S T A T E O F N E W Y O R K

3468

2009-2010 Regular Sessions

I N S E N A T E

March 19, 2009

Introduced by Sens. MORAHAN, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services

AN ACT to amend the social services law, in relation to granting residents of adult homes, residences for adults, enriched housing programs and assisted living programs a cause of action to seek the appointment of temporary or permanent receivers of such residential programs for adults

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 461-c of the social services law is amended by adding a new subdivision 10 to read as follows:

10. (A) AS A MEANS OF PROTECTING THE HEALTH, SAFETY AND WELFARE OF A RESIDENT OR RESIDENTS OF AN ADULT HOME, RESIDENCE FOR ADULTS, ENRICHED HOUSING PROGRAM OR ASSISTED LIVING PROGRAM, SUCH RESIDENT OR RESIDENTS MAY SEEK JUDICIAL RELIEF. IN ADDITION TO OTHER FORMS OF RELIEF AVAILABLE UNDER THIS ARTICLE, A RESIDENT OR RESIDENTS OF AN ADULT HOME, RESIDENCE FOR ADULTS, ENRICHED HOUSING PROGRAM OR ASSISTED LIVING FACILITY MAY SEEK EQUITABLE RELIEF FROM A COURT, INCLUDING, BUT NOT LIMITED TO, THE APPOINTMENT OF A TEMPORARY OR PERMANENT RECEIVER. A RESIDENT OR RESIDENTS OF AN ADULT HOME, RESIDENCE FOR ADULTS, ENRICHED HOUSING PROGRAM OR ASSISTED LIVING PROGRAM, OR HIS, HER OR THEIR REPRESENTATIVE MAY COMMENCE AN ACTION IN THE SUPREME COURT OF THE COUNTY IN WHICH THE FACILITY IS LOCATED TO SEEK THE APPOINTMENT OF A TEMPORARY OR PERMANENT RECEIVER.

(B) UPON THE COMMENCEMENT OF AN ACTION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THE COMMISSIONER OF HEALTH SHALL BE SERVED AND GIVEN THE OPPORTUNITY TO JOIN AS A PARTY TO THE ACTION. IN ADDITION TO OTHER METHODS OF SERVICE AUTHORIZED BY LAW, SERVICE UPON SUCH COMMISSIONER MAY BE EFFECTUATED AT THE COMMISSIONER'S OFFICE IN THE CITY OF NEW YORK. FAILURE OF THE COMMISSIONER OF HEALTH TO JOIN AN ACTION FOR THE APPOINTMENT OF A RECEIVER SHALL NOT BE AN IMPEDIMENT TO THE ACTION. ON THE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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RETURN OF SUCH ACTION, DETERMINATION OF THE PROCEEDING TO APPOINT A RECEIVER SHALL HAVE PRECEDENCE OVER EVERY OTHER BUSINESS OF THE COURT UNLESS THE COURT SHALL FIND THAT SOME OTHER PENDING PROCEEDING, HAVING SIMILAR STATUTORY PRECEDENCE, SHALL HAVE PRIORITY. THE COURT MAY CONDUCT A HEARING AT WHICH ALL INTERESTED PARTIES SHALL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE PERTAINING TO THE APPLICATION. IF THE COURT SHALL FIND THAT CONDITIONS ENDANGERING THE HEALTH, SAFETY OR WELFARE OF A RESIDENT OR RESIDENTS EXIST, THE COURT MAY MAKE AN ORDER GRANTING SUCH EQUITABLE RELIEF AS IT DEEMS NECESSARY, INCLUDING, BUT NOT LIMITED TO, THE APPOINTMENT OF A TEMPORARY OR PERMANENT RECEIVER.

(C) THE COURT APPOINTED RECEIVER SHALL OPERATE SUCH FACILITY IN COMPLIANCE WITH ALL OF THE APPLICABLE LAWS, RULES AND REGULATIONS OF THE DEPARTMENT OF HEALTH, AND SHALL HAVE SUCH ADDITIONAL POWERS, AS APPROVED BY THE COURT, AS SHALL BE NECESSARY TO SO OPERATE THE FACILITY. SUCH RECEIVER SHALL DISPOSE OF THE RENTS AND OTHER MONIES DEPOSITED WITH HIM OR HER ACCORDING TO THE FOLLOWING ORDER OF PRIORITY:

(1) CORRECTION OF VIOLATIONS OF THIS CHAPTER AND THE RULES AND REGULATIONS ADOPTED PURSUANT THERETO, AND EXPENDITURES NECESSARY TO ENSURE THAT THE HEALTH, SAFETY AND WELFARE OF THE RESIDENTS ARE PROTECTED. UNTIL PAYMENT IN FULL FOR THE CORRECTION OF VIOLATIONS AND REMOVAL OF CONDITIONS ENDANGERING THE HEALTH, SAFETY OR WELFARE HAVE BEEN MADE, NO OTHER DISBURSEMENTS SHALL BE PERMITTED, EXCEPT FOR FUEL BILLS, FIRE AND LIABILITY INSURANCE, AND BILLS FOR ORDINARY REPAIRS AND MAINTENANCE;

(2) PAYMENT OF A FEE FOR THE RECEIVER'S SERVICES;

(3) PAYMENT OF OUTSTANDING STATE, CITY AND FEDERAL TAXES AND/OR LIENS; AND

(4) PAYMENT TO THE OWNERS OR PRIME LESSORS OF RENT, AS DETERMINED BY THE COURT PURSUANT TO PARAGRAPH (D) OF THIS SUBDIVISION.

(D) EXCEPT IN THE CASE WHERE THE RECEIVER IS ASSUMING AN EXISTING BONA FIDE ARMS LENGTH LEASE, THE COURT SHALL DETERMINE A REASONABLE MONTHLY RENTAL FOR THE FACILITY, BASED ON CONSIDERATION OF ALL APPROPRIATE FACTORS, INCLUDING THE CONDITION OF THE FACILITY. THE RENT AS DETERMINED BY THE COURT SHALL BE PAID BY THE RECEIVER TO THE OWNERS OR PRIME LESSORS FOR EACH MONTH THAT THE RECEIVERSHIP REMAINS IN EFFECT, IF MONIES ARE REMAINING AFTER MAKING THE EXPENDITURES PRIORITIZED IN PARAGRAPH (C) OF THIS SUBDIVISION. NOTHING CONTAINED IN THIS PARAGRAPH SHALL BE CONSTRUED TO ALTER OR DIMINISH ANY OBLIGATION THE OPERATOR MAY HAVE UNDER ANY CURRENTLY VALID LEASE. THE RECEIVER SHALL HAVE THE POWER TO LET CONTRACTS FOR THE FACILITY OR TO INCUR EXPENSES, PROVIDED THAT WHERE THE INDIVIDUAL ITEMS OF REPAIRS, IMPROVEMENTS OR SUPPLIES EXCEED THREE THOUSAND DOLLARS, THE RECEIVER SHALL OBTAIN PRICE QUOTATIONS FROM AT LEAST THREE REPUTABLE SOURCES AND USE THE LEAST COSTLY SOURCE UNLESS THERE IS GOOD CAUSE NOT TO USE SUCH SOURCE, WHICH SHALL BE DOCUMENTED IN WRITING BY THE RECEIVER. THE RECEIVER SHALL NOT BE REQUIRED TO FILE ANY BOND. HE OR SHE SHALL COLLECT INCOMING PAYMENTS FROM ALL SOURCES AND APPLY THEM TO THE COSTS INCURRED IN THE PERFORMANCE OF HIS OR HER FUNCTIONS AS RECEIVER. AFTER PAYMENT OF EXPENDITURES FOR THE PRIORITIES LISTED IN PARAGRAPH (C) OF THIS SUBDIVISION, THE RECEIVER SHALL HONOR ALL EXISTING LEASES, MORTGAGES AND CHATTEL MORTGAGES THAT HAD PREVIOUSLY BEEN UNDERTAKEN AS OBLIGATIONS OF THE OWNERS OR OPERATORS OF THE FACILITY AND COMPENSATE THE OWNERS OF ANY GOODS HELD IN INVENTORY FOR THOSE GOODS THAT HE OR SHE USES OR CAUSES TO BE USED BY REIMBURSING THE COSTS OF SUCH GOODS, EXCEPT THAT NO COMPENSATION SHALL BE MADE FOR ANY SUCH GOODS FOR WHICH SUCH OWNERS HAVE ALREADY BEEN REIMBURSED.

