§ 461-h. Special proceeding for termination of adult home, residence for adults and enriched housing program admission agreements. 1. (a) A special proceeding to terminate the admission agreement of a resident of an adult home, residence for adults or enriched housing program and discharge the resident therefrom may be maintained in the county court, the justice court of the village, the town justice court, the court of civil jurisdiction in a city, or the district court which has jurisdiction over proceedings brought pursuant to article seven of the real property actions and proceedings law.

(b) The place of trial of the special proceeding shall be within the jurisdictional area of the court in which the adult home or residence for adults is situated; except that where the facility is located in an incorporated village which includes parts of two or more towns, the proceeding may be tried by a town justice of any such town who keeps an office in the village.

2. The proceeding may be brought by the operator of an adult home, residence for adults or enriched housing program.

3. (a) The special proceeding prescribed by this section shall be commenced by petition and a notice of petition. A notice of petition may be issued only by an attorney, judge or the clerk of the court; it may not be issued by a party prosecuting the proceeding in person.

(b) The notice of petition shall specify the time and place of the hearing on the petition.

4. The notice of petition and petition shall be served at least five and not more than twelve days before the time at which the petition is noticed to be heard.

5. (a) Service of the notice of petition and petition shall be made by personally delivering them to the resident; and at the time of such service, a copy of such notice of petition and petition shall be mailed to the resident's next of kin and to the person designated in the admission agreement as the responsible party, if any, and the department. If service by personal delivery of the notice of petition and petition upon a resident, who has been removed from the facility as

permitted by subdivision three of section four hundred sixty-one-g of this article, is not possible, then service upon such resident shall be made by any of the methods permitted by section three hundred eight of the civil practice law and rules.

(b) The notice of petition and petition together with proof of service thereof on the resident and proof that copies thereof have been mailed to the resident's next of kin and to the person designated in the admission agreement as the responsible party, if any, shall be filed with the court or clerk thereof within three days after delivery to the resident.

(c) Service shall be complete upon filing proof of service.

6. The petition shall be verified by the person authorized by subdivision two of this section to maintain the proceeding; or by a legal representative, attorney or agent of such person pursuant to subdivision (d) of section thirty hundred twenty of the civil practice law and rules.

Every petition shall:

(a) state the interest of the petitioner in the premises from which removal is sought;

(b) state the resident's interest in the premises and his relationship to petitioner with regard thereto;

(c) describe the premises from which removal is sought;

(d) state the facts upon which the special proceeding is based; and

(e) state the relief sought. The relief may include a judgment for payment of all charges, expenses and other assessments due.

7. The resident may answer in writing prior to the date the petition is to be heard or orally at the time the petition is heard. The resident may interpose any defense that he may have in his answer.

8. If the relief sought by the operator includes a judgment for payment of all charges, expenses and other assessments due, then any counterclaims which the resident may have against the operator may be heard in a special proceeding maintained pursuant to the provisions of this section, provided, however, that the court in its discretion may

sever such claims and counterclaims from the special proceeding.

9. Where triable issues of fact are raised, they shall be tried by the court. The court, in its discretion, at the request of one or both of the parties may grant an adjournment for not more than ten days.

10. (a) The court shall direct that a final judgment be entered determining the rights of the parties with regard to the admission agreement.

(b) The judgment, including such money as it may award for use and occupancy of the facility or otherwise, may be docketed in such books as the court maintains for recording the steps in a summary proceeding; unless a rule of the court, or the court by order in a given case otherwise provides, such judgment need not be recorded or docketed in the books, if separately maintained in which are docketed money judgments in an action.

11. (a) Upon rendering a final judgment for petitioner, the court shall issue an order of removal directed to the sheriff of the county or to any constable or marshal of the city in which the facility is situated, or, if it is not situated in a city to any constable of any town in the county, describing the property, and commanding the officer to remove the resident.

(b) The officer to whom the order of removal is directed and delivered shall give at least seventy-two hours notice, in writing and in the manner prescribed in this section for the service of a notice of petition, to the person to be removed and shall execute the order between the hours of sunrise and sunset.

12. (a) If a proceeding is brought by an operator of an adult home, residence for adults or enriched housing program pursuant to the provisions of this section and the reason for the proceeding is that a resident of such a facility has not paid the authorized charges, the court shall stay the issuance of the order of removal for ten days from the date a judgment is rendered. The court, in its discretion, may stay the issuance of an order of removal for up to ninety days if the reason for the termination of the admission agreement and discharge of the

resident is that the resident failed to pay the authorized charges and such nonpayment was due to an interruption by a government agency in the delivery to such resident of any public benefits to which such resident is entitled. During the pendency of such stay, the operator of the facility, as part of the provision of case management services shall be required to assist the resident who shall cooperate with the operator, in obtaining any such public benefits or any supplemental public benefits which are available to persons who have not received their regular public benefits.

(b) If a proceeding is brought by an operator of an adult home, residence for adults or enriched housing program pursuant to the provisions of this section, and the reason for the proceeding is repeated behavior by the resident which directly impairs the well-being, care or safety of the resident or any other resident or which substantially interferes with the orderly operation of the facility, the court, in its discretion, upon application of the resident, may stay the issuance of the order of removal for up to thirty days from the date a judgment is rendered.

(c) If a proceeding is brought by an operator, administrator or receiver of an adult home, residence for adults or enriched housing program pursuant to the provisions of this section, and the reason for the proceeding is that the facility has had its operating certificate revoked or temporarily suspended pursuant to subdivision four of section four hundred sixty-d of this article, or the operator has voluntarily surrendered the operating certificate for the facility to the department, the court, in its final judgment entered pursuant to subdivision ten of this section, shall not direct the facility to remain open and in operation.

13. During the pendency of a special proceeding brought pursuant to this section, the operator of an adult home, residence for adults or enriched housing program shall be required to honor all terms of the admission agreement until the resident is removed.

14. Nothing contained herein shall be deemed to alter or abridge any right of a resident or operator of an adult home, residence for adults or enriched housing program to obtain any relief to which such persons

are entitled in any other court of competent jurisdiction.

15. Notwithstanding the provisions of this article, nothing contained herein shall be construed to create a relationship of landlord and tenant between an operator of an adult home, residence for adults or enriched housing program and a resident thereof.

16. Notwithstanding any other provision in this section to the contrary, the admission agreement of a resident in an enriched housing program may be terminated and the resident discharged pursuant to the provisions of section four hundred sixty-one-g of this article and pursuant to a special proceeding as set forth in this section; provided, however, where such resident has an existing lease with the landlord of the premises in which the program is housed, the resident may not be involuntarily removed from the premises except in accordance with the provisions of such lease and applicable law and regulation.