

American Bankruptcy Institute Law Review

Volume 8 Number 1 Spring 2000

ALTERNATIVES TO BANKRUPTCY FOR INSOLVENT NURSING HOMES:

A CASE STUDY

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I. Introduction

There is no question that nursing home insolvency is on the rise.¹ This crisis has largely been attributed to problems related to changes to the Medicare payment system implemented by the Federal Government in the Balanced Budget Act of 1997, where the cost of providing care is often greater than what Medicare pays.² Nursing home insolvency creates distinct matters of concern for owners and managers of such facilities, as the possibility of interruption of patient services and/or abrupt transfer of patients is heightened.³

In the face of this crisis, nursing home care providers and those involved in the regulation of nursing homes are forced to explore different alternatives to closing the home and transferring patients. A number of larger nursing home conglomerate "chains" have filed for chapter 11 bankruptcy relief in the past year,⁴ and it remains to be seen whether such a reorganization can be accomplished successfully. However, it is certain that such reorganization efforts may involve complicated matters, including: recoupment/setoff issues regarding the Medicare reimbursement system; possible issues involving unions and acceptance or rejection of collective bargaining agreements, which in turn can involve public relations problems; the stigma associated with the term "bankruptcy" and its effect on patients and public relations; and the cost of the many layers associated with administering the bankruptcy estate, which can include the debtor-in-possession, possibly a chapter 11 Trustee, the United States Trustee, and all counsel and professionals involved in the reorganization. Inherent in a chapter 7 liquidation (or a chapter 11 liquidating plan) is the possibility of closing the facility, which again brings to the forefront the problems involved with interruption of patient services and abrupt transfers.⁵

While bankruptcy certainly may be a suitable option for some insolvent nursing home facilities, this Article offers another option — the implementation of a court-appointed Receiver to take over management of the insolvent facility. The Receiver will address the nursing home's financial difficulties and transition the facility to a stabilized future through a sale to a qualified entity, all the while taking care to ensure the health, safety, and consistency of care and treatment provided to the residents of the home.

This Article provides a case study of one such successful nursing home Receivership, wherein three nursing homes in the Hartford, Connecticut area and two nursing homes in East Windsor, Connecticut were successfully kept open, turned around, and sold to a qualified purchaser. This Article looks at Connecticut's statutory scheme governing the implementation of a nursing home Receiver, and compares other states' statutes with regard to the same. This Article then takes the reader through the subject of Receiverships and concludes that Receivership is an extremely valuable tool in combating the growing problem of nursing home insolvencies.

II. The Connecticut Statutory Scheme

A. Petition

Under Connecticut General Statutes, standing to bring a petition for the imposition of a Receiver for a nursing home facility is vested primarily in such state regulatory officials as the Commissioner of Social Services, the Commissioner of Public Health or the Director of the Office of Protection and Advocacy for Persons with Disabilities.⁶ A resident of a Connecticut nursing home (or his or her legally liable relative, conservator, or guardian) must first file a petition for Receivership of a nursing home facility with the Commissioner of Public Health, rather than the Superior Court, and may only file such a petition with the Superior Court if the Commissioner of Public Health fails to resolve such complaint within the requisite time period.⁷ Connecticut statutes also do not give the owner or operator of a nursing home facility standing to petition for the appointment of a Receiver.⁸

However, the statute provides that prompt and proper notice of the hearing on any petition filed must be given to the owner of such facility and must be posted in a conspicuous place inside the home.⁹

Of the eight states that have comprehensive nursing home Receivership statutes,¹⁰ the majority reserve the right to bring a petition for the imposition of a Receiver in a nursing home facility to the "secretary" or "commissioner" of the state agency in charge of regulation of nursing homes or the "agency" or "department" itself.¹¹ Additionally, seven of the states' statutes require that prompt and proper notice of the hearing on any petition filed must be given to the administrator or other person in charge of the facility, which usually constitutes sufficient notice of the petition to the owner of the facility.¹²

