

CHAPTER 576

RECEIVERS, PROPERTY OF ABSENTEES

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576.01 RECEIVERS, WHEN AUTHORIZED. A receiver may be appointed in the following cases:

(1) Before judgment, on the application of any party to the action who shall show an apparent right to property which is the subject of such action and is in the possession of an adverse party, and the property, or its rents and profits, are in danger of loss or material impairment, except in cases wherein judgment upon failure to answer may be had without application to the court;

(2) By the judgment, or after judgment, to carry the same into effect, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment;

(3) In the cases provided by law, when a corporation is dissolved, or is insolvent or in imminent danger of insolvency, or has forfeited its corporate rights; and, in like cases, of the property within this state of foreign corporations;

(4) In such other cases as are now provided by law, or are in accordance with the existing practice, except as otherwise prescribed in this section.

[R. L. s. 4262] (9389)

576.02 [Superseded, Rules of Civil Procedure, Rules 67.03 86.01 and 86.02]

576.04 ABSENTEES; POSSESSION, MANAGEMENT, AND DISPOSITION OF PROPERTY. If a person entitled to or having an interest in property within or without the jurisdiction of the state has disappeared or absconded from the place within or without the state where he was last known to be, and has no agent in the state, and it is not known where he is, or if such person, having a spouse or minor child or children dependent to any extent upon him for support, has thus disappeared, or absconded without making sufficient provision for such support, and it is not known where he is, or, if it is known that he is without the state, any one who would under the law of the state be entitled to administer upon the estate of such absentee if he were deceased, or if no one is known to be so entitled, some person deemed suitable by the court, or such spouse, or some one in such spouse's or minors' behalf, may file a petition, under oath, in the district court for the county where any such property is situated or found, stating the name, age, occupation, and last known residence or address of such absentee, the date and circumstances of the disappearance or absconding, and the names and residences of other persons, whether members of such absentee's family or otherwise, of whom inquiry may be made, whether or not such absentee is a citizen of the United States, and if not, of what country he is a citizen or native, and containing a schedule of the property, real and personal, so far as known, and its location within or without the state, and praying that such property may be taken possession of and a receiver thereof appointed under this chapter. No proceedings shall be commenced under the provisions of sections 576.04 to 576.16, until at least three months after the date on which it is alleged in such petition that such person so disappeared or absconded.

[1925 c 262 s 1; 1937 c 27 s 1; 1947 c 165 s 1] (8080-1)

576.05 WARRANT; SHERIFF TO TAKE POSSESSION OF PROPERTY; FEES AND COSTS. The court may thereupon issue a warrant directed to the sheriff or his deputy, which may run throughout the state, commanding him to take possession of the property named in the schedule and hold it subject to the order

of the court and make return of the warrant as soon as may be, with his doings thereon and with a schedule of the property so taken. The officer shall post a copy of the warrant upon each parcel of land named in the schedule and cause so much of the warrant as relates to land to be recorded in the office of the register of deeds for the county where the land is located. He shall receive such fees for serving the warrant as the court allows, but not more than those established by law for similar service upon a writ of attachment. If the petition is dismissed, the fees and the cost of publishing and serving the notice hereinafter provided shall be paid by the petitioner; if a receiver is appointed, they shall be paid by the receiver and allowed in his account.

[1925 c. 262 s. 2] (8080-2)

576.06 NOTICE OF SEIZURE; APPOINTMENT OF RECEIVER; DISPOSITION OF PROPERTY. Upon the return of such warrant, the court may issue a notice reciting the substance of the petition, warrant, and officer's return, which shall be addressed to such absentee and to all persons who claim an interest in such property, and to all whom it may concern, citing them to appear at a time and place named and show cause why a receiver of the property named in the officer's schedule should not be appointed and the property held and disposed of under sections 576.04 to 576.16.

[1925 c. 262 s. 3] (8080-3)

576.07 PUBLICATION OF NOTICE. The return day of the notice shall be not less than 30, nor more than 60, days after its date. The court shall order the notice to be published once in each of three successive weeks in one or more newspapers within the state, and to be posted in two or more conspicuous places in the county within the state where the absentee last resided or was known to have been either temporarily or permanently, and upon each parcel of land named in the officer's schedule, and a copy to be mailed to the last known address of such absentee. In all cases where the absentee is not a citizen of the United States, a copy of the notice shall be ordered by the court to be served within such time, by mail, on the consular representative of the foreign country of which the absentee is a citizen, if there be one in this state, otherwise on the secretary of state, who shall forward the same to the chief diplomatic representatives of such country at Washington. The court may order other and further notice to be given within or without the state.

