

1 H.453

2 Introduced by Committee on Judiciary

3 Date:

4 Subject: Human services; nursing home; long-term care facility; licensing;  
5 receivership

6 Statement of purpose: This bill proposes to establish a process to provide for  
7 receivership of a long-term care facility that files for bankruptcy.

8 An act relating to receivership of long-term care facilities

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 33 V.S.A. chapter 71 is amended to read:

11 CHAPTER 71. LICENSING OF NURSING HOMES REGULATION OF  
12 LONG-TERM CARE FACILITIES

13 § 7101. POLICY

14 The purpose of this chapter is to provide for the development, establishment  
15 and enforcement of standards for the construction, maintenance ~~and~~, operation,  
16 provision of receivership and dissolution of nursing homes and similar  
17 ~~institutions~~ long-term care facilities in which medical, nursing, or other  
18 ~~remedial~~ care is rendered, ~~and of homes for the aged~~, which will promote safe  
19 surroundings, adequate care, and humane treatment, safeguard the health of,

1        safety of, and continuity of care to residents, and protect residents from the  
2        adverse health effects caused by abrupt or unsuitable transfer of such persons  
3        cared for in these facilities.

4        § 7102. DEFINITIONS

5        ~~The following words and phrases, as used in~~ For purposes of this chapter,  
6        ~~have the following meanings unless otherwise provided:~~

7            (1) ~~“Residential care home” means a place, however named, excluding a~~  
8            ~~licensed foster home, which provides, for profit or otherwise, room, board and~~  
9            ~~personal care to three or more residents unrelated to the home operator.~~

10        ~~Residential care homes shall be divided into two groups, depending upon the~~  
11        ~~level of care they provide, as follows:~~

12            (A) ~~Level III, which provides personal care, defined as assistance~~  
13            ~~with meals, dressing, movement, bathing, grooming, or other personal needs,~~  
14            ~~or general supervision of physical or mental well being, including nursing~~  
15            ~~overview and medication management as defined by the licensing agency by~~  
16            ~~rule, but not full time nursing care; and~~

17            (B) ~~Level IV, which provides personal care, as described in~~  
18            ~~subdivision (A), or general supervision of the physical or mental well being of~~  
19            ~~residents, including medication management as defined by the licensing~~  
20            ~~agency by rule, but not other nursing care;~~

1           ~~(2) “Therapeutic community residence” means a place, however named,~~  
2           ~~excluding a hospital as defined by statute or the Vermont state hospital, which~~  
3           ~~provides, for profit or otherwise, short term individualized treatment to three~~  
4           ~~or more residents with major life adjustment problems, such as alcoholism,~~  
5           ~~drug abuse, mental illness or delinquency;~~

6           ~~(3) “Licensing agency” means the agency of human services, or the~~  
7           ~~department or division within the agency as the secretary of human services~~  
8           ~~may designate;~~

9           ~~(4) “Maternity home” means a place, other than a hospital as defined by~~  
10           ~~statute, which maintains and operates facilities, for profit or otherwise,~~  
11           ~~accommodating a person or persons, unrelated to the home operator, who~~  
12           ~~require maternity care;~~

13           ~~(5) “Maternity care” means a high level of nursing care, prescribed by~~  
14           ~~the physician, and medical care required by obstetrical patients prior to~~  
15           ~~delivery, during delivery, and for such period following delivery as the~~  
16           ~~physician may indicate. The term “maternity care” shall also include care of~~  
17           ~~the newborn in accordance with procedures and techniques recommended in~~  
18           ~~“Hospital Care of Newborn Infants,” most recent edition published by the~~  
19           ~~American Academy of Pediatrics;~~

20           ~~(6) “Nursing care” means the performance of services necessary in~~  
21           ~~earing for the sick or injured that require specialized knowledge, judgment and~~

1 skill and meet the standards of the nursing regimen, or the medical regimen, or  
2 both, as defined in 26 V.S.A. § 1572(4) and (5);

3 (7) “Nursing home” means an institution or distinct part of an institution  
4 which is primarily engaged in providing to its residents any of the following:

5 (A) Skilled nursing care and related services for residents who require  
6 medical or nursing care.

7 (B) Rehabilitation services for the rehabilitation of injured, disabled,  
8 or sick persons.