(E) THE RECEIVER SHALL BE ENTITLED TO SUCH FEE AND REIMBURSEMENT FOR EXPENSES AS DETERMINED BY THE COURT, BASED UPON CONSIDERATION OF ALL

APPROPRIATE FACTORS RELATING TO THE OPERATION OF THE FACILITY, TO BE PAID AS A CHARGE AGAINST THE OPERATOR, NOT TO EXCEED THE FEES, COMMISSIONS AND NECESSARY EXPENSES AUTHORIZED TO BE PAID TO RECEIVERS IN AN ACTION TO FORECLOSE A MORTGAGE. THE RECEIVER SHALL NOTIFY THE PETITIONER OR PETITIONERS AND THE COURT OF ANY LIEN OR CONVEYANCE MADE IN CONTEMPLATION OF RECEIVERSHIP WITH AN INTENT TO REMOVE AN ASSET OF THE FACILITY FROM THE JURISDICTION AND USE OF THE RECEIVER, OR TO HINDER OR DELAY THE RECEIVER IN THE EXECUTION OF HIS OR HER DUTIES. WITH RESPECT TO ANY SUCH LIEN OR CONVEYANCE, THE PETITIONER OR PETITIONERS AND THE RECEIVER SHALL HAVE AVAILABLE ANY REMEDY AVAILABLE TO A TRUSTEE IN A BANKRUPTCY PROCEEDING PURSUANT TO THE FEDERAL BANKRUPTCY ACT OR ANY REMEDY AVAILABLE TO A CREDITOR IN A PROCEEDING PURSUANT TO ARTICLE TEN-A OF THE DEBTOR AND CREDITOR LAW, AND THE PETITIONER AND/OR RECEIVER MAY APPLY TO THE COURT TO HAVE SUCH LIEN OR CONVEYANCE SET ASIDE, OR TO HAVE THE COURT MAKE ANY ORDER WHICH THE CIRCUMSTANCES OF THE CASE MAY REQUIRE.

(F) THE PROVISIONS OF PARAGRAPHS (F), (G) AND (H) OF SUBDIVISION FOUR OF SECTION FOUR HUNDRED SIXTY-ONE-F OF THIS TITLE SHALL APPLY TO RECEIVERSHIPS COMMENCED UNDER THIS SUBDIVISION.

(G) A RECEIVER APPOINTED PURSUANT TO THIS SUBDIVISION MAY SEEK PAYMENT PURSUANT TO THE PROVISIONS OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED SIXTY-ONE-F OF THIS TITLE.

(H) WHEN A RECEIVER HAS BEEN APPOINTED, THE OPERATOR, OPERATORS, ADMINISTRATOR AND/OR MANAGEMENT OF THE FACILITY SHALL:

(1) IMMEDIATELY TRANSFER ALL RECORDS CONCERNING OPERATION OF THE FACILITY, INCLUDING RESIDENT RECORDS, FACILITY BUSINESS RECORDS AND ANY OTHER RECORDS RELATED TO THE OPERATION OF THE FACILITY TO THE RECEIVER;

(2) BE BARRED FROM ACCESS TO THE FACILITY DURING THE TERM OF THE RECEIVERSHIP; AND

(3) PROVIDE THE RECEIVER WITH ANY FUNDS RECEIVED BY THE OPERATOR FOR THE OPERATION OF THE FACILITY.

(I) THE COURT SHALL DETERMINE AT THE TIME OF THE APPOINTMENT OF A RECEIVER UNDER THIS SUBDIVISION THE CONDITIONS UPON WHICH OR THE PERIOD AFTER WHICH THE RECEIVERSHIP WILL TERMINATE. AT THE TIME OF TERMINATION OF THE RECEIVERSHIP, THE RECEIVER SHALL RENDER A FULL AND COMPLETE ACCOUNTING TO THE COURT AND SHALL DISPOSE OF ANY PROFIT OR SURPLUS MONEY AT THE DIRECTION OF THE COURT.

(J) THE COURT MAY AWARD THE PREVAILING PARTY IN AN ACTION FOR THE APPOINTMENT OF A RECEIVER NECESSARY AND REASONABLE EXPENSES INCURRED BY OR ON BEHALF OF THE PARTY, INCLUDING COSTS AND ATTORNEYS' FEES.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law, provided that any rules and regulations necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date.