts, can be protected from foreclosure, repossession, and account levying, to name a few of the numerous

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22. See Kristine Ogram & Olivia Rockeman, *Pot Firms Face a Cash Crunch and No Access to U.S. Bankruptcy Protection*, L.A. TIMES (Dec. 17, 2019), <https://www.latimes.com/business/story/2019-12-17/pot-firms-cash-crunch-no-us-bankruptcy-protection> [<https://perma.cc/KCS9-WACX>].

23. See generally Joseph Gregorio, *Physicians, Medical Marijuana and the Law*, 16 AM. MED. ASS'N J. ETHICS 732 (2014).

24. CAL. CIV. PROC. CODE §§ 564–570 (West 2021).

25. See, e.g., *In re CW Nevada LLC*, 602 B.R. 717, 726 (Bankr. D. Nev. 2019).

26. See *Yates v. Hartman*, 488 P.3d 348, 352 (Colo. App. 2018).

27. Erik Clark, *What Is the Automatic Stay?*, NAT'L BANKR. F. (Oct. 22, 2021), <https://www.natlbankruptcy.com/automatic-stay-explained> [<https://perma.cc/Q8KQ-GY8S>].

28. See 11 U.S.C. § 362.

protections an automatic stay provides.<sup>29</sup> This protection from creditors means that instead of a debtor having everything immediately taken away, a debtor is given breathing room to evaluate their assets, debts, and business practices.<sup>30</sup> This is how businesses such as Ford, which were once bankrupt, ended up thriving.

Unfortunately, the automatic stay is not available to cannabis entrepreneurs because cannabis is federally illegal, despite its legality in over two-thirds of the United States.<sup>31</sup> This means that cannabis entrepreneurs facing a financial storm cannot use the automatic stay as an umbrella to protect themselves from foreclosure, seizure of assets, litigation, and numerous other protections. Instead, a cannabis entrepreneur is left defenseless against creditors, which means once a financial storm strikes the chance of a cannabis entrepreneur surviving is minimal.<sup>32</sup>

### *B. The Similarities and Differences Between Receivership and Bankruptcy*

There are several different kinds of receiverships and bankruptcies. For example, Health and Safety Receiverships are a way for cities and counties to abate nuisance properties.<sup>33</sup> Receiverships can also be used to take over defunct or unlawful businesses, along with a myriad of other receiverships.<sup>34</sup> Bankruptcies also come in several forms. Chapter 7 bankruptcies can be utilized by consumers and businesses when there is no coming back.<sup>35</sup> Chapter 11 can be used by businesses to financially restructure their business.<sup>36</sup> Finally, Chapter 13 bankruptcy can be used by consumers to financially restructure their lives.<sup>37</sup> With these classifications in mind, it is time to explore the nuances between receivership and bankruptcy.

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29. *Id.*

30. See Clark, *supra* note 27.

31. See Salzberg, *supra* note 13.

32. See Luke Scheuer, *The "Legal" Marijuana Industry's Challenge for Business Entity Law*, 6 WM. & MARY BUS. L. REV. 511, 516–17 (2015).

33. Ryan Griffith, *Health and Safety Receivership: California's Cure for Zombie Foreclosures, Vacant, and Other Nuisance Properties*, 8 LINCOLN MEM'L U. L. REV. 35, 48–50 (2021).

34. *Id.*

35. See *Chapter 7—Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics> [https://perma.cc/WY7R-3ZRQ].

36. See *Chapter 11—Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics> [https://perma.cc/UEH5-CUB6].

37. See *Chapter 13—Bankruptcy Basics*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics> [https://perma.cc/6UW9-93NH].

In both receivership and bankruptcy, a fiduciary is installed to take control of the situation.<sup>38</sup> In bankruptcy, a court will appoint a bankruptcy trustee to supervise the case and act as a fiduciary to all parties in the case as an agent of the court.<sup>39</sup> Similarly, a receiver is also appointed by the court, acts as a fiduciary to all parties, and acts as an agent of the court.<sup>40</sup>

A few of the differences between a bankruptcy trustee and receiver are that receiverships are generally involuntarily levied against the debtor, and the receiver is nominated to the court by at least one, if not all, creditors.<sup>41</sup> On the other hand, in bankruptcy, the debtor seeks bankruptcy protection, and the court generally selects the trustee.<sup>42</sup> A receiver is also often more business minded than a trustee because a receiver will seek to keep the business afloat.<sup>43</sup> Alternatively, a bankruptcy trustee may seek to shut down the business.<sup>44</sup> Furthermore, as discussed, bankruptcy is governed exclusively by federal law.<sup>45</sup> Of course, when it comes to cannabis businesses, bankruptcy is simply not an option due to its federal classification as a Schedule I drug.<sup>46</sup>

## II. STATE LEGAL CANNABIS COMPANIES CANNOT SEEK FINANCIAL REHABILITATION IN BANKRUPTCY COURT DUE TO CANNABIS BEING LISTED AS A SCHEDULE I DRUG FEDERALLY

President Nixon and the Federal Government initiated a blitzkrieg against drugs in 1970 by enacting the Controlled Substances Act (“CSA”).<sup>47</sup> Prior to 1970, laws had been enacted against cannabis, such as the Boggs Act, which imposed a fine of \$2,000 for cannabis possession.<sup>48</sup> Thereafter, in 1965, the Drug Control Amendment Act was passed that increased the fine to \$5,000 and could lead to a maximum prison sentence of two years.<sup>49</sup> However, the CSA sought to deter marijuana use by

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38. August B. Rothschild, *Liability Incurred by a Receiver or Trustee in Bankruptcy Conducting a Business*, 15 HASTINGS L.J. 520, 522 (1964).

