§ 4617. Receiverships. 1. The commissioner may, upon a determination that serious operational deficiencies exist or serious financial problems exist and such action is desirable, enter into an agreement with the operator or owners of a continuing care retirement community with respect to the appointment of a receiver to take charge of the community under conditions as found acceptable by both parties. Receivership commenced in accordance with the provisions of this subdivision shall terminate at such time as may be provided in the receivership agreement, or at such time as either party notifies the other in writing that it wishes to terminate such receivership.

2. The commissioner shall, at the time of revocation, suspension or temporary suspension of a certificate of authority, apply to the supreme court where the community is situated for an order directing the owner of the land and/or structure on or in which the community is located, to show cause why a receiver should not be appointed to take charge of the community. In those cases where the certificate of authority has been revoked, suspended or temporarily suspended, the supreme court shall appoint a receiver that, where reasonably possible, is a legal entity that holds a valid certificate of authority. Such application shall contain proof by affidavit that the facility has had its certificate of authority revoked, suspended, or temporarily suspended. Such order to show cause shall be returnable not less than five days after service is completed and shall provide for personal service of a copy thereof and the papers on which it is based, on the owner or owners of the land and/or structures on or in which the community is located. If any such owner and manager cannot with due diligence be served personally within the county where the property is located and within the time fixed in such order, then service may be made on such person by posting a copy thereof in a conspicuous place within the community in question, and by sending a copy thereof by registered mail, return receipt requested, to such owner at the last address registered by such owner with the department or in the absence of such registration to the address set forth in the last recorded deed with respect to the facility. Service shall be deemed complete on filing proof of service thereof in the office of the county clerk, or the clerk of the city of New York, as the case may be.

3. On the return of said order to show cause, the matter shall have precedence over every other business of the court unless the court shall find that some other pending proceeding, having a 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 the facts warrant the granting thereof, then any such qualified and approved agency, person or corporation, or the commissioner or any person designated by the commissioner, shall be appointed receiver to take charge and assume operation of the community. However, such receiver may make application to the appointing court for decision, reformation or such other relief as may be appropriate to protect the best interests of the residents residing within such community. No security interest in any real or personal property comprising the community shall be impaired or diminished in priority by the receiver. The receiver shall compensate the owner or owners of any goods held in inventory for those goods which he or she uses or causes to be used by reimbursing the costs of such goods, except that no such compensation shall be made for any goods for which the owners or operators of the community have already been reimbursed.

4. Any receiver appointed pursuant to this section shall have all of the powers and duties of a receiver appointed in an action to foreclose a mortgage on real property, together with such additional powers and duties as are herein granted and imposed. The receiver may correct or eliminate those deficiencies in the facility that seriously endanger the life, health, safety or finances of such residents subject to such terms as the court may direct. The receiver shall operate the community in such a manner as intended to assure safety and adequate care for such residents. Any receiver who is an official or employee of the state of New York shall not be required to file any bond. 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 community.

5. The appointing court, upon application of the receiver, may make

such provision as justice may require for reasonable compensation and reimbursement of the reasonable expenses of the receiver. The receiver shall be liable only in his or her official capacity for injury to person and property by reason of conditions of the community in a case where an owner would have been liable; provided that he or she operates such facility in compliance with the terms of his or her appointment, the receiver shall not have any liability in his or her personal capacity, except for gross negligence and intentional acts.

6. a. The court shall terminate the receivership only under the following circumstances:

(i) when the community is issued a new certificate of authority for the community; or

(ii) at such time as all of the residents in the community have been provided alternate residential and health care services.

b. At the time of termination, the receiver shall render a full and complete accounting to the court and shall make disposition of surplus money at the discretion of the court.

7. a. Any person who is served a copy of an order of the court appointing the receiver shall, upon being notified of the name and address of the receiver, make all payments for goods supplied by the community, or services rendered by the community, to the receiver. A receipt shall be given for each such payment, and copies of all such receipts shall be kept on file by the receiver. The amount so received shall be deposited by the receiver in a special account which shall also be used for all disbursements made by the receiver.

b. Any person refusing or omitting to make such a payment after such service and notice may be sued therefor by the receiver. Such person shall not in such suit dispute the authority of the receiver to incur or order such expenses, or the right of the receiver to such payments made to him. The receipt provided by the receiver for any sum paid to him shall, in all suits and proceedings and for every other purpose, be as effectual in favor of any person holding the receipt as actual payment of the amount thereof to the operator or other person or persons who

would, but for the provisions of this section, have been entitled to receive the sum to be paid. No resident shall be discharged, nor shall any contract or rights be forfeited or impaired, nor any forfeiture or liability be incurred, by reason of any omission to pay any operator, owner, contractor, or other person any sum so paid to the receiver.

8. Any other provision of this article notwithstanding, the commissioner may, if such commissioner deems appropriate, grant to any community operating or scheduled to operate under a receivership authorized by this section a certificate of authority, the duration of which shall be limited to the duration of the receivership.

9. a. No provision contained herein shall be deemed to relieve the operator, owner, or manager of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the operator, owner, or manager prior to the appointment of any receiver hereunder, nor shall anything contained herein be construed to suspend during the receivership any obligation of the owner for the payment of taxes or other operating and maintenance expenses of the community nor of the owner or any other person for the payment of mortgages or liens.

b. The receiver shall not be responsible for any obligations incurred by the owner, manager, or prime lessor, if any, prior to the appointment of the receiver, other than those obligations to residents pursuant to the continuing care retirement contracts.

c. The receiver shall be entitled to use for operating and maintenance expenses and the basic needs of the residents of the community a portion of the revenues due the operator during the month in which the receiver is appointed which portion shall be established on the basis of the amounts of the unpaid operating and maintenance expenses for such month.