B. Grounds

The grounds for appointment of a Receiver are relatively liberal and are geared toward enabling the implementation of a Receiver in homes in financial trouble. Pursuant to Connecticut General Statutes section 19a-543, "the court **shall** grant an application for the appointment of a Receiver for a nursing home facility upon a finding of **any** of the following":

1. such facility is operating without a license . . . or such facility's license has been suspended or revoked;
2. such facility intends to close and adequate arrangements for relocation of its residents have not been made at least thirty days prior to closing;
3. such facility has sustained a serious financial loss or failure which jeopardizes the health, safety and welfare of the patients or there is a reasonable likelihood of such loss or failure; or
4. there exists in such facility a condition in substantial violation of the Public Health Code, or any other applicable state statutes.¹³

Other states with comprehensive nursing home Receivership statutes similarly provide for the imposition of a Receiver in the case of nursing homes that are in financial jeopardy or are otherwise not compliant with state health and safety regulations, including operating without the proper licenses and/or failing to make proper arrangements for transfer of residents in the case of imminent closing.¹⁴ All operate with an eye toward protecting the health, safety, and welfare of nursing home residents.

C. Powers and Duties of Receiver

Connecticut's nursing home Receivership statutes give the Receiver (1) the power to initiate and prosecute civil actions for and on behalf of the facility in question and the right to defend all actions brought against the facility or the Receiver; (2) the right to possession of all of the entity's books, papers and property; (3) the right to demand and receive all evidence of debt and/or property belonging to the facility; (4) the power to do and execute in the facilities' name, or in their names as Receiver, all other acts and things necessary or proper in the execution of their trust; and (5) bestows upon the Receiver all powers necessary for any of the above mentioned purposes.¹⁵ Additionally, the statutes provide that the Receiver **shall** exercise the above enumerated powers to remedy the conditions that constitute grounds for the imposition of Receivership, assure adequate healthcare for patients and preserve the assets and property of the owner.¹⁶

Furthermore, it is the Receiver's express duty to notify patients and their families of the Receivership, correct or eliminate any deficiency in the structure or furnishings of the facility and perform other duties related to the transfer or

discharge of any patient if such event shall become necessary.¹⁷ Similarly, those states with comprehensive nursing home Receivership statutes provide Receivers with a wide array of powers and duties designed to maintain and secure the health, safety and welfare of the patients and, in doing so, to correct any deficiencies leading to the imposition of the Receiver, including attaining regulatory compliance and financial stability for such facilities.¹⁸

III. The AHF/Hartford, Inc. and AHF/Windsor, Inc. Receiverships

AHF/Hartford, Inc. ("AHF/Hartford") and AHF/Windsor, Inc. ("AHF/ Windsor") are not-for-profit organizations organized under the laws of the State of Connecticut. AHF/Hartford owned two nursing homes in Hartford, Connecticut and one nursing home in Bloomfield, Connecticut. The three nursing homes are skilled nursing facilities and operate a total of 528 skilled nursing beds (the "Hartford Homes"). AHF/Windsor owned two nursing homes in East Windsor, Connecticut (the "Windsor Homes").¹⁹ One of the Windsor Homes is a skilled nursing facility operating a total of 172 skilled nursing beds and the other is an intermediate care facility operating a total of sixty nursing beds.

In the spring of 1997, the Commissioner of Public Health of the State of Connecticut commenced proceedings, pursuant to Connecticut General Statutes section 19a-542, requesting the appointment of a Receiver to administer the Hartford Homes and the Windsor Homes, principally because the Homes were unable to pay current operating expenses and the debt service for their secured debt. This threatened the health and welfare of the residents at the nursing homes.²⁰ Specifically, the Superior Court ordered the appointment of the Receiver for the Hartford Homes on May 8, 1997 and ordered the appointment of the same Receiver for the Windsor Homes on July 22, 1997. The Hartford and Windsor Receiverships were often administered jointly since similar actions were taken as to both the Hartford and Windsor Homes. This was possible in large part to the fact that the Court appointing the Receiver awarded continuing jurisdiction over all matters relating to the Receiverships to one Superior Court Judge, who heard all proceedings over the course of both Receiverships and was able to remain intimately acquainted with the status of the Homes and the parties and interests involved.

