

Ask The Receiver: Do receivers have to prepare and file an inventory?

By Peter A. Davidson*

Q: A few months ago I was appointed receiver over an operating business. A party is complaining that I have not filed an inventory of the assets of the business. My order of appointment says nothing about my having to file an inventory. The business has hundreds, if not thousands, of items of property (tools, desks, fork-lifts, supplies, etc.). Do I have to go to the trouble and cost of preparing and filing an inventory and, if so, how detailed must it be?

A: Yes. You must prepare and file an inventory. The fact that the order of appointment does not specifically state that an inventory is required is irrelevant. California Rules of Court, rule 3.1181(a) states: “A receiver must, within 30 days after appointment, or within such other time the court may order, file an inventory containing a complete and detailed list of all property which the receiver has taken possession by virtue of the appointment (emphasis added).” Because rule 3.1181(a) uses the term “must,” the obligation is mandatory. Rule 1.5(b)(1)(“Must” is mandatory”). Further, if you subsequently take possession of additional property, you are required to promptly file a supplemental inventory. Cal. Rules of Court, rule 3.1181(b).

Some attorneys, in drafting appointment orders, try to avoid this requirement by having the court waive the inventory requirement. This is likely ineffective. “The rules have the force of statute to the extent that they are not inconsistent with legislative enactments and constitutional provisions.” *In re Richard S.*, 54 Cal.3d 857, 863 (1991). Just as a court cannot disregard mandatory provisions of a statute, a court generally cannot ignore mandatory provisions of a Rule of Court. Further, although rule 3.1181(a) permits a court to modify the time within which the inventory must be filed this does not mean the Court can waive an inventory altogether. A strict reading of the rule supports this conclusion. If a court had leeway to waive the requirement, rule 3.1181(a) would provide: “A receiver must, unless the court orders otherwise,…” Indeed, the requirement in rule 3.1181(b) – that a receiver promptly file supplemental inventories – further supports the view that a court cannot waive the inventory requirement, because it is a directive to the receiver and makes no mention of a Court’s ability to expand or minimize the requirement.

The filing of an inventory serves a number of purposes. It not only informs the court of the assets its agent has possession of, it also informs the parties, who may be able to tell the receiver if items he should have are missing (i.e., where is the back-hoe, Picasso, or computer server?). It also protects the receiver from later complaints that property is missing or is not property the receiver should have in his or her possession.

For example, in *Dickie v Flamme Bros.*, 251 Neb. 910 (Sup. Ct. Neb. 1997), a receiver was appointed in an involuntary corporate dissolution case to marshal and sell the corporation’s

assets and wind up its affairs. The receiver sold the corporation's real property and various other assets and entered into settlements with secured creditors and the parties, all of which were approved by the court. Four years after his appointment, the receiver filed his final report. One of the parties objected to it. The objections were overruled, but the party appealed. Three years later, the Nebraska Supreme Court reversed and remanded, stating that it could not decide the issues on appeal because the receiver had never filed an inventory of the corporation's property on the date of his appointment, which his order of appointment had required. It directed the lower court to require the receiver to do so within 30 days, without any further compensation to the receiver. *Dickie v. Flamme Bros.*, 246 Neb. 66 (Sup. Ct. Neb. 1994).

The receiver filed the inventory and an amended final report, which the lower court approved. However, the same party again appealed contending the lower court erred in accepting the inventory because it did not account for all the property owned by the corporation. Three years later, the Nebraska Supreme Court again reversed and remanded. It held that in order for a receiver to comply with his duty of care, he is responsible for taking an inventory of the corporation's assets and liabilities, which should list all real and personal property of the corporation as of the date of the receiver's appointment, and identify all mortgages and security interests. *Dickie v. Flamme Bros*, supra, 251 Neb. at 916. The record showed that various personal property was not accounted for in the inventory, including a combine, certain harvested crops, negotiable commodity certificates, equipment and possible claims against third parties. Further, the inventory listed an entry of "miscellaneous property of junk value," which the Court held was inadequate because it neglected to list what property the entry included. The court ordered the receiver to file an amended inventory, within 30 days, accounting for all property of the estate. If the receiver failed to provide an adequate explanation for the missing property, the lower court was to surcharge the receiver for any damages the corporation incurred. *Id.* at 917. Although an extreme example, this result, and the attendant cost, possible liability and years of delay, might have been avoided had the receiver filed an inventory at the beginning of the case.

As to the inventory's detail, rule 3.1181(a) requires the inventory to be "a complete and detailed list of all property of which the receiver has taken possession..." While a receiver does not have to list every screw and nail on the premises (unless the business manufactures screws and nails), the inventory should be sufficiently detailed so the items can be identified. This will allow the receiver to respond if the receiver is later questioned as to the property's disposition, or assist the receiver in ensuring that the property is allocated correctly to a specified party, if required. In practice, a receiver should exercise the same care and diligence that an ordinary prudent person would exercise in handling his or her estate under like circumstances. *Vitug v. Griffin*, 214 Cal app. 3d 488, 496 (1989).

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