9 (C) On a 24 hour basis, health related care and services to individuals  
10 who because of their mental or physical condition require care and services  
11 which can be made available to them only through institutional care;

12 (8) “Person” means any individual, corporation, partnership, association,  
13 state, subdivision or agency of the state, or any other entity. Whenever used in  
14 any provision of this chapter which prescribes or imposes a fine or  
15 imprisonment, or both, the term “person,” as applied to a firm, partnership or  
16 association, shall include the members thereof and, as applied to a corporation,  
17 the officers thereof; a firm, partnership, association or a corporation may be  
18 subjected as an entity to the payment of a fine;

19 (1) “Assisted living residence” means a program which combines  
20 housing, health and supportive services for the support of resident  
21 independence and aging in place. Within a homelike setting, assisted living

1 units offer, at a minimum, a private bedroom, private bath, living space,  
2 kitchen capacity, and a lockable door. Assisted living promotes resident  
3 self-direction and active participation in decision-making while emphasizing  
4 individuality, privacy, and dignity.

5 ~~(9)(2)~~ “Facility” means a residential care home, ~~maternity home,~~ nursing  
6 home, assisted living residence, home for the terminally ill, or therapeutic  
7 community residence licensed or required to be licensed pursuant to the  
8 provisions of this chapter.

9 ~~(10)(3)~~ “Home for the terminally ill” means a place providing services  
10 specifically for three or more dying people, including room, board, personal  
11 care and other assistance for the residents’ emotional, spiritual, and physical  
12 well-being. ~~A home for the terminally ill shall not be considered a nursing~~  
13 ~~home, residential care home or any other facility regulated by this chapter.~~

14 ~~(11)~~ “Assisted living residence” means a program which combines  
15 housing, health and supportive services for the support of resident  
16 independence and aging in place. ~~Within a homelike setting, assisted living~~  
17 ~~units offer, at a minimum, a private bedroom, private bath, living space,~~  
18 ~~kitchen capacity, and a lockable door. Assisted living promotes resident self-~~  
19 ~~direction and active participation in decision-making while emphasizing~~  
20 ~~individuality, privacy and dignity.~~

1           (4) “Licensee” means any person, other than a receiver appointed under  
2 this chapter, which is licensed or required to be licensed to operate a facility.

3           (5) “Licensing agency” means the agency of human services or the  
4 department or division within the agency as the secretary of human services  
5 may designate.

6           (6) “Nursing care” means the performance of services necessary in  
7 caring for the sick or injured that require specialized knowledge, judgment, and  
8 skill and meet the standards of nursing as defined in 26 V.S.A. § 1572.

9           (7) “Nursing home” means an institution or distinct part of an institution  
10 which is primarily engaged in providing to its residents any of the following:

11           (A) Skilled nursing care and related services for residents who  
12 require medical or nursing care.

13           (B) Rehabilitation services for the rehabilitation of injured, disabled,  
14 or sick persons.

15           (C) On a 24-hour basis, health-related care and services to  
16 individuals who because of their mental or physical condition require care and  
17 services which can be made available to them only through institutional care.

18           (8) “Owner” means the holder of the title to the property on or in which  
19 the facility is maintained.

20           (9) “Resident” means any person who lives in and receives services or  
21 care in a facility.

1           (10) “Residential care home” means a place, however named, excluding  
2           a licensed foster home, which provides, for profit or otherwise, room, board,  
3           and personal care to three or more residents unrelated to the home operator.  
4           Residential care homes shall be divided into two groups, depending upon the  
5           level of care they provide, as follows:

6                   (A) Level III, which provides personal care, defined as assistance  
7                   with meals, dressing, movement, bathing, grooming, or other personal needs,  
8                   or general supervision of physical or mental well-being, including nursing  
9                   overview and medication management as defined by the licensing agency by  
10                  rule, but not full-time nursing care; and

11                   (B) Level IV, which provides personal care, as described in  
12                  subdivision (A) of this subdivision (11), or general supervision of the physical  
13                  or mental well-being of residents, including medication management as  
14                  defined by the licensing agency by rule, but not other nursing care.