The Receiver spent the first few months of the Receiverships taking every steps possible to ensure that all five Homes would remain operational and that patient care and treatment would not in any way be interrupted or suffer in quality, in order to uphold his duty of maintaining the health, safety and welfare of the patients. Such steps included contacting vendors to discuss the status of accounts to ensure that goods and services would continue to be provided, and assuring vendors prompt payment for goods and services. The Receiver also sent periodic mass mailings to creditors advising of the Receiverships and the status of the Homes. Additionally, the Receiver spent a great amount of time working with public relations and ensuring all interested parties, including families of residents and employees, that the Homes would remain fully operational and that patient care would not suffer or be interrupted. The Receiver also had continued discussions with the state agencies involved in nursing home regulation and other agencies involving Medicare/Medicaid receivables and outstanding tax obligations. With the permission of the Court, the Receiver hired professionals to conduct audits and formulate strategies to financially rehabilitate the Homes. The Receiver also continually met with union representatives to ensure their cooperation in his attempts at rehabilitation²¹ by addressing such labor issues as the continuation of benefits provided and compliance with employer mandates, including such matters as the continued retention of workers' compensation insurance. Additionally, throughout the Receiverships, the Receiver continually maintained frequent contact with the Connecticut Department of Public Health, the Department of Social Services, and the Connecticut Health and Educational Facilities Authority ("CHEFA") to keep them apprised of both the Homes' financial status and the status of patient care. The Receiver also filed monthly operating reports as to both the Hartford and Windsor Homes with the Court.

While engaged in maintaining the working operation and administration of the Homes, the Receiver continually met with his attorneys and professionals and counsel to CHEFA to develop an overall strategic plan which would include a proposal for dealing with creditors and the possible restructuring or selling of the Homes. With this goal in mind, the Receiver underwent the task of obtaining appraisals of the Homes, a lengthy process that was completed in January 1998. In the meantime, the Receiver and his professionals met with the appropriate state officials regarding compliance with laws and regulations related to the potential change of ownership of the Homes and transfer of the relevant licenses.

Eventually, the Receiver, with the aid of his professionals, arrived at the conclusion that the sale of the Homes was the best method of transitioning the Homes to a stable future. To begin that process, in March 1998, the Receiver solicited proposals from a number of investment banking firms, seeking a financial advisor to assist the Receiver with the proposed sale of the Homes. After numerous interviews throughout March and April, 1998, the Receiver selected and retained a well known investment banking firm operating out of New York City (the "Sale Advisor") to assist with the marketing of the Homes.

Throughout the Summer and Autumn of 1998, the Receiver, along with the Sale Advisor, developed a confidential selling memo and related sale documents. The documents contained information regarding the Homes, and were distributed to potential buyers of the Homes. The Receiver also worked with the Sale Advisor to develop a timetable for when the sale process would be accomplished.

As the Receiver had to seek Court approval of the sale process before beginning, the Receiver sent widespread notice to creditors of the hearing as to provide creditors the opportunity to object. In September 1998, the Court approved the sale process, which called for several rounds of bidding and a due diligence process.

In accordance therewith, in September 1998 the Receiver, in conjunction with the professionals retained by him, including attorneys, an appraiser, accountants and the Sale Advisor, began the Court approved sale process by soliciting over 100 potential purchasers. The potential purchasers were apprised of the potential sale of all of the real and personal property assets of the Home, with the exception of certain account receivables (the "Assets"), and were invited, pursuant to Court order, to receive and review a copy of the Confidential Selling Memorandum, which was appropriately on file with the Court under seal.