39. H. Jason Gold, *A Creditor’s Perspective: The Bankruptcy Trustee: Friend or Foe?*, 11 NAT’L L. REV. 340 (Sept. 28, 2021), <https://www.natlawreview.com/article/creditor-s-perspective-bankruptcy-trustee-friend-or-foe> [<https://perma.cc/H5CH-A6JW>].

40. *Shannon v. Superior Court*, 217 Cal. App. 3d 986, 992 (Cal. Ct. App. 1990).

41. *See* CAL. R. OF CT. 3.1177.

42. *Receivers vs. Trustees in Bankruptcy*, COLONIAL (Feb. 19, 2019),

<https://www.colonialsurety.com/receivership-bankruptcy-blog> [<https://perma.cc/4G4S-87AF>].

43. *See id.*

44. *See id.*

45. *See* U.S. Const. art. I, § 8.

46. *Drug Scheduling*, *supra* note 21.

47. Controlled Substances Act, 21 U.S.C. §§ 812, 841–44.

48. Boggs Act of 1951, Pub. L. No. 82-255, 65 Stat. 767 (amending 21 U.S.C. § 174 2(c)).

49. Drug Abuse Control Amendments of 1965, Pub. L. No. 89-74, 79 Stat. 226 (amending scattered sections of 21 U.S.C. §§ 301–99).

extreme punishment, which technically includes the death penalty.<sup>50</sup> The CSA in its current form calls for the death penalty in certain circumstances, exemplifying how extreme the punishments of the CSA were and remain.<sup>51</sup>

As a result of marijuana's status as a Schedule I drug, cannabis companies are generally denied access to federal bankruptcy courts. That is because debtors engaging in criminal activity come to the court with unclean hands, which prevents them from using equitable remedies such as bankruptcy.<sup>52</sup> Because bankruptcy courts are Courts of Equity,<sup>53</sup> an individual or entity cannot seek relief from a Court of Equity if they come to the court with unclean hands.<sup>54</sup> This is because the Federal Government views cannabis in the same light as LSD, heroin, and meth.<sup>55</sup> Therefore, under federal law, anyone selling cannabis comes into the federal bankruptcy courts with unclean hands, even if that same person or entity is pristinely clean under state law.<sup>56</sup>

In the last decade, the federal bankruptcy courts twice held that two state legal cannabis businesses in Colorado had unclean hands.<sup>57</sup> However, the federal courts have one outlier case that exists. In *Garvin*, the Ninth Circuit determined that the plan proposed to pay the trustee was not forbidden by law.<sup>58</sup> *Garvin* did not overrule the prior Ninth Circuit cases barring bankruptcy protection, such as *In re Rent-Rite Super Kegs W. Ltd.*,<sup>59</sup> but instead analyzed 11 U.S.C. § 1129 differently from other bankruptcy courts.<sup>60</sup>

*Garvin* explains that 11 U.S.C. § 1129 outlines sixteen enumerated requirements any interested party proposing a bankruptcy plan must

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50. See Federal Death Penalty Act of 1994, 18 U.S.C. § 3591(b). An individual could be sentenced to death if found guilty of manufacturing, importing, or distributing a controlled substance if the act was committed as part of a continuing criminal enterprise involving, among other things, 60,000 kilograms or more of a mixture or substance containing a detectable amount of marijuana, or 60,000 or more marijuana plants, or the if the enterprise received more than \$20 million in gross receipts during any 12-month period of its existence. *Federal Laws and Penalties*, NORML, <https://norml.org/laws/federal-penalties-2> [<https://perma.cc/982B-WZJB>].

51. See 18 U.S.C. § 3591.

52. See e.g., *In re Rent-Rite Super Kegs W. Ltd.*, 484 B.R. 799, 809 (Bankr. D. Colo. 2012).

53. *Equitable Powers of a Bankruptcy Court Federal All Writs Act and 105 of the Code Part I*, AM. BANKR. INST. (June 2006), <https://www.abi.org/abi-journal/equitable-powers-of-a-bankruptcy-court-federal-all-writs-act-and-105-of-the-code-part-i> [<https://perma.cc/K8C5-BMQD>].

54. *Marketquest Grp., Inc. v. BIC Corp.*, 316 F. Supp. 3d 1234, 1295 (S.D. Cal. 2018).

55. *Drug Scheduling*, *supra* note 21.

56. See, e.g., *Marketquest Grp., Inc.*, 316 F. Supp. at 1234.

57. See *In re Rent-Rite Super Kegs*, 484 B.R. at 809; see also *In re Way to Grow, Inc.*, 597 B.R. 111, 120 (Bankr. D. Colo. 2018).

58. *Garvin v. Cook Invs. NW, SPNWY, LLC*, 922 F.3d 1031 (9th Cir. 2019).

59. See *In re Rent-Rite Super Kegs*, 484 B.R. at 809.

60. *Garvin*, 922 F.3d at 1035.



meet.<sup>61</sup> The relevant requirement for this article is that the interested party bring forth a plan that is “not . . . forbidden by law.”<sup>62</sup> The court in *Garvin* read “not forbidden by law” to not require specific compliance with the bankruptcy code.<sup>63</sup> The *Garvin* court states that the court will not insulate debtors from criminal prosecution, and courts cannot stop bankruptcies based on a possibility that something may become illegal during the bankruptcy.<sup>64</sup> *Garvin* offers no guarantee of bankruptcy protection to cannabis entrepreneurs. However, *Garvin* presents merely a rare and interesting example of a cannabis company obtaining bankruptcy protection. In fact, *Garvin* appears to be the only reported case where a cannabis company obtained bankruptcy protection.

Although one federal district court in Washington allowed a cannabis company to obtain bankruptcy protection, state legal marijuana businesses are rarely given bankruptcy protection.<sup>65</sup> Therefore, it is not something that marijuana businesses should rely on.

The federal courts’ general analysis restricting bankruptcy protection is correct. The CSA was passed by the legislature and signed off by President Nixon, whose administration declared a “war on drugs.”<sup>66</sup> Even though marijuana’s classification is repeatedly questioned and scrutinized, the federal law remains relatively unchanged.<sup>67</sup> As part of the Judicial Branch, the bankruptcy courts are meant to interpret the law, not create it. Therefore, marijuana businesses will and arguably should be locked out of bankruptcy courts without legislative change. As a result, marijuana entrepreneurs must find alternative solutions to rehabilitate their companies when financial storms strike. One of the alternative remedies that marijuana entrepreneurs can seek is receivership, which is a creature of state law.

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61. *Id.* at 1034.

62. *Id.* at 1034–35.

63. *Id.* at 1035.

64. *Id.* at 1036.

65. See Cynthia Castillo & Gary Kaplan, *Alternatives to Bankruptcy in the Cannabis Sector*, JD SUPRA (Feb. 4, 2021), <https://www.jdsupra.com/legalnews/alternatives-to-bankruptcy-in-the-4283458/> [<https://perma.cc/K69B-6C75>].

66. See Controlled Substances Act, 21 U.S.C. §§ 812, 841–44.

67. See *id.*

### III. CAN RECEIVERSHIP BE USED TO HELP CANNABIS COMPANIES THAT CANNOT SEEK BANKRUPTCY PROTECTION TO FINANCIALLY REHABILITATE THEMSELVES

#### *A. What Is a Court Appointed Receiver?*

A receiver is a creature of state law and not subject to federal restriction.<sup>68</sup> California has numerous receivership statutes that address a wide variety of situations. For example, a city or county can appoint a receiver to abate a nuisance property that substantially endangers public health and safety, such as fire-damaged buildings, drug houses, and hoarder homes.<sup>69</sup> A receiver can also be appointed to unwind a criminal enterprise<sup>70</sup> or overtake an unlawful business.<sup>71</sup> Additionally, a receiver can be appointed to preserve property in general, ranging from preserving real estate to the intellectual property of a tech company.<sup>72</sup> However, California Code of Civil Procedure 564 et seq is the general receivership statute that applies to all receiverships.<sup>73</sup> There is also a California Rule of Court Scheme found at California Rule of Court Section 3.1175-3.1184, which governs how a receiver must act during the pendency of a receivership action.<sup>74</sup>

With that introduction, most readers likely wonder what a receiver is. The answer is not San Francisco 49er legend and NFL Hall of Famer Jerry Rice. Instead, a receiver is a state court-appointed person responsible for resolving difficult situations, such as the insolvency of a corporation, carrying a judgment into effect, or preserving the property rights of a party.<sup>75</sup>

Receiverships date back to 1373 A.D., when Old English Chancery Courts utilized the remedy to bring order to a property or estate that was out of control.<sup>76</sup> If a king died without having a son, the king's subjects wondered who would manage the farmers, the knights, the treasury, and so on. The answer was that the English Chancery Court would appoint a receiver to temporarily control the castle until a permanent plan was formed.<sup>77</sup> This is still essentially the practice today. A receiver can be

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68. See CAL. CIV. PROC. CODE §§ 564–570 (West 2021).

69. See CAL. HEALTH & SAFETY CODE §§ 17980.6–17980.7 (West 2021).

70. CAL. PENAL CODE § 186.6 (West 2021).

71. CAL. BUS. & PROF. CODE § 17204 (West 2021).

72. CIV. PROC. § 564.

73. *Id.*

74. CAL. R. OF CT. 3.1175–3.1184 (West 2021).

75. See *id.*

76. See generally GREAT BRITAIN COURT OF EXCHEQUER, ANCIENT PETITIONS OF THE CHANCERY AND THE EXCHEQUER: AYANT TRAIT AUX ÎLES DE LA MANCHE, CONSERVÉS AU PUBLIC RECORD OFFICE À LONDRES (Emma M. Walford trans., 1902).

77. See generally *id.*

appointed over a business, a property, or an estate, to take temporary control of a problem asset until a permanent plan is in place or the asset is sold.<sup>78</sup>

A receiver is both an agent of the court and a fiduciary to all parties with an interest in the property at issue.<sup>79</sup> Considering this balance, a business is often wise to appoint a receiver if it is facing financial hardship. This is because a receiver can resolve disputes between parties that cannot handle their situation. Once a receiver is appointed, they possess tremendous power and immunity equivalent to that of a judicial officer.<sup>80</sup>

However, appointing a receiver is a difficult task. Courts consider receivership to be a drastic remedy, to be used only in exceptional circumstances.<sup>81</sup> The party seeking the appointment of a receiver bears the burden of proving the necessity of receivership to preserve the property at issue by a preponderance of the evidence.<sup>82</sup> The process is so difficult because once a receiver is appointed, the property at issue is placed in the hands of the court, and the receiver acts as the court's agent.<sup>83</sup> A receiver possesses tremendous power, including selling and even demolishing structures under their control.<sup>84</sup> In summary, receivership is an extremely powerful tool.

### *B. How Receiverships Have Worked in the Past*

Numerous businesses have been placed under receivership and have experienced positive growth as a result. For example, a lumber mill in Colorado was facing a shutdown due to infighting between the board and other factors.<sup>85</sup> In order to save the lumber mill and all the jobs associated with it, a Colorado court appointed a receiver to take control of the lumber mill.<sup>86</sup> Within a few years, the receiver had the lumber mill running smoothly and the receiver grew the lumber mill from 80 employees to 120 employees.<sup>87</sup>

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78. *See Misita v. Distillers Corp.*, 128 P.2d 888, 893 (Cal. Dist. Ct. App. 1942).

79. CAL. R. OF CT. 3.1179; *see also Shannon v. Superior Court*, 266 Cal. Rptr. 242, 245–46 (Cal. Ct. App. 1990).

80. *See New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989).

81. *See City & County of S.F. v. Daley*, 20 Cal. Rptr. 2d 256, 263 (Cal. Ct. App. 1993).

82. *See Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.*, 254 P.2d 599, 602 (Cal. Ct. App. 1953).

83. *See Takeba v. Superior Court of San Joaquin County*, 185 P. 406, 408–09 (Cal. Dist. Ct. App. 1919).

84. *See City of Santa Monica v. Gonzalez*, 182 P.3d 1027, 1043–44 (Cal. 2008).

85. *See Sawmills Get Break on Onerous Timber Contracts*, TELLURIDE DAILY PLANET, THE WATCH (Aug. 14, 2011), [https://www.telluridenews.com/the\\_watch/news/article\\_5b8426f0-6a61-5db3-80aa-8053b2beb099.html](https://www.telluridenews.com/the_watch/news/article_5b8426f0-6a61-5db3-80aa-8053b2beb099.html) [<https://perma.cc/WK37-T973>].

86. *See id.*

87. *Colorado Mill's New Lease on Life*, USNR, <https://www.usnr.com/en/content/montrosetrimline> [<https://perma.cc/VW8V-69F7>].

In another example, a receivership helped turn around a struggling technology company. In this example, two IBM engineers and an IBM salesman teamed up to form a successful business for several years.<sup>88</sup> The engineers then took a buyout, and the salesman was left to run the business himself; however, without technical expertise, the company struggled.<sup>89</sup> Part of the engineers' buyout included a loan against the company, and once the company's books were in the red, the lending bank's concerns grew.<sup>90</sup> The lending bank that leveraged the buyout was also concerned about repayment and considered collection efforts against the business. However, instead of taking an adversarial approach, a creditor sought the appointment of a receiver. The receiver brought the two engineers back into the company, held off the bank's collection efforts, and got the business back on its feet.<sup>91</sup> Within a year after the receiver's appointment, the company was operating better than ever.<sup>92</sup> This is just another of many examples showing how a receiver can help a company avoid collapsing.

Another example of a receiver stepping in occurred in the California prison system.<sup>93</sup> A receiver was appointed because the medical care in California prisons was so inadequate it required independent oversight.<sup>94</sup> The receiver appointed to oversee the California prison system began increasing compensation for doctors, imposing higher standards, and ensuring access to medical care.<sup>95</sup> The receivership lasted for nearly nine years but resulted in inmates receiving appropriate health care.<sup>96</sup>

The appointment of receivers was also commonplace during the mortgage meltdown.<sup>97</sup> As a result of the irresponsible lending practices by numerous financial institutions, many ended up with more liabilities than assets. However, what was to be done with the substantial assets these

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88. See Robert P. Mosier, *Receivership to the Rescue: Reviving Failing Companies with a Consensual Receivership*, 17 CAL. RECEIVERS F.—RECEIVERSHIP NEWS 3, 3 (Spring 2005).

89. *Id.*

90. *Id.*

91. *Id.*

92. See *id.*

93. See *Plata v. Schwarzenegger*, 556 F. Supp. 2d 1087 (N.D. Cal. 2008).

94. See Marvin Mentor, *Federal Court Seizes California Prisons' Medical Care; Appoints Receiver with Unprecedented Powers*, PRISON LEGAL NEWS (Mar. 15, 2006), <https://www.prisonlegalnews.org/news/2006/mar/15/federal-court-seizes-california-prisons-medical-care-appoints-receiver-with-unprecedented-powers/> [<https://perma.cc/78FG-X5JM>].

95. See generally DAVID R. SHAW, OFF. OF THE INSPECTOR GEN., CALIFORNIA PRISON HEALTH CARE RECEIVERSHIP CORPORATION USE OF STATE FUNDS FOR FISCAL YEAR 2008–2009 (2010), <https://www.oig.ca.gov/wp-content/uploads/2019/05/California-Prison-Health-Care-Receivership-Corporation-Use-of-State-Funds.pdf> [<https://perma.cc/SJC7-HGXU>].

96. See *California to Regain Control of Healthcare at Folsom Prison*, REUTERS (July 13, 2015), <https://www.reuters.com/article/us-usa-california-prisons/california-to-regain-control-of-healthcare-at-folsom-prison-idUKKCN0PN2DZ20150713> [<https://perma.cc/ZV9Q-PSP2>].

97. See Lynn Shibut, *Resolutions and Receiverships*, in CRISIS AND RESPONSE: AN FDIC HISTORY, 2008–2013, at 202–206 (2017).

banks had on hand was a major question. In several instances, a receiver was appointed. Washington Mutual Bank, a large financial institution, was hit hard by defaulted mortgages and had to be placed into receivership.<sup>98</sup> The receivership then worked with JP Morgan Chase and preserved the assets of Washington Mutual to the best of the receiver's ability.<sup>99</sup> This resulted in a fairly smooth transition where Washington Mutual became part of JP Morgan Chase.<sup>100</sup>

Another example of the necessity of a receiver, is if a property falls into a significant state of disrepair that creates a public nuisance, which endangers the public health and safety of the community.<sup>101</sup> In this case, a city or county can appoint a receiver to help take control of the property.<sup>102</sup> These examples are only a few of the numerous ways a receivership is used to bring order to an out-of-control situation.

#### IV. HOW A RECEIVER CAN HELP A CANNABIS COMPANY THAT CANNOT ACCESS BANKRUPTCY COURT FINANCIALLY REHABILITATE ITSELF AND HOW A RECEIVER IS APPOINTED

##### *A. Recent Examples of Successful Cannabis Receiverships and Situations Where Cannabis Receiverships Could Have Saved Cannabis Businesses*

###### 1. Examples of When a Cannabis Receivership Was a Success

A recent example of a cannabis receivership succeeding came out of a Santa Clara County trial court.<sup>103</sup> This case involved a cannabis company, the Guild San Jose, that defaulted on a one-million-dollar loan and could not file for bankruptcy due to marijuana's status as a Schedule I drug.<sup>104</sup> Therefore, the Guild San Jose was set to lose everything.<sup>105</sup> However, a Santa Clara Superior Court Judge appointed a receiver to take control.<sup>106</sup> Within a few months, the receiver made the Guild San Jose a

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98. See *Status of Washington Mutual Bank Receivership*, FED. DEPOSIT INS. CORP. (Oct. 23, 2020), <https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/wamu-settlement.html> [<https://perma.cc/5EGC-3Q9G>].

99. See *id.*

100. See *id.*

101. See Griffith, *supra* note 33.

102. *Id.*

103. See *KLA Daylight, LLC v. GWS Health* (Super. Ct. Santa Clara County, 2020, No. 18CV333291).

104. *Id.*

105. Joey Peña & John Schroyer, *Auction of Licensed California Cannabis Business Brings in \$8.25 Million*, MJBIZDAILY (Dec. 17, 2021), <https://mjbizdaily.com/auction-of-licensed-california-marijuana-business-brings-in-8-25-million/> [<https://perma.cc/5J8Q-2VJ7>].

106. See *KLA Daylight, LLC*, No. 18CV333291.

profitable company again.<sup>107</sup> The receivership then ended up selling the Guild San Jose for 8.5 million dollars, even though it was worthless before the receiver's appointment.<sup>108</sup> The creditors were paid back, and the previous owners of the Guild San Jose received something as well, which would not have been the case if not for the receivership.<sup>109</sup>

As seen above, receiverships can be appointed to assist failing businesses, nuisance activities, unlawful business practices, or simply a dispute between business partners. These are all common scenarios that businesses, including marijuana businesses, find themselves in. In these scenarios, most businesses file for bankruptcy because receivership is a "drastic remedy."<sup>110</sup> However, bankruptcy courts are closed to marijuana businesses.<sup>111</sup> Therefore, marijuana entrepreneurs must look for ways to rehabilitate themselves, and marijuana businesses are beginning to implement receiverships as a solution.<sup>112</sup>

There is recent case law allowing a receiver to be appointed over unlicensed cannabis businesses and for the receiver to obtain a marijuana license for the company.<sup>113</sup> This may save a cannabis company from falling into the numerous pitfalls it could face when seeking state licensure because a court-appointed expert would be responsible for obtaining the licenses. This would preserve a company that was facing financial hardships while in the process of obtaining a cannabis license from collapsing because a receiver is an agent of the court that has the ability to enjoin creditors, seek judicial relief, and possess numerous immunities.<sup>114</sup>

## 2. Examples of When a Cannabis Receivership Could Have Helped

First, a cannabis receivership could often help during partner disputes.<sup>115</sup> A partner may be mishandling money, dealing with substance abuse problems, or experiencing a host of other personal issues. If that is the case, a receiver can be brought in to resolve the partnership dispute before finances dwindle to a point of no return and bankruptcy is unavailable.<sup>116</sup>

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107. *Id.*

108. *See* Peña & Schroyer, *supra* note 105.

109. *Id.*

110. *City & County of San Francisco v. Daley*, 20 Cal. Rptr. 2d 256, 263 (Cal. Ct. App. 1993).

111. *See e.g., In re Way to Grow, Inc.*, 597 B.R. 111, 120 (Bankr. D. Colo. 2018).

112. *See In re CWNevada LLC*, 602 B.R. 717, 726 (Bankr. D. Nev. 2019).

113. *See Yates v. Hartman*, 488 P.3d 348, 352 (Colo. App. 2018).

114. Jihee Ahn, *Cannabis Litigation Options: The Benefits of a Receivership*, HARRIS BRICKEN (Aug. 21, 2019), <https://harrisbricken.com/cannalawblog/cannabis-litigation-options-the-benefits-of-a-receivership/> [<https://perma.cc/2CET-6RXG>].

115. *Id.*

116. *Id.*

In addition to personal disputes between business partners, the litany of complicated local and state laws a cannabis business must encounter are extremely burdensome. Each state has their own statutory scheme, and cities and counties can utilize their police power to enact their own regulations.<sup>117</sup> *City of Vallejo v. NCorp4, Inc.* is an outstanding illustration of the nonsensical laws that a cannabis business must endure.<sup>118</sup> NCorp4, Inc. was a Vallejo cannabis company that was forced to shut its doors, not because of bad business practices, but because of conflicting state, federal, and local laws.<sup>119</sup>

California legalized medical marijuana in 1996.<sup>120</sup> Thereafter, numerous medical marijuana dispensaries began to open. In 2011, the City of Vallejo noticed the proliferation of medical marijuana dispensaries and declared dispensaries a public nuisance.<sup>121</sup> However, dispensaries that were a public nuisance could continue to operate if they had been paying city business taxes.<sup>122</sup>

To further illustrate the confusion, the city business tax was collected for three years, but the City decided that accepting taxes from those engaged in an activity that is not lawful under the City's land use regulations was confusing.<sup>123</sup> Thereafter, in July 2015, the City decided it would limit the number of dispensaries in the City to four because it wanted to start collecting tax revenue again.<sup>124</sup> Then, for any of the existing dispensaries to continue to operate, they had to have been paying their quarterly taxes even though those taxes were not being accepted.<sup>125</sup> The City then filed public nuisance complaints against companies that had not paid their taxes when they were not supposed to be operating, including NCorp4, one of forty cannabis companies in Vallejo, and sought an injunction to shut them down.<sup>126</sup>

The City of Vallejo was unable to shut down the dispensaries at the trial court level, but the City won on appeal.<sup>127</sup> This lawsuit caused NCorp4 to go under.<sup>128</sup> In this situation, NCorp4 was compliant with state law, but the local regulations overwhelmed the company. This was an unnecessarily complicated scenario. This case exemplifies how if NCorp4

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117. See *City of Vallejo v. NCORP4, Inc.*, 223 Cal. Rptr. 3d 740, 747 (Cal. Ct. App. 2017).

118. See generally *id.*

119. *Id.* at 747.

120. CAL. HEALTH & SAFETY CODE § 11362.5 (West 2021).

121. *Vallejo*, 223 Cal. Rptr. 3d at 743–44.

122. See *id.* at 746.

123. See *id.* at 744–45.

124. See *id.* at 745.

125. *Id.*

126. See *id.* at 746.

127. *Id.*

128. See *id.* at 748.

had sought the appointment of a receiver to work with the court to comply with the City's request, a different result might have been achieved because a receiver is trained to deal with these complex issues while most business owners are not. The receiver could have worked with the City while cloaked with the tremendous power of the court, which also grants a receiver the same immunity as a judicial officer.<sup>129</sup> Therefore, the receiver could have found ways to comply with the City's request and prevented NCorp4 from resorting to scorched earth litigation, which left its coffers empty and complete dissolution was NCorp4's only available option because bankruptcy courts were closed to it.<sup>130</sup>

#### *A. How a Receiver Is Appointed to a Cannabis Company*

Receivership is an equitable remedy.<sup>131</sup> Therefore, no jury is required to determine the appointment of a receiver.<sup>132</sup> As a result of receivership being an equitable remedy that is not heard by a jury, a receiver is typically appointed at a Noticed Motion hearing.<sup>133</sup> The party seeking the appointment of a receiver submits a petition, authorities, and declarations supporting the need to appoint a receiver.<sup>134</sup> However, the appointment of a receiver is a drastic remedy, and the petitioning party bears the burden of proving a receiver is necessary.<sup>135</sup>

Once a receiver is appointed, their appointment is subject to an abuse of discretion standard.<sup>136</sup> Therefore, once a receiver is appointed, they are cloaked with tremendous power, which includes the power to sell property and enjoin creditors. Receivers also have the same immunity as judicial officers.<sup>137</sup> Thus, removing a receiver after they are appointed by a court is difficult, which gives receivers great leverage to complete the projects they are tasked with completing. The fact that a receiver has tremendous power once appointed is a great asset to cannabis entrepreneurs who want to ensure tasks get completed and their businesses stay afloat.

Although there are benefits to receiverships, drawbacks exist. Once appointed, a receiver functionally steps into the shoes of the owner and takes control of the business. The receiver then has to be compensated and generally to do this, the receiver will sell assets from the business, which

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129. See *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989).

130. See *In re Way to Grow, Inc.*, 597 B.R. 111, 120 (Bankr. D. Colo. 2018).

131. Comment, *Equitable Remedy of Receivership. State Law in the Federal Courts: Federal Courts. Receivers. Applicability of State Law*, 10 STAN. L. REV. 361–67 (1958).

132. See *Teutscher v. Woodson*, 835 F.3d 936, 944 (9th Cir. 2016).

133. See *City of Crescent City v. Reddy*, 215 Cal. Rptr. 3d 351, 356–357 (Cal. Ct. App. 2017).

134. *Id.*

135. See *Plata v. Schwarzenegger*, 603 F.3d 1088, 1097 (9th Cir. 2010).

136. See *Crites, Inc. v. Prudential Ins. Co.*, 322 U.S. 408, 418 (1944).

137. See *New Alaska Dev. Corp. v. Guetschow*, 869 F.2d 1298, 1303 (9th Cir. 1989).



a cannabis entrepreneur may disagree with. But at the very least, everything is supervised by the court.<sup>138</sup>

### *B. What Happens Once a Receiver Is Appointed*

The next logical question is what happens once a receiver is appointed. The answer is—as it usually is in the law—it depends. Most states have their own procedural rules that a receiver must follow.<sup>139</sup> However, while distinctions exist, the gist is always the same. A receiver is a neutral court agent that must keep all parties, including the court, informed of what they are doing, and submit a surety bond and an inventory of the property.<sup>140</sup> For purposes of this article, the California Rules of Court will be analyzed.

Once a receiver is appointed by a California court, California Rules of Court 3.1175-3.1184 and California Code of Civil Procedure § 567 immediately take effect. Practically speaking, the first steps a receiver will take on the day of his or her appointment is to record the Order against any real property involved in the litigation. The receiver will also submit an Oath and Surety to the court, which are form filings that ensure the receiver acts appropriately and is held accountable if any malfeasance occurs.<sup>141</sup> Within one month of the receiver's appointment, the receiver must submit an inventory of all property that they have been ordered to take over.<sup>142</sup> The receiver must also begin submitting monthly reports to all parties and any lien holders.<sup>143</sup> Furthermore, throughout the receivership, the receiver must be mindful of his or her duty as neutral court agent.<sup>144</sup> Finally, a receivership is not permanent; a receivership merely serves as a stopgap measure to bring order to an out-of-control situation. The receivership will end in one of two ways: (1) sale of the property<sup>145</sup> or (2) the receiver seeking discharge when the business is viable.<sup>146</sup>

The tremendous powers of a receiver can assist a struggling cannabis business in numerous ways. For example, if two business partners have devolved into a toxic relationship, and therefore basic decisions cannot be

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138. See *People v. Riverside Univ.*, 35 Cal. App. 3d 572, 578 (Cal. Ct. App. 1973).

139. James M. McGee & Ross H. Parker, *Basic Receivership Law/Concepts*, MUNSCH HARDT, [https://www.munsch.com/portalresource/lookup/wosid/cp-base-4-6096/overrideFile.name=/basic\\_receivership\\_law\\_concepts\\_article\\_presentation\\_pdf](https://www.munsch.com/portalresource/lookup/wosid/cp-base-4-6096/overrideFile.name=/basic_receivership_law_concepts_article_presentation_pdf) [<https://perma.cc/H4Z2-RM7D>].

140. *Shannon v. Superior Court*, 217 Cal. App. 3d 986, 992–93 (Cal. Ct. App. 1990).

141. CAL. CIV. PROC. CODE § 567 (West 2021).

142. CAL. R. CT. 3.1181.

143. CAL. R. CT. 3.1182.

144. CAL. R. CT. 3.1179.

145. CAL. CIV. PROC. CODE § 568.5 (West 2021).

146. CAL. R. CT. 3.1184.

made, a receiver may utilize the power of the court to resolve the business dispute.<sup>147</sup> Alternatively, if the business partners have a healthy relationship, but entered into a five-year lease on a major warehouse their business could not afford, the receiver can terminate that lease. This can preserve the business assets to pay for other expenses to help the business survive.

A receiver is authorized to sell receivership property in a manner that benefits the receivership estate, which means a receiver could sell real estate, equipment, and other real or personal property owned by the cannabis company.<sup>148</sup> Therefore, the receiver can sell all the receivership assets, pay off creditors, and leave the owners of the business with whatever is left from the sale of the business. It is not uncommon at the conclusion of the receivership for all creditors to walk away paid, and the owners of the property to walk away with some money in their pocket. This route is a clean way to end the receivership, but it puts an end to the business, which may not be what everyone wants. Furthermore, if a business is sold, a process called lien-stripping can be used.<sup>149</sup> Lien stripping results in the creditors only receiving partial payment, which is not ideal for creditors.<sup>150</sup> Conversely, if the receiver can help the business through its lowest point and allow it to continue operating, the likelihood of creditors being fully paid increases significantly.

Therefore, the other alternative is that the receiver can bring the business into a healthy financial state by terminating detrimental executory contracts, entering beneficial contracts, resolving partnership disputes, dismissing problem-employees, and taking other necessary actions to convert the toxic business assets into productive ones.<sup>151</sup> If a receiver can do this and the business can operate on its own, then the receiver can seek discharge from the court, and the business can continue without judicial oversight.

Whether the receivership concludes with a sale of the business or the business becoming self-sufficient, the final step a receiver takes is filing his or her Final Report and Accounting with the court pursuant to California Rule of Court 3.1184.<sup>152</sup> A receiver is typically paid their fees and expenses throughout the action, but in the end, the court must approve the receivership expenses at a Noticed Motion Hearing or through a

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147. See *Health & Body Store, LLC v. JustBrand Ltd.*, No. 11-cv-6638, 2012 U.S. Dist. LEXIS 129917 (E.D. Pa. Sept. 11, 2012).

