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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 10. Continuing Care Contracts [1770 - 1793.91] (*Chapter 10 repealed and added by Stats. 1990, Ch. 875, Sec. 2.*)

ARTICLE 8. Appointment of Administrators [1793.50 - 1793.62] (*Article 8 added by Stats. 1990, Ch. 875, Sec. 2.*)

1793.50. (a) The department may petition the superior court for an order appointing a qualified administrator to operate a continuing care retirement community, and thereby mitigate imminent crisis situations where elderly residents could lose support services or be moved without proper preparation, in any of the following circumstances:

- (1) The provider is insolvent or in imminent danger of becoming insolvent.
 - (2) The provider is in a financially unsound or unsafe condition.
 - (3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.
 - (4) The provider has failed to submit a plan, as specified in Section 1793.13, the department has not approved the plan submitted by the provider, the provider has not fully implemented the plan, or the plan has not been successful.
 - (5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.
 - (6) The residents are otherwise placed in serious jeopardy.
- (b) The administrator may only assume the operation of the continuing care retirement community in order to accomplish one or more of the following: rehabilitate the provider to enable it fully to perform its continuing care contract obligations; implement a plan of reorganization acceptable to the department; facilitate the transition where another provider assumes continuing care contract obligations; or facilitate an orderly liquidation of the provider.
- (c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.
- (d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's continuing care retirement community or assets should not be vested in an administrator.
- (e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.
- (f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.
- (g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.
- (h) If, at the conclusion of the hearing, including such oral evidence as the court may consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation, and directing the administrator to take steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.
- (i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the continuing care retirement community and to other interested persons as the court may direct.
- (j) The court may permit the provider to participate in the continued operation of the continuing care retirement community during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the continuing care retirement community in order to protect the residents of the continuing care retirement community.

(Amended by Stats. 2011, Ch. 32, Sec. 15. (AB 106) Effective June 29, 2011. Operative January 1, 2012, by Sec. 73 of Stats. 2011, Ch. 32.)

1793.52. The court-appointed administrator shall immediately notify the residents of that appointment and of the status of the continuing care retirement community management.

(Amended by Stats. 1995, Ch. 920, Sec. 66. Effective January 1, 1996.)

1793.54. If an administrator is appointed to rehabilitate a provider, the administrator may do any of the following:

- (a) Take possession of and preserve, protect and recover any assets, books, records, or property of the provider, including, but not limited to, claims or causes of action belonging to, or which may be asserted by, the provider.
- (b) Deal with the property in the administrator's name in the capacity as administrator, and purchase at any sale any real estate or other asset upon which the provider may hold any lien or encumbrance or in which the provider may have an interest.
- (c) File, prosecute, and defend or compromise any suit or suits which have been filed, or which may thereafter be filed, by or against the provider as necessary to protect the provider or the residents or any property affected thereby.
- (d) Deposit and invest any of the provider's available funds.
- (e) Pay all expenses of the rehabilitation.
- (f) Perform all duties of the provider in the provision of care and services to residents in the continuing care retirement community at the time the administrator takes possession.
- (g) Facilitate the orderly transfer of residents should the provider ultimately fail.
- (h) Exercise any other powers and duties as may be authorized by law or provided by order of the court.

(Amended by Stats. 1995, Ch. 920, Sec. 67. Effective January 1, 1996.)

1793.56. (a) The appointed administrator is entitled to reasonable compensation.

(b) The costs compensating the administrator may be charged against the assets of the provider. When the provider's assets and assets from the continuing care retirement community are insufficient, the department, in its discretion, may compensate the administrator from the Continuing Care Provider Fee Fund.

(c) Any individual appointed administrator, pursuant to Section 1793.50, shall be held harmless for any negligence in the performance of his or her duties and the provider shall indemnify the administrator for all costs of defending actions brought against him or her in his or her capacity as administrator.

(Amended by Stats. 2000, Ch. 820, Sec. 74. Effective January 1, 2001.)

1793.58. (a) The department, administrator, or any interested person, upon due notice to the administrator, at any time, may apply to the court for an order terminating the rehabilitation proceedings and permitting the provider to resume possession of the provider's property and the conduct of the provider's business.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless, after a full hearing, the court has determined that the purposes of the proceeding have been fully and successfully accomplished and that the continuing care retirement community can be returned to the provider's management without further jeopardy to the residents of the continuing care retirement community, creditors, owners of the continuing care retirement community, and to the public.

(c) Before issuing any order terminating the rehabilitation proceeding the court shall consider a full report and accounting by the administrator regarding the provider's affairs, including the conduct of the provider's officers, employees, and business during the rehabilitation and the provider's current financial condition.

(d) Upon issuance of an order terminating the rehabilitation, the department shall reinstate the provisional certificate of authority or certificate of authority. The department may condition, suspend, or revoke the reinstated certificate only upon a change in the conditions existing at the time of the order or upon the discovery of facts which the department determines would have resulted in a denial of the request for an order terminating the rehabilitation had the court been aware of these facts.

(Amended by Stats. 2000, Ch. 820, Sec. 75. Effective January 1, 2001.)

1793.60. (a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the department may apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issuance of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's provisional certificate of authority or certificate of authority.

(Amended by Stats. 2011, Ch. 32, Sec. 16. (AB 106) Effective June 29, 2011. Operative January 1, 2012, by Sec. 73 of Stats. 2011, Ch. 32.)

1793.62. (a) The department, administrator, or any interested person, upon due notice to the parties, may petition the court for an order terminating the rehabilitation proceedings when the rehabilitation efforts have not been successful, the continuing care retirement community has been sold at foreclosure sale, the provider is the subject of an order for relief in bankruptcy, or the provider has otherwise been shown to be unable to perform its obligations under the continuing care contracts.

(b) The court shall not issue the order requested pursuant to subdivision (a) unless all of the following have occurred:

(1) There has been a full hearing and the court has determined that the provider is unable to perform its contractual obligations.

(2) The administrator has given the court a full and complete report and financial accounting signed by the administrator as being a full and complete report and accounting.

(3) The court has determined that the residents of the continuing care retirement community have been protected to the extent possible and has made such orders in this regard as the court deems proper.

(Amended by Stats. 2009, Ch. 500, Sec. 49. (AB 1059) Effective January 1, 2010.)