Throughout the next few months, the Receiver and his professionals conducted the Court-approved bidding process, and in December of 1998, accepted a bid to purchase the assets of all five Homes. After investigation and discussion, the purchaser ("Purchaser") was chosen because it had substantial experience in turning around underperforming nursing homes and because of its ability to provide in-house financing. In December of 1998, the Receiver and Purchaser entered into an Asset Purchase Agreement, and on March 31, 1999, the Receiver successfully closed the sale of the Homes to Purchaser and transferred ownership and control of the Homes to the Purchaser on that day.

In order to deliver clear and marketable title to each of the Homes to the Purchaser, the Receiver petitioned the Court, pursuant to Connecticut General Statutes sections 52-283a and 52-380e, for an order discharging all judgment and attachment liens held on the Homes upon the substitution of a bond with sufficient surety.²² In this regard, upon sale of the property, the liens attached to the surety bonds instead of the proceeds of the sale. Upon the Receiver's petition, the Court authorized this procedure, and in the case of the Hartford and Windsor Receiverships, the proceeds of the sale did not satisfy the claim of the first priority secured creditor. Therefore, distribution of the proceeds at closing was made only to the secured creditor and all other federal liens and municipal tax liens. Because there were no remaining funds to pay junior lienholders, the surety bonds were subsequently discharged.

After the transfer of the Homes to the Purchaser, the Receiver began the process of winding up the Receivership. A large part of the Receiver's windup task was to develop a process by which claims would be submitted to and adjudicated by the Receiver by a certain date. The Receiver, with the aid of his professionals, did develop such a process, wherein the Receiver sent mass notice to all creditors of record that all claims had to be filed with the Receiver by early November 1999 in order to be allowed, and that no pre-Receiver or post-sale claims were to be submitted. Upon receipt of the claims, the Receiver would review the claims and pay any outstanding claims appropriately incurred by the Homes during the term of his Receivership. All other disputed claims were to be arbitrated.

IV. Analysis of the Success of the AHF/Hartford and AHF/Windsor Receiverships

The overall cooperation of all interested parties and the hard work and knowledge of the field exhibited by the Receiver and his professionals were indispensable to the success of the Hartford and Windsor Receiverships. However, three factors in particular were crucial to the success of the Receiverships: (1) the cooperation of the primary secured creditor; (2) the Receiver's ability to utilize Connecticut statutes allowing the discharge of junior

liens; and (3) the continuing jurisdiction afforded a single Superior Court judge to hear all matters arising within the Receiverships.

Obviously, the fate of the Homes would have been extremely different had CHEFA simply chosen to foreclose on its security interests in the Homes. Instead, CHEFA forewent receiving any debt service for its secured debt for the life of the Receivership, and allowed the Receiver to use all receivables in the operation of the Homes. Such cooperation by the secured creditor was crucial to the Receiver's success. It was also helpful that, in this case, the secured creditor was the State of Connecticut, who had a vested state interest in having the Homes remain open.

It was also very important that all Receivership matters were heard by one judge, enabling the judge to remain knowledgeable about the case, the parties involved, and to retain a consistent knowledge of healthcare matters. If each motion or hearing had been adjudicated by a different judge, which is what would have happened had an order of continuing jurisdiction not been issued to a single judge, there is no doubt that the fulfillment of carefully developed long-term plans regarding the turnaround of the Homes could not have been implemented.

Finally, as discussed above, the ability of the Receiver to discharge junior liens, and, therefore, deliver title to the operating facilities free and clear to the Purchaser were crucial in selling the Homes.

Although the factors listed above contributing to the success of the Hartford and Windsor Receiverships may be fairly unique to that case, the other states' nursing home Receivership statutes (and discharge of lien statutes) discussed herein seem to indicate that the success of court-appointed Receiverships in the case of insolvent nursing homes in those states, and others who hereafter adopt such statutes, is possible.

