§ 131E-238. Temporary manager; