

[South Dakota Codified Laws](#)

[Title 21. Judicial Remedies](#)

[Chapter 21-21. Receivership \(Refs & Annos\)](#)

**SDCL § 21-21-9**

**21-21-9. Powers of receiver in collection and management of property**

[Currentness](#)

The receiver has, under the control of the court, power to bring and defend actions in his own name as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the court may authorize.

**Credits**

**Source:** CCivP 1877, § 223; CL 1887, § 5019; RCCivP 1903, § 231; RC 1919, § 2479; SDC 1939 & Supp 1960, § 37.2604.

[Notes of Decisions \(16\)](#)

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S D C L § 21-21-9, SD ST § 21-21-9  
Current through 2018 Session Laws and Supreme Court Rule 18-15

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Notes Of Decisions (16)


### Instructions or authority to receiver


It is the right and duty of a receiver, if he considers the legality of a tax questionable, to apply to the court for instruction or protection. [Ledoux v. La Bee, 1897, 83 F. 761](#) . [Receivers](#) 112

A receiver for a corporation is not personally liable when they exercise ordinary care and prudence in the performance of the receivership. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Corporations and Business Organizations](#) 2921

Receiver for a corporation acts as officer or agent of the court subject to the control of the court. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Corporations and Business Organizations](#) 2921

### Preservation and protection of estate

A receiver has duty to preserve and protect the property and assets of estate over which it has been appointed for benefit of all persons interested. [Vander Vorste v. Northwestern Nat. Bank, 1965, 81 S.D. 566, 138 N.W.2d 411, 20 A.L.R.3d 960](#) . [Receivers](#)  86



Receiver's duty to preserve and protect the property was not diminished because owner resisted receiver's petition for authority to sell such property and thereby was responsible for delay in disposing of property which delay allegedly contributed to pilferage and damage. [Vander Vorste v. Northwestern Nat. Bank, 1965, 81 S.D. 566, 138 N.W.2d 411, 20 A.L.R.3d 960](#) . [Receivers](#)  86

### Mortgage payments

Receiver may pay rents and profits to a mortgagee to satisfy a deficiency judgment, where the mortgage agreement expressly pledges rents and profits to the mortgagee in the event of a default. [Alma Group, L.L.C. v. Weiss, 616 N.W.2d 96, 2000 S.D. 108](#) . [Mortgages And Deeds Of Trust](#) 1093 ; [Mortgages And Deeds Of Trust](#) 1919 ; [Mortgages And Deeds Of Trust](#) 2045(1) ; [Mortgages And Deeds Of Trust](#) 2094


Neither trial court nor receiver is ordinarily authorized to pay rents and profits to a mortgagee to satisfy a deficiency judgment. [Alma Group, L.L.C. v. Weiss, 616 N.W.2d 96, 2000 S.D. 108](#) . [Mortgages And Deeds Of Trust](#) 1917 ; [Mortgages And Deeds Of Trust](#) 2045(1) ; [Mortgages And Deeds Of Trust](#) 2094

### Sales of assets


Where the receiver of a corporation contracted to sell its land to a purchaser who paid the price thereof, the purchaser, acquiring a deed while a third person was in possession, acquired an equitable title good as against the corporation, if in existence. [Joy v. Midland State Bank, 1910, 26 S.D. 244, 128 N.W. 147](#) , modified [28 S.D. 262, 133 N.W. 276](#) . [Champerly And Maintenance](#)  7(5) ; [Corporations And Business Organizations](#)  2925

### Litigation receivers

Trial court lacked authority to appoint "litigation receiver" to determine whether offer of settlement made by suing shareholders should be accepted; there was no constitutional or statutory authority for allowing appointment of receiver for that purpose. [SDCL 21-21-9](#) . [Case v. Murdock, 1995, 528 N.W.2d 386](#) , rehearing granted, adhered to on rehearing

[544 N.W.2d 205](#) . [Receivers](#)  4

### Actions

Receiver held necessary party plaintiff, in action by creditors against insolvent corporation, stockholders, directors, and officers, for accounting and recovery of property withheld by defendants. [Aaron v. Security Inv. Co., 211 N.W. 965 Corporations And Business Organizations](#)  2883

### Discharge of receiver

Circuit court, following remittitur from Supreme Court decision ruling that circuit court was without subject matter jurisdiction to order dissolution of nonprofit religious corporation, had the authority to wind up receivership and discharge receiver, and did not exceed its authority in doing so, as receivership was ancillary to underlying dissolution action, it appeared that circuit court acted only to wind up receivership following remittitur, and none of circuit court's action interfered with parties' religious dispute or addressed the subject matter of the corporate dissolution. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Appeal And Error](#) 4814

Dismissal of a suit will not ipso facto discharge a receiver for a corporation; rather, when a receiver's appointment is without authority, from the necessity of the circumstances, the court bears the duty and power to engage the proper proceedings to wind up the receivership and discharge the receiver. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Corporations and Business Organizations](#) 2918

### Fees and expenses

Parties who, though not judges, execute the orders of judges, such as court-appointed receivers, share judicial immunity with the court. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Receivers](#) 168

Circuit court, in winding up receivership for nonprofit religious corporation, did not abuse its discretion when it ordered payment of receiver's fees and expenses from receivership funds and allowed the receiver to use receivership funds to pay the expenses of third parties, as, at nearly every hearing, the receiver reported to the circuit court his difficulties in winding up the receivership because of a lack of cooperation by certain individuals involved with corporation, and the corporation was the only entity capable of paying those fees. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Corporations and Business Organizations](#) 3485

Generally, when a party requests the appointment of a receiver, and thereafter the appointment is deemed without legal authority, it is the requesting party and not the receivership funds that are liable for the expenses of the receivership; however, this general rule must be amenable to the circumstances surrounding the appointment of the receiver and the creation of the receivership, and, thus, the circuit court has the discretion to charge the receivership fees to the receivership estate or to a particular party. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Receivers](#) 200

### Immunity

Receiver appointed by circuit court for nonprofit religious corporation shared immunity of circuit court with regard to his actions as a receiver, though Supreme Court had ruled in prior appeal that circuit court lacked subject matter jurisdiction over a religious dispute and, thus, to order dissolution of corporation, as there was no clear absence of all jurisdiction of the circuit court, in that corporate dissolution actions fell within jurisdictional province of circuit courts, and circuit court found that all of receiver's actions were done in good faith. [Wipf v. Hutterville Hutterian Brethren, Inc., 834 N.W.2d 324, 2013 S.D. 49](#) . [Corporations and Business Organizations](#) 3485