V. Conclusion

While nursing home insolvency is on the rise, the need for nursing home beds remains high. In order to avoid the dangerous consequences to the elderly of closing homes and the abrupt transfer of patients, use of state statutes allowing the imposition of court-appointed Receivers to take over and manage failing homes is an alternative that has proven effective and successful.

FOOTNOTES:

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Active in the Connecticut State Bar Association, Ms. Austin is the Vice-Chair of the Commercial Law & Bankruptcy Section and a member of the Federal Practice Section. She also is a member of the International Women's Insolvency Restructuring Confederation and member of the Executive Committee of the Women's Bankruptcy Bar Association. She is a member of the ABI Healthcare Insolvency Committee, as well as a member of the Commercial Law League and American Bar Association. [Back To Text](#)

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Ms. Gydus is admitted to the bar of the State of Connecticut and is also admitted to the United States District Court and Bankruptcy Courts for the District of Connecticut and the Southern District of New York. She is a member of,

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Ms. Gydus received her B.A., *magna cum laude*, from the University of Connecticut and received her J.D. degree from the University of Connecticut School of Law. [Back To Text](#)

¹ See

Brenda Marks, *Mediplex Parent Firm Goes Bankrupt No Impact Expected at Nursing Homes*, Waterbury Republican Am., Oct. 21, 1999, at 1; Emmet Meara, *Advocates Detail Nursing Home Crisis*, Bangor Daily News, Dec. 3, 1999; *see also The Graying of Texas: Nursing Home Bankruptcies Prompt State Action*, The Dallas Morning News, Aug. 9, 1999, at 10A [hereinafter *The Graying of Texas*]. *See, e.g., Gerry Homes v. National Labor Relations Board*, No. 97-4321, 1998 WL 513919, at *2 (2d Cir. June 18, 1998) (noting that two nursing homes are in bankruptcy proceedings); *In re An Unknown Group of Cases Seeking to be Filed*, 79 B.R. 651, 651-52 (Bankr. E.D. Va. 1987) (prohibiting 45 nursing homes from filing bankruptcy until United States Trustee determined there would be no harm to public safety). [Back To Text](#)

² See

Mike Chambers, *Big U.S. Nursing Home Chain Hurt By Changes in Medicare Program*, The Globe and Mail (Toronto), Sept. 14, 1999, at B13; Andrew Julien, *Medicare Rewrites The Rules on Nursing Home Payments — Critics Predict Decline In Care For Those Who Need It Most*, The Hartford Courant, Aug. 17, 1999, at A1; Charles Ornstein, *National Nursing Home Chains Warn of Bankruptcy Possibility*, The Dallas Morning News, July 29, 1999.

Under the new system, patients are ranked depending on the severity of their illness or injury, and Medicare pays a flat daily rate designed to cover a broad range of expenses, rather than the former practice of reimbursing the home for the cost of each item of service. Adding to the problem is the fact that Medicare has also greatly curtailed its coverage of rehabilitation therapy for residents, which has been a major source of revenue for nursing home providers. *See id.*; *see also* Laura Steiner, *Managed Care: HCFA to Phase In Risk-Adjusted Payment to Medicare Managed Care Plans*, 27 J.L. Med. & Ethics 105, 105 (1999) (noting that Balanced Budget Act of 1997's risk adjustment payments will reduce Medicare payments to HMOs by \$15.7 billion); Katherine Huang, Note, Graduate Medical Education: The Federal Government's Opportunity to Shape the Nation's Physician Workforce, 16 Yale J. on Reg. 175, 195 (1999) (observing that Balanced Budget Act of 1997 scaled down Medicare payments as whole as well as funding for medical education). [Back To Text](#)

³ See

David S. Douglas et al., Rx For The Elderly: Legal Rights (and Wrongs) Within the Healthcare System, 20 Harv. C.R.-C.L. L. Rev. 425, 447 (1985) (positing that moving nursing home residents involves serious health risks); Sandra H. Johnson, Nursing Home Receiverships: Design and Implementation, 24 St. Louis U. L.J. 681, 681-82 n.3 (1981) (stating that abrupt transfer of nursing home residents has been shown to cause great danger to health of residents); Margaret M. Flint, *Nursing Homes*, 266 PLI/Est 559, 579 (1998) (asserting that transfer of patients poses documented psychological and medical risks). [Back To Text](#)

⁴ See generally *Nursing Home Chain Files for Bankruptcy Protection – Sun Cites Losses in Medicare Fees*

, The Fort Worth Star-Telegram, Oct. 15, 1999, at 5; Chambers, supra note 2, at B13; *The Graying of Texas*, *supra* note 1, at 10A. [Back To Text](#)

⁵ See

In re C. Keffas & Son Florist, Inc., 240 B.R. 466, 467, 473-74 (Bankr. E.D.N.Y. 1999) (noting that in chapter 7 bankruptcy cases, trustee has option to liquidate and close business in short period of time); Lewis v. Cowan (In re Cowan), 235 B.R. 922, 924 (Bankr. W.D. Mo. 1999) (stating that two primary goals of trustee under chapter 7 are to

liquidate and close estate as soon as possible); Treinish v. Topco Assocs. (In re AFW Liquidation Corp.), 208 B.R. 399, 401 (Bankr. N.D. Ohio 1997) (finding that trustee has fiduciary duty to liquidate and close estate under rules of chapter 7). [Back To Text](#)

⁶ See

Conn. Gen. Stat. § 19a-542 (1997) (stating that Commissioner of Social Services, Commissioner of Public Health, or Director of Office of Protection and Advocacy for Persons with Disabilities may file action to appoint Receiver for nursing home); *see also* Russell Hall Co. v. Quigley, No. 87-0229608S, 1990 WL 283885, at *1 (Conn. Super. Ct. 1990) (acknowledging appointment of defendant as Receiver of nursing home pursuant to § 19a-542 of Connecticut General Statutes). [Back To Text](#)

⁷ See

Conn. Gen. Stat. § 19a-542 (1997) (allowing Connecticut nursing home resident to file Receivership petition for nursing home if Commissioner of Public Health has not acted within 45 days of complaint). [Back To Text](#)

⁸ See

Conn. Gen. Stat. §§ 19a-541 to 549 (1997). [Back To Text](#)

⁹ See

Conn. Gen. Stat. § 19a-542 (1999) (requiring that notice be given to owner and posted in conspicuous place inside of home no later than 24 hours after order to appoint Receiver is given). [Back To Text](#)

¹⁰ See

Alaska Stat. § 18.20.370 (Michie 1999); Ark. Code Ann. §§ 20-10-902 to 10-910 (Michie 1999); Cal. Health & Safety Code §§ 1327, 1329 (West 1999); Fla. Stat. Ann. § 400.126 (West 1999); Md. Code Ann., Health-Gen. §§ 19-333 to 339 (1999); Minn. Stat. Ann. §§ 144A.14 to .15 (West 1999); N.Y. Pub. Health Law § 2810 (McKinney 1999); Or. Rev. Stat. §§ 441.281 to .318 (1999). [Back To Text](#)

¹¹ See

Alaska Stat. § 18.20.370 (Michie 1999); Ark. Code Ann. § 20-10-905 (Michie 1999); Cal. Health & Safety Code § 1327 (West 1999); Fla. Stat. Ann. § 400.126 (West 1999); Md. Code Ann., Health-Gen. § 19-334 (West 1999); Minn. Stat. Ann. § 144A.15 (West 1999); N.Y. Pub. Health Law § 2810 (McKinney 1999) (affording nursing home owner right to bring petition seeking imposition of nursing home Receiver); Or. Rev. Stat. § 441.281 (1999). [Back To Text](#)

