

# Cannabis Creditors Face Receivership in Oregon

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It is no secret that cannabis [businesses](#) and [owners](#) remain largely barred from taking advantage of federal bankruptcy protections, leaving distressed marijuana businesses with limited restructuring options. Most often, distressed marijuana businesses and businesses serving the marijuana industry (collectively, MRBs) must instead rely on [state law](#), including state-specific cannabis receivership statutes.

## New Cannabis MRB Receivership in Oregon

Recently, Chalice Brands, Ltd. (Chalice), the Canadian parent company to several Oregon subsidiaries (the Greenpoint Parties), engaged in the production, distribution, and sale of cannabis and cannabis products via a network of sixteen retail stores in Oregon, filed suit against the Greenpoint Parties in Oregon state court seeking appointment of a receiver to prevent a “race to the courthouse” by creditors, thereby avoiding piecemeal dismemberment and liquidation of the Greenpoint Parties and their assets (Chalice is also a secured lender to the Greenpoint Parties). In its suit, Chalice requested that the court-appointed receiver take over management and operation of the Greenpoint Parties and their assets so those assets would be preserved and liquidated in an orderly fashion to maximize value for the benefit of all creditors and parties in interest.

When the receivership suit was filed, many creditors of the Greenpoint Parties understandably worried that they would be left empty-handed. They also were confused about their rights to repayment with respect to still-outstanding debts.

The filings also sent a shockwave through the greater cannabis industry, leaving creditors (and potential creditors) of MRBs throughout the country wondering: Is there any chance of recouping any of the funds owed by a cannabis company that has filed a receivership? Or, in other words, is all lost for creditors of marijuana and ancillary businesses when a state receivership is filed?

## What are the Powers and Duties of a Receiver in Oregon?

Receivership and bankruptcy are both legal processes that businesses and individuals may use to address their financial problems. In both cases, the goal is to protect a company or individual from creditors, as well as to maximize the value of the assets and distribute the proceeds to creditors in an orderly fashion according to priorities set forth in the statutes. Generally, in receivership and a liquidating bankruptcy, a third party (a receiver or trustee) is appointed to take control of the company’s assets and/or manage its operations.

Unlike federal bankruptcy laws, which are uniform throughout the country, receivership statutes differ by state. Oregon has one of the most robust and detailed receivership statutes. In Oregon, where Chalice recently

received an order appointing a receiver over the Greenpoint Parties, a receiver of a licensed marijuana business is assigned the duties and responsibilities set forth in the state court order appointing that person as the receiver. Oregon receivership law also confers on the receiver a broad range of powers, which may be further expanded by court order, including but not limited to:

- Control over property of the estate
- Operate a business owned by the estate in the ordinary course
- Incur debt to preserve estate property and to pay expenses of administration
- Use, sell, transfer and/or abandon property of the estate
- Sue and be sued
- Engage estate professionals
- Assume executory contracts
- Allow or disallow creditors' claims
- Distribute estate property

Further, Oregon law specifically allows trustees and secured parties to operate a licensed marijuana business – similar laws only exist in about 20% of the United States – through a receiver. Such a receiver:

- Must be eligible to be a licensee (see, OAR 845-025-1260(2))
- May obtain a temporary authority to operate a licensee “to allow orderly disposition of the business” (see, OAR 845-025-1260(1))
- May be granted an extension of the temporary 60-day authority to allow for the disposition of the business (see, OAR 845-025-1260(3), and (4))

## What Happens in an Oregon Receivership?

Generally, in a receivership, once a receiver is appointed, several timelines begin to run. For example, within 60 days of appointment, the receiver will file with the court a “schedule” listing all of the company’s creditors, the amounts and nature of each creditor’s claim, and whether the same is disputed (see, ORS § 37.190). Should any dispute arise, the receiver and any interested party may object to a claim. That claim may be mediated or litigated before the court (see, ORS § 37.360; Or.R.Civ.P. 80). In this same 60-day period, the receiver must also file an inventory of all estate property. Further, each month following the appointment, the receiver is required to file reports detailing the ongoing business operations and finances.