148. See *People v. Riverside Univ.*, 111 Cal. Rptr. 68, 75–76 (Cal. Ct. App. 1973).

149. See *Spreckles v. Spreckles Sugar Corp.*, 79 F.2d 332, 333 (2d Cir. 1935).

150. *Id.*

151. *Id.*

152. CAL. R. CT. 3.1184.

stipulation of all parties.<sup>153</sup> This is ultimately how the receiver is compensated for his or her services. However, a receiver is almost always assured of compensation because receiver fees and expenses are entitled to super-priority.<sup>154</sup> Nevertheless, a judge must ultimately approve a receiver's fees and expenses in their Final Report and Accounting.<sup>155</sup> Once the receiver submits their Final Report and Accounting, and a judge signs the receiver's proposed order, the receiver is discharged.<sup>156</sup> This means the receivership is concluded, and the original business is in the hands of a new owner, or the business weathered a financial storm, and the receiver was able to bring it back to self-sufficiency. Overall, the receivership remedy is a great alternative for struggling cannabis companies that are locked out of bankruptcy court to find ways to revive their business.

V. CANNABIS COMPANIES OFTEN FAIL UNNECESSARILY DUE TO LACK OF BANKRUPTCY PROTECTION, WHICH HARMS ECONOMIES AND PREVENTS THE COLLECTION OF TAX REVENUE

Each state has unique cannabis licensing requirements, and due to the Federal Government's classification of cannabis as a Schedule I Drug, these licensing requirements are extremely burdensome. California, for example, created an entire agency called the Bureau of Cannabis Control to oversee licensing of cannabis products.<sup>157</sup> For a cannabis entrepreneur to get started in California, they must first determine which of the six licenses they want to obtain: 1) retailer; 2) retailer (non-store front); 3) distribution; 4) distribution transport only; 5) microbusiness; or 6) testing laboratory.<sup>158</sup> Once an entrepreneur makes that decision, they can look forward to filling out a number of forms and paying an annual licensing fee that can be as high as \$300,000.<sup>159</sup> Furthermore, a cannabis entrepreneur can be taxed as much as 80% by California for an arm's length transaction.<sup>160</sup>

A cannabis entrepreneur is not rewarded for navigating all this red tape or paying astronomical taxes and fees. Instead, the cannabis entrepreneur is treated like a second-rate business. A few examples of this

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153. *Id.*

154. *See Parks v. Cent. Door & Lumber Co.*, 102 P.2d 706, 709–710 (Or. 1940).

155. CAL. R. CT. 3.1184.

156. *Id.*

157. *See License Search*, DEPT. OF CANNABIS CONTROL CAL., <https://search.cannabis.ca.gov> [<https://perma.cc/W5BX-NWAP>].

158. *Id.*

159. *Application and License Fees*, DEPT. OF CANNABIS CONTROL CAL., <https://cannabis.ca.gov/applicants/application-license-fees/> [<https://perma.cc/2Z4P-KGSK>].

160. *Tax Rates—Special Taxes and Fees*, CAL. DEP'T OF TAX & FEE ADMIN., <https://www.cdtfa.ca.gov/taxes-and-fees/tax-rates-stfd.htm> [<https://perma.cc/S4YC-MFGG>].

are that a cannabis entrepreneur cannot use FDIC-insured banks,<sup>161</sup> take federal business tax deductions,<sup>162</sup> or patent their intellectual property.<sup>163</sup> With all these restrictions, taxes, and fees, a cannabis entrepreneur must also actually run a successful business. Running a successful business is a difficult proposition as evidenced by the numerous successful businesspeople such as Walt Disney, Henry Ford,<sup>164</sup> and nine U.S. Presidents that ultimately filed for bankruptcy.<sup>165</sup>

With all these restrictions, taxes, and the realities of running a business, it is unjust that a business that the government interferes with so extensively by creating extra license requirements, preventing bank usage, and denying intellectual property protection cannot seek bankruptcy protection. Therefore, highlighting what receivership can do to financially rehabilitate a struggling cannabis entrepreneur is vitally important.

#### CONCLUSION

Cannabis entrepreneurs may be locked out of federal court, but they do have an alternative in state court known as receivership. As discussed, receivership is an extreme remedy that can enjoin creditors from collecting against a debtor and provide a cannabis entrepreneur breathing room during a financial storm. A receivership may provide many of the same protections that an automatic stay would if the receivership order is crafted appropriately.

Of course, a federal court and the power of the automatic stay will always be greater than a state court injunction. However, until federal law changes, receivership may be an attractive alternative to cannabis entrepreneurs struggling to pay creditors. This is because a receiver can be appointed as a custodian of assets to preserve them and even to run a business under the observation and shield of the court. Numerous businesses have been placed under receivership and came out better for it. Therefore, receiverships are a great alternative for struggling cannabis companies that are locked out of bankruptcy court but need protection from creditors so that they can handle a financial storm.

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161. Pantekoek, *supra* note 6.

162. *Cannabis Accounting, Deductions, & Strategy*, *supra* note 10.

163. Wright, Jr., *supra* note 11.

164. Trex, *supra* note 15.

165. Chad Van Horn, *Eight U.S. Presidential Bankruptcies You May Have Missed*, VAN HORN L. GRP., <https://blog.vanhornlawgroup.com/presidential-bankruptcies/> [<https://perma.cc/9W49-CGS7>].