¹² See

Ark. Code Ann. § 20-10-905 (Michie 1999); Cal. Health & Safety Code § 1327 (West 2000); Fla. Stat. Ann. § 400.126 (West 1999); Md. Code Ann., Health-Gen. § 19-335 (1999); Minn. Stat. Ann. § 144A.15 (West 1999); N.Y. Pub. Health Law § 2810 (McKinney 1999); Or. Rev. Stat. § 441.281 (1998). [Back To Text](#)

¹³ Conn. Gen. Stat. § 19a-543 (1999). [Back To Text](#)

¹⁴ See

Alaska Stat. § 18.20.370 (Michie 1999); Ark. Code Ann. § 20-10-904 (Michie 1999); Cal. Health & Safety Code § 1327 (West 2000); Fla. Stat. Ann. § 400.126 (West 1999); Md. Code Ann., Health-Gen. § 19-334 (1999); Minn. Stat. Ann. § 144A.15 (West 1999); N.Y. Pub. Health Law § 2810 (McKinney 1999) (permitting Receiver to petition "at any

time" under any circumstances thereafter deemed appropriate); Or. Rev. Stat. § 441.281 (1998). [Back To Text](#)

¹⁵ Conn. Gen. Stat. §§ 19a-545, 52-507 (1999). [Back To Text](#)

¹⁶ See

Conn. Gen. Stat. § 19a-545 (1999) (describing duties of Receiver); Ala. Code § 40-21-33 (2000) (discussing duties of Receiver in bankruptcy); D.C. Code Ann. § 32-1416 (1999) (describing powers and duties of Receiver). [Back To Text](#)

¹⁷ See

Conn. Gen. Stat. § 19a-545 (1999) (describing duties of Receiver); *see also* D.C. Code Ann. § 32-1416 (1999) (enumerating affirmative duties of Receiver to ensure well being and safety of patients); Minn. Stat. Ann. § 144A.15(3) (West 1999) (same); N.Y. Pub. Health Law § 2810(2)(c) (McKinney 1999) (same). [Back To Text](#)

¹⁸ More specifically, a survey of the comprehensive nursing home Receivership statutes reveals that Receivers are awarded such powers and duties as: the receipt and expenditure of accounts receivable; the management and disposition of employees and staffing; compensation of vendors and service providers and the general administration of the day to day operations of the facility; preservation of the assets of the facility; provision of proper notice to residents, creditors, and other constituents regarding the Receivership; and timely reporting to the appointing court regarding the status of the facility and the residents. Additionally, most statutes contain a "catch-all" provision giving the Receiver "any and all powers" necessary to perform such duties or attain such goals. *See* Ark. Code Ann. § 20-10-909(7) (Michie 1999) (asserting Receiver is authorized to do what is necessary and proper to maintain facility); Cal. Health & Safety Code § 1329(5)(F) (West 2000) (same); Fla. Stat. Ann. § 400.126(3) (West 1999) (same); Md. Code Ann., Health-Gen. § 19-337(a)(2) (1999); Minn. Stat. Ann. § 144A.15(3) (West 1999) (same); N.Y. Pub. Health Law § 2810(2)(c) (McKinney 1999) (same); Or. Rev. Stat. § 441.289(1) (1998) (same). [Back To Text](#)

¹⁹ AHF/Hartford and AHF/Windsor are related entities by virtue of the fact that both are managed by AHF/Connecticut Management Co. Inc., which was operated out of Ohio. [Back To Text](#)