In Oregon, the receiver has flexibility to set the form and procedure of the claims allowance and payment process and may issue a claims “bar date” (the date by which claims must be filed with the receiver) (see, ORS § 37.340(1)) and ORS § 37.210). With respect to specific claims of creditors in Oregon, all unsecured claims that arose before the receiver was appointed must be submitted to the receiver to participate in the proceeds of the estate (see ORS § 37.350(6)). It is essential that creditors take notice of relevant claims bar date(s) and comply with all requirements prior to the stated deadline(s).

Once all claim disputes are resolved, and the company’s assets have been assessed, the receiver will sell and distribute the proceeds of the sale of the assets to the creditors based on a state-specific priority of payment of

claims. In Oregon, after taking into account the expenses associated with the administration of the receivership estate, available proceeds are distributed to creditors and equity holders in the order listed below:

- Secured and perfected claims (from the proceeds of the collateral)
- Administrative claims
- Secured but unperfected claims
- Wages and salaries
- Small unsecured claims by individuals for certain types of deposits
- Spousal and child support
- Unsecured tax claims
- Other unsecured claims
- Equity interests

See, ORS § 37.370(1).

## What Do Creditors Need to Know About the Chalice Case?

In its suit, Chalice sought the court's permission under OAR 845-025-1260 to have "s[old] or lease[d] or license[d], as applicable the [...] defined Collateral privately sometime after Wednesday, May 24, 2023." The collateral includes: "all of the inventory and finished goods in the possession, custody, or control of Debtors arising from, derived from, and/or related to the Licenses (together, the "Inventory"), and all proceeds thereof, including money and deposit accounts; books of account and records relating to the Licenses and Inventory; and contract rights or rights to the payment of money, insurance claims, and proceeds relating to or from the Licenses or Inventory."

### ***A receiver has been appointed***

The court appointed Kenneth Eiler, an attorney who has practiced law for over 40 years, with the last 20 as a full-time trustee and receiver, as the receiver over the Greenpoint Parties (the Receiver). The order appointing the Receiver sets forth his powers to include "exclusive possession and control" over the estates of the Greenpoint Parties and "all other powers and rights of a receiver appointed under Oregon law."

### ***No claims administration process – yet***

Importantly for creditors, the Receiver is not required to administer a claims process in the Chalice-Greenpoint Parties receivership proceedings at this time but may elect to do so. Regardless, creditors (particularly secured creditors who have not perfected their claims) of the Greenpoint Parties should take the time now to prepare a claim for submittal to the receiver if and when a claims administration process is established. This will likely occur following the liquidation of the Greenpoint Parties' assets via auction (see below). Also importantly for some creditors, the order "shall operate as a stay, applicable to all persons, of all activities against the Greenpoint Parties and their estates and assets, including any and all actions or proceedings, collateral lien perfection, and enforcement acts and repossessions.

### ***The receiver is auctioning the assets***

Thus far, the Receiver has moved promptly to liquidate the assets of the Greenpoint Parties' estates and has filed with the Court a Motion for Approval of Bid Procedures to enable him to market and sell assets of the receivership estate. The estates are presently cash-flow negative making it urgent to liquidate the estates to maximize the value of its assets and minimize the accrual of administrative expenses. The bid procedures are designed for an expedited bid and sale process. If the court approves the Bid Procedures Motion, a bid deadline will be set for June 30, and a hearing on approval of the successful bid(s) will be set for July 10.

## The Takeaway

Receiverships are state law alternatives to Chapter 7 and Chapter 11 bankruptcy proceedings. The receivership in the Chalice-Greenpoint Parties case is designed to track many, if not most, of the procedures that would be followed if the case were a bankruptcy case.

Given the increasingly shaky economy, it is inevitable that many businesses and their creditors – not merely MRBs – will find themselves involved in receivership proceedings and workouts (recall the year 2008). Due to the intricacies of state cannabis laws, it is critical that businesses and creditors engage counsel well-versed in both insolvency laws and applicable state cannabis laws.

The insolvency and cannabis regulatory professionals at McGlinchey are well-positioned to assist creditors and other parties with questions regarding receivership.

## Related people

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