15           (11) “Therapeutic community residence” means a place, however  
16           named, excluding a hospital as defined by statute or the Vermont state hospital,  
17           which provides, for profit or otherwise, short-term individualized treatment to  
18           three or more residents with major life adjustment problems, such as  
19           alcoholism, drug abuse, mental illness, or delinquency.



1 shall expire one year after date of issuance, or upon such uniform dates  
2 annually as the licensing agency may prescribe by regulation. Licenses shall  
3 be issued only for the premises and persons named in the application and shall  
4 not be transferable or assignable. Licenses shall be posted in a conspicuous  
5 place on the licensed premises.

6 (b) In its discretion the licensing agency may issue a temporary license  
7 permitting operation of a nursing home, assisted living residence, therapeutic  
8 community residence, residential care home or ~~maternity~~ home for the  
9 terminally ill for such period or periods and subject to such conditions as the  
10 licensing agency deems proper, but in no case shall a nursing home, assisted  
11 living residence, therapeutic community residence, residential care home or  
12 ~~maternity~~ home for the terminally ill operate under a temporary license or  
13 renewal thereof for a period exceeding ~~thirty-six~~ 36 months.

14 (c) ~~{Deleted.}~~ An owner, licensee, or administrator shall disclose to the  
15 licensing agency any changes in the ownership interests in the company,  
16 ownership of any real property, management of the facility, or corporate  
17 structure that occur after the date the license is issued. The licensing agency  
18 may require the owner, licensee, or administrator to apply for a new license.

19 ~~(d) In its discretion the licensing agency may issue a temporary license~~  
20 ~~permitting operation of a residential care home for such period or periods and~~  
21 ~~subject to such conditions as the licensing agency deems proper, but in no case~~

1 ~~shall a residential care home operate under a temporary license or renewal~~  
2 ~~thereof for a period exceeding thirty six months.~~

3 \* \* \*

4 § 7107. UNLICENSED HOMES

5 (a) The licensing agency shall promulgate regulations governing the  
6 identification of unlicensed residential care homes, nursing homes, assisted  
7 living residences, therapeutic community residences, and ~~maternity~~ homes for  
8 the terminally ill.

9 \* \* \*

10 (e)(1) Within 30 days of the date a license to operate any facility pursuant  
11 to this section is revoked or voluntarily relinquished, the operator shall obtain a  
12 new license or shall cause all of the residents in the facility to be moved  
13 promptly.

14 (2) The facility shall be responsible for securing suitable alternative  
15 placements for the residents and shall be responsible for the cost of the  
16 planning for the transition and transportation of the residents to the alternative  
17 placements.

18 (3) Failure to comply with this subsection may result in penalties being  
19 assessed against the operator, owner or the facility as provided for in  
20 subsection 7111(c) of this title.

21 \* \* \*

1 § 7111. ENFORCEMENT; PROTECTION OF RESIDENTS

2 (a) The licensing agency shall enforce provisions of this chapter to protect  
3 residents of facilities.

4 \* \* \*

5 (h) The ~~licensing agency~~ commissioner of disabilities, aging, and  
6 independent living, the attorney general, or a resident or a resident's legal  
7 representative may bring an action ~~in accordance with the Rules of Civil~~  
8 ~~Procedure for appointment of a receiver for a facility, if there are grounds to~~  
9 ~~support suspension, revocation, modification or refusal to renew the facility's~~  
10 ~~license and alternative placements for the residents are not readily available~~ as  
11 provided for in subchapter 2 of this chapter.

12 \* \* \*

13 ~~§ 7113. INTERPRETATION~~

14 This chapter shall not be construed in any way to restrict or modify any law  
15 ~~pertaining to the placement and adoption of children or the care of unmarried~~  
16 ~~mothers.~~

17 \* \* \*

18 Subchapter 2. Receivership Proceedings

19 § 7201. POLICY

20 The purpose of this subchapter is to provide for the receivership of a  
21 long-term care facility in order to ensure safe surroundings, adequate care, and

1 humane treatment; to safeguard the health of, safety of, and continuity of care  
2 to residents; and to protect residents from the adverse health effects caused by  
3 abrupt or unsuitable transfer of such persons cared for in these facilities.

4 § 7202. APPLICATION FOR RECEIVER

5 (a) The commissioner of disabilities, aging, and independent living or the  
6 attorney general may file a complaint in the superior court of the county in  
7 which the licensing agency or the facility is located, requesting the  
8 appointment of a receiver when:

9 (1) A licensee intends to close and has not secured suitable placements  
10 for its residents at least 30 days prior to closure;

11 (2) A situation, physical condition, or a practice, method, or operation  
12 which presents imminent danger of death or serious physical or mental harm to  
13 residents exists in a facility, including imminent or actual abandonment of a  
14 facility;

15 (3) A facility is in substantial or habitual violation of the standards of  
16 health, safety, or resident care established under state or federal regulations to  
17 the detriment of the welfare of the residents or clients;

18 (4) The facility is insolvent; or

19 (5) The licensing agency has suspended, revoked, or modified the  
20 existing license of the facility.

1       (b)(1) A resident or resident's representative may petition the licensing  
2       agency or the attorney general to seek a receivership under this section. If the  
3       licensing agency or attorney general denies the petition or fails to file a  
4       complaint within five days, the party bringing the petition may file a complaint  
5       in the superior court of the county in which the licensing agency or the facility  
6       is located, requesting the appointment of a receiver on the same grounds listed  
7       in subsection (a) of this section. Prior to a hearing for the appointment of a  
8       receiver, the commissioner of disabilities, aging, and independent living shall  
9       file an affidavit describing the results of any investigation conducted, including  
10       a statement of findings with respect to the resident's petition and the reasons  
11       for not filing an action under this section. The commissioner shall include the  
12       two most recent reports of deficiencies in the facility, if any.

13       (2) If the court finds the grounds listed in subsection (a) of this section  
14       are not met, the court may dismiss the complaint without a hearing as provided  
15       for in the Vermont rules of civil procedure.

16       (c)(1) The licensing agency shall be deemed a necessary party under  
17       Rule 19(a) of the Vermont Rules of Civil Procedure. A temporary receiver  
18       shall be a necessary party after the temporary receiver is appointed and shall  
19       remain a party until a receiver is appointed under section 7204 of this chapter.  
20       A receiver appointed under section 7204 of this chapter shall be deemed a  
21       necessary party under Rule 19(a) of the Vermont Rules of Civil Procedure.

1           (2) The entity filing the complaint shall notify the state long-term care  
2           ombudsman and the mortgage holder upon filing of the complaint.

3           (d) Upon receipt, the licensee or administrator of the facility shall make the  
4           complaint available for examination to residents and the public by posting a  
5           notice of its availability.

6           § 7203. APPOINTMENT OF TEMPORARY RECEIVER

7           (a) A motion to appoint a temporary receiver may be filed with the  
8           complaint or at any time prior to the hearing on the merits provided for in  
9           section 7204 of this chapter. The motion shall be accompanied by an affidavit  
10           alleging facts necessary to show the grounds for the receivership and the  
11           necessity for appointing a temporary receiver prior to the hearing on the merits.  
12           A motion to prejudgment attachment under Rule of Civil Procedure 4.1(b)(3)  
13           may also be filed with the complaint or at any time prior to the hearing on the  
14           merits.

15           (b) The court may appoint a temporary receiver ex parte when the court  
16           finds that there is a reasonable likelihood that:

17           (1)(A) a licensee intends to close the facility and has not secured  
18           suitable placements for its residents prior to closure; or

19           (B) a situation, physical condition, or a practice, method, or operation  
20           presents imminent danger of death or serious physical or mental harm to  
21           residents; and

1           (2) the situation must be remedied immediately to ensure the health,  
2 safety, and welfare of the residents of the facility.

3           (c) If the order for temporary receivership is granted, the complaint and  
4 order shall be served on the owner, licensee, or administrator and shall be  
5 posted in a conspicuous place in the facility no later than 24 hours after  
6 issuance.

7           § 7204. APPOINTMENT OF RECEIVER; NOTICE

8           (a)(1) Unless the complaint is dismissed as provided for in section 7202 of  
9 this chapter or parties agree to a later date, the court shall hold a hearing on the  
10 merits to appoint a receiver within 10 days of filing the complaint. The court  
11 shall hold a hearing on the merits even when the court has appointed a  
12 temporary receiver as provided for in section 7203 of this chapter.