²⁰ The primary secured creditor of the Homes was the State of Connecticut, as represented by the Connecticut Health and Educational Facilities Authority ("CHEFA"), which held a first priority mortgage on the real estate and blanket security interest on the assets owned by the Homes by virtue of loans issued to the Homes by CHEFA as part of a municipal bond refinancing. *See also* Christopher Keating, *Industry Fights for Funding Nursing Homes Lobby Against Cuts*, Hartford Courant, May 24, 1997, at B1 (stating need for increased funding for nursing homes has intensified as three nursing homes recently closed, and three others were forced into Receivership). [Back To Text](#)

²¹ Although the Receiver and the union in effect at the Homes were able to cooperate to the extent that the transition of the Homes to a stable future was successful, the Receiver spent a great deal of time and effort catering to the demands of the union. In fact, these authors postulate that an entire article could be written about labor relations issues in nursing home Receiverships alone. For instance, almost immediately after his appointment, the Receiver had to deal with issues surrounding the expiration of the collective bargaining agreement that had been in effect between the union members and the former management of the Homes. In this instance, the Receiver was able to do his best to honor the terms of the expired collective bargaining agreement instead of negotiating a brand new agreement, until the eventual purchase of the Homes. At that time, the purchaser of the Homes negotiated a new collective bargaining agreement with the union. In addition, the Receiver at all times dealt with issues posed by the union, such as benefits disputes and issues relating to the proper funding of certain Union trust funds. *See* Ottley v. Sheepshead Nursing Home, 784 F.2d 62, 64 (2d Cir. 1986) (describing involvement of Receiver in debate over contribution of nursing home to collective bargaining fund); Lewart v. Haym Salomon Home for the Aged, No. 82 Civ. 1109, 1983 U.S. Dist. LEXIS 20317, at *2 (S.D.N.Y. Jan. 3, 1983) (observing that Receiver repudiated collective bargaining agreements and union filed charges with National Labor Relations Board). [Back To Text](#)

²² Other states that have enacted similar statutes include: Alaska – Alaska Stat. §§ 34.35.310, 34.35.375(a) (Michie 1999) (describing method to release lien by filing bond); Arizona – Ariz. Rev. Stat. Ann. § 33–1004(A) (West 2000) (same); Florida – Fla. Stat. Ann. § 713.76(1) (West 1999) (same); Georgia – Ga. Code Ann. § 44–14–364(a) (1999) (same); Indiana – Ind. Code Ann. § 32–8–3–11 (West 1999) (same); Kentucky – Ky. Rev. Stat. Ann. § 376.100 (Banks–Baldwin 1999) (same); Maine – Me. Rev. Stat. Ann. tit. 14, § 4613 (West 1999) and Me. Rev. Stat. Ann. tit. 36, § 175–A (West 1999) (same); Massachusetts – Mass. Gen. Laws Ann. ch. 235, § 25 (West 1999) and Mass. Gen. Laws Ann. ch. 223, § 120 (West 1999) (same); Michigan – Mich. Comp. Laws Ann. § 570.1116(1) (West 1999) (same); Mississippi – Miss. Code Ann. § 11–33–45 (2000) (same); New York – N.Y. Lien Law §§ 19(1), 21, 37 (McKinney 1999) (same); North Carolina – N.C. Gen. Stat. § 44A–16(6) (1999) (same); Ohio – Ohio Rev. Code Ann. § 1311.11(c)(3) (West 1999) (same); Oklahoma – Okla. Stat. Ann. tit. 42, § 147.1 (West 1999) (same); Rhode Island – R.I. Gen. Laws § 10–5–17 (1999) (same); South Carolina – S.C. Code Ann. § 29–5–110 (Law. Co–op. 1999) (same); Tennessee – Tenn. Code Ann. § 66–11–142(a) (1999) (same); Virginia – Va. Code Ann. § 43–70 (Michie 1999) (same); Washington – Wash. Rev. Code Ann. § 6.25.190 and Wash. Rev. Code Ann. § 60.04.161 (West 1999) (same); Wyoming – Wyo. Stat. Ann. § 29–1–310 (Michie 1999) (same). Back To Text