[1925 c. 262 s. 4] (8080-4)

576.08 HEARING BY COURT; DISMISSAL OF PROCEEDING; APPOINTMENT AND BOND OF RECEIVER. The absentee, or any person who claims an interest in any of the property, may appear and show cause why the prayer of the petition should not be granted. The court may, after hearing, dismiss the petition and order the property in possession of the officer to be returned to the person entitled thereto, or it may appoint a receiver of the property which is in the possession of the officer and named in his schedule. If a receiver is appointed, the court shall find and record the date of the disappearance or absconding of the absentee; and such receiver shall give a bond to the state in such sum and with such condition as the court orders, to be approved by the court. In the appointment of the receiver the court shall give preference to the wife of the absentee, if she is competent and suitable.

[1925 c. 262 s. 5] (8080-5)

576.09 POSSESSION OF PROPERTY BY RECEIVER. After the approval of the bond the court may order the sheriff or his deputy to transfer and deliver to such receiver the possession of the property under the warrant, and the receiver shall file in the office of the clerk of court a schedule of the property received by him.

[1925 c. 262 s. 6] (8080-6)

576.10 ADDITIONAL PROPERTY; RECEIVER TO TAKE POSSESSION. The receiver, upon petition filed by him, may be authorized and directed to take possession of any additional property within or without the state which belongs to such absentee and to demand and collect all debts due the absentee from any person within or without the state and hold the same as if it had been transferred and delivered to him by the officer.

[1925 c. 262 s. 7; 1947 c. 165 s. 2] (8080-7)

576.11 WHERE NO CORPOREAL PROPERTY; RECEIVER; BOND. If the absentee has left no corporeal property within or without the state, but there are

debts and obligations due or owing to him from persons within or without the state, a petition may be filed, as provided in section 576.04, stating the nature and amount of such debts and obligations, so far as known, and praying that a receiver thereof may be appointed. The court may thereupon issue a notice, as above provided, without issuing a warrant, and may, upon the return of the notice and after a hearing, dismiss the petition or appoint a receiver and authorize and direct him to demand and collect the debts and obligations specified in the petition. The receiver shall give bond, as provided in section 576.08, and hold the proceeds of such debts and obligations and all property received by him, and distribute the same as provided in sections 576.12 to 576.16. He may be further authorized and directed as provided in section 576.10.

[1925 c 262 s 8; 1947 c 165 s 3] (8080-8)

576.12 CARE OF PROPERTY; LEASE; SALE. The court may make orders for the care, custody, leasing, and investing of all property and its proceeds in the possession of the receiver. If any of the property consists of live animals or is perishable or cannot be kept without a great or disproportionate expense, the court may, after the return of the warrant, order such property to be sold at public or private sale. After the appointment of a receiver, upon his petition and after notice, the court may order all or part of the property, including the rights of the absentee in land, to be sold at public or private sale to supply money for payments authorized by sections 576.04 to 576.16, or for reinvestment approved by the court.

[1925 c. 262 s. 9] (8080-9)

576.13 USE OF PROCEEDS. The court may order the property or its proceeds acquired by mortgages, lease, or sale to be applied in payment of charges incurred or that may be incurred in the support and maintenance of the absentee's spouse and minor child or children, and to the discharge of such debts and claims for alimony as may be proved against the absentee.

[1925 c. 262 s. 10; 1937 c. 27 s. 2] (8080-10)

576.14 CLAIMS; ADJUSTMENT BY RECEIVER. The court may authorize the receiver to adjust by arbitration or compromise any demand in favor of or against the estate of the absentee.

[1925 c. 262 s. 11] (8080-11)

576.15 COMPENSATION OF RECEIVER; TITLE OF ABSENTEE LOST AFTER TEN YEARS. The receiver shall be allowed such compensation and disbursements as the court orders, to be paid out of the property or proceeds. If, within ten years after the date of the disappearance or absconding, as found and recorded by the court, the absentee appears, or an administrator, executor, assignee in insolvency, or trustee in bankruptcy of the absentee is appointed, the receiver shall account for, deliver, and pay over to him the remainder of the property. If the absentee does not appear and claim the property within ten years, all his right, title, and interest in the property, real or personal, or the proceeds thereof, shall cease, and no action shall be brought by him on account thereof.

[1925 c. 262 s. 12] (8080-12)

576.16 DISTRIBUTION OF BALANCE OF PROPERTY. If, at the expiration of ten years, the property has not been accounted for, delivered or paid over under section 576.15, the court shall order the distribution of the remainder to the persons to whom, and in the shares and proportions in which, it would have been distributed if the absentee had died intestate within the state on the day ten years after the date of the disappearance or absconding, as found and recorded by the court.

If the receiver is not appointed within nine years after the date found by the court under section 576.08, the time limited for accounting for, or fixed for distributing, the property or its proceeds, or for barring actions relative thereto, shall be one year after the date of the appointment of the receiver instead of the ten years provided in sections 576.14 and 576.15.

The provisions of sections 576.04 to 576.16 shall not be construed as exclusive, but as providing additional and cumulative remedies.

[1925 c. 262 s. 13] (8080-13)