13           (2) Notice of the hearing shall be served on the owner, the licensee, the  
14 mortgage holder, the state long-term care ombudsman, and the licensing  
15 agency not less than five days before the hearing. If the owner or the licensee  
16 cannot be served, the court shall specify an alternative form of notice.

17           (b) The licensee shall post notice of the hearing, in a form approved by the  
18 court, in a conspicuous place in the facility for not less than five days before  
19 the date of the hearing.

1     § 7205. APPOINTMENT OF RECEIVER; RECOMMENDATIONS

2             BY LICENSING AGENCY

3             (a) Not less than two days prior to the hearing on the merits, the  
4             commissioner shall file with the court a list of recommended persons who meet  
5             the criteria in subsection (b) of this section to consider for appointment as the  
6             receiver, which may include licensed nursing home administrators or other  
7             qualified persons. The list shall include a minimum of three recommended  
8             persons and shall include the names and the qualifications of the persons.

9             (b) To be appointed as a receiver, a person shall have experience as a  
10            licensed nursing home administrator or experience in the delivery of health  
11            care services and the operation of a long-term care facility. No person is  
12            qualified to be a receiver who:

13                 (1) is the owner, licensee, or administrator of the facility;

14                 (2) has owned or operated a facility that has been ordered into  
15            receivership; or

16                 (3) is the owner, licensee, or administrator of any facility that has been  
17            in substantial or habitual violation of the federal or state licensing and  
18            certification rules applicable to that facility.

19     § 7206. APPOINTMENT OF RECEIVER; HEARING AND ORDER

20             (a) After the hearing on the merits, the court may appoint a receiver from  
21             the list provided by the licensing agency if it finds that one of the grounds in

1 section 7202 of this chapter is satisfied, and that the person is not disqualified  
2 as provided for in subsection 7205(b) of this chapter.

3 (b) The court shall set a reasonable compensation for the receiver and may  
4 require the receiver to furnish a bond with surety as the court may require.  
5 Any expenditure, including the compensation of the receiver, shall be paid  
6 from the revenues of the facility.

7 (c) The court may order limitations and conditions on the authority of the  
8 receiver provided for in section 7207 of this chapter. The order shall divest the  
9 owner and licensee of possession and control of the facility during the period  
10 of receivership under the conditions specified by the court.

11 (d) An order issued pursuant to this section shall confirm on the receiver all  
12 rights and powers described in section 7207 of this chapter and shall provide  
13 the receiver with the authority to conduct any act authorized under this section,  
14 including managing the accounts, banking transactions, and payment of debts.

15 (e) An order appointing a receiver under this chapter has the effect of a  
16 license for the duration of the receivership and of suspending the license of the  
17 licensee. The receiver shall be responsible to the court for the conduct of the  
18 facility during the receivership, and a violation of regulations governing the  
19 conduct of the facility, if not promptly corrected, shall be reported by the  
20 licensing agency to the court. The order shall not remove the obligation of the

1 receiver to comply with all relevant federal and state rules applicable to the  
2 facility.

3 (f) The court shall order regular accountings by the receiver at least  
4 semi-annually.

5 § 7207. POWERS AND DUTIES OF RECEIVER

6 (a) A receiver shall not take any actions or assume any responsibilities  
7 inconsistent with the purposes of this subchapter or the duties specifically  
8 provided for in this section.

9 (b) Unless otherwise ordered by the court and subject to the limitations  
10 provided for in sections 7208 through 7211 of this chapter, the receiver  
11 appointed under this subchapter shall:

12 (1) notify residents of the receivership and shall make reasonable efforts  
13 to notify family after the facility is placed in receivership;

14 (2) operate the facility;

15 (3) remedy the conditions that constituted grounds for the receivership;

16 (4) remedy violations of federal and state regulations governing the  
17 operation of the facility;

18 (5) protect the health, safety, and welfare of the residents, including the  
19 correction or elimination of any deficiency of the facility that endangers the  
20 safety or health of the residents;

1           (6) preserve the assets and property of the residents, the owner, and the  
2           licensee;

3           (7) hire, direct, manage, and discharge any employees, including the  
4           administrator or manager of the facility;

5           (8)(A) Apply the revenues of the facility to current operating expenses;

6           (B) Receive and expend in a reasonable and prudent manner the  
7           revenues of the facility due during the 30-day period preceding the date of  
8           appointment and becoming due thereafter; and

9           (C) To the extent possible, apply the revenues of the facility to debts  
10          incurred by the licensee prior to the appointment of the receiver;

11          (9) continue the business of the facility and the care of residents;

12          (10) file monthly reports containing information as required by the  
13          licensing agency to the owner and the licensing agency; and

14          (11) exercise such additional powers and perform such additional duties  
15          as ordered by the court.

16          § 7208. LIMITATIONS; CORRECTION OF CONDITIONS

17          (a)(1) Except as provided for in subsection (b) of this section, if the total  
18          cost of correcting conditions that constituted grounds for the receivership and  
19          violations of federal and state regulations governing the operation of the  
20          facility or of other health and safety issues exceeds \$5,000.00, the receiver

1 shall notify the mortgage holder, licensee and owner of the conditions needing  
2 correcting and the estimated amount needed to correct the condition.

3 (2) The mortgage holder, owner, or licensee shall have five days from  
4 the date of mailing of the notice to apply to the court to determine the  
5 reasonableness of the expenditure by the receiver.

6 (3) If the mortgage holder, owner, or licensee files a motion objecting to  
7 the corrections, the receiver shall not correct the conditions until ordered by the  
8 court.

9 (b) If the condition constitutes a situation, physical condition, or a practice,  
10 method, or operation which presents imminent danger of death or serious  
11 physical or mental harm to residents and the estimate and the total cost of the  
12 correction exceeds \$10,000.00, the receiver shall notify the mortgage holder,  
13 owner, and licensee who may object to the court as provided for in  
14 subsection (a) of this section. The receiver may proceed with the corrections  
15 pending a hearing and order of the court.

16 § 7209. LIMITATIONS; PAYMENT OF DEBTS

17 The receiver shall petition the court when debts incurred prior to  
18 appointment of the receiver appear extraordinary, of questionable validity, or  
19 unrelated to the normal and expected maintenance and operation of the facility;  
20 or where payment of the debts will interfere with the purposes of the

1 receivership. The court shall determine the order of priority of debts with first  
2 priority given to expenditures for direct care of current residents.

3 § 7210. LIMITATIONS; AUTHORITY TO BORROW

4 (a) In the event that the receiver does not have sufficient funds to cover  
5 expenses needed to prevent or remove jeopardy to the resident or to pay the  
6 debts accruing to the facility, the receiver may petition the court for permission  
7 to borrow for these purposes.

8 (b) Notice of the receiver's petition to the court for permission to borrow  
9 must be given to the owner, the licensee, the mortgage holder, and the  
10 licensing agency.

11 (c) The court may, after hearing, authorize the receiver to borrow money  
12 upon specified terms of repayment and to pledge security, if necessary, if the  
13 court determines that the facility should not be closed and that the loan is  
14 reasonably necessary to prevent or remove jeopardy, or if it determines that the  
15 facility should be closed and that the expenditure is necessary to prevent or  
16 remove jeopardy to residents for the limited period of time when they are  
17 awaiting transfer.

18 § 7211. LIMITATIONS; CLOSURE OF THE FACILITY

19 (a) The receiver may not close the facility without leave of the court.

20 (b) The court shall consider the protection of residents and shall prevent the  
21 closure of facilities that, under proper management, are likely to be financially

1 viable. This section may not be construed as a method of financing major  
2 repair or capital improvements to facilities that have been allowed to  
3 deteriorate because the owner or licensee has been unable or unwilling to  
4 secure financing by conventional means.

5 (c) In ruling on a motion to close the facility, the court shall consider:

6 (1) The rights and best interests of the residents;

7 (2) The availability of suitable alternative placements;

8 (3) The rights, interest, and obligations of the owner and licensee;

9 (4) The licensure status of the facility; and

10 (5) The need for the facility in the geographic area.

11 (d) When a facility is closed, the receiver shall provide for the orderly  
12 transfer of residents to mitigate trauma caused by the transfer to another  
13 facility.

14 § 7212. WRIT OF POSSESSION

15 After notice and a hearing, the court may issue a writ of possession on  
16 behalf of the receiver for specific real or personal property related or pertaining  
17 to the facility.

18 § 7213. ATTACHMENT; TRUSTEE PROCESS

19 Revenues held by or owing to the receiver in connection with the operation  
20 of the facility are exempt from attachment and trustee process, including  
21 process served prior to the institution of receivership proceedings.

1        § 7214. AVOIDANCE OF CONTRACTS

2            (a) The court may grant a motion filed by the receiver to avoid a lease,  
3            mortgage, secured transaction, or other contract entered into by the owner or  
4            licensee of the facility if the court finds that the agreement:

5            (1) was entered into for a fraudulent purpose or to hinder or delay  
6            creditors;

7            (2) including a rental amount, price, or rate of interest, was unreasonable  
8            or excessive at the time the agreement was entered into; or

9            (3) is unrelated to the operation of the facility.

10          (b)(1) The receiver shall send notice of the motion to any known owners  
11          and mortgage holder of the property, the licensing agency, and the state  
12          long-term care ombudsman at the time of filing.

13          (2) The court shall hold a hearing on the receiver's motion to avoid a  
14          contract within 15 days.

15          (c) If the receiver is in possession of real estate or goods subject to a  
16          contract or security interest that the receiver is permitted to avoid under this  
17          section and if the real estate or goods are necessary for the continued operation  
18          of the facility, the court may set a reasonable rental amount, price, rate of  
19          interest, or of replacement contract term to be paid by the receiver during the  
20          term of the receivership.

1       (d) Payment by the receiver of the amount determined by the court to be  
2       reasonable is a defense to an action against the receiver for payment or for the  
3       possession of the subject goods or real estate by a person who received notice.

4       (e) Notwithstanding this section, there may not be a foreclosure or eviction  
5       during the receivership by any person if the foreclosure or eviction would, in  
6       view of the court, serve to defeat the purpose of the receivership.

7       § 7215. OBLIGATIONS OF THE OWNER OR LICENSEE

8       (a) A licensee, owner, manager, employee, or such person's agent shall  
9       cooperate with the receiver in any proceeding under this chapter, including  
10       replying promptly to any inquiry from the receiver or the licensing agency  
11       requesting a reply, and making available to the receiver any books, accounts,  
12       documents, or other records or information or property pertaining to operation  
13       of the facility in his or her possession, custody, or control. A person shall not  
14       obstruct or interfere with the receiver in the conduct of any receivership.

15       (b) This section shall not be construed to abridge otherwise existing legal  
16       rights, including the right to resist a petition for receivership or revocation or  
17       suspension of licensure.

18       (c)(1) After notice of the receiver's appointment, a person who fails to  
19       cooperate with the receiver or any person who obstructs or interferes with the  
20       receiver in the conduct of the receivership shall be assessed a civil penalty of  
21       not more than \$10,000.00.

1           (2) A person who violates this subsection may be subject to the  
2 revocation or suspension of a nursing home administrator's license or a license  
3 to operate a facility.

4 § 7216. REVIEW AND TERMINATION

5           (a) The court shall review the necessity of the receivership at least  
6 semiannually.

7           (b) Either party or the commissioner of disabilities, aging, and independent  
8 living may petition the court to terminate the receivership. The petition shall  
9 include a certification from the commissioner or designee that the conditions  
10 that prompted the appointment have been corrected or, in the case of a  
11 discontinuance of operation, when the residents are safely relocated.

12           (c) The petitioner shall send notice of the petition to terminate the  
13 receivership to the mortgage holder, the licensing agency, and the state  
14 long-term care ombudsman at the time of filing.

15           (d) A receivership may not be terminated in favor of the former or the new  
16 licensee, unless that person assumes all obligations incurred by the receiver  
17 and provides collateral or other assurances of payment considered sufficient by  
18 the court.

19           (e) At the time of termination of the receivership, the court shall lift the  
20 suspension or revoke the license of the licensee.

1     § 7217. LIMITED LIABILITY

2             Except in cases of gross negligence or intentional wrongdoing, the receiver  
3     is liable in his or her official capacity only, and any judgment rendered shall be  
4     satisfied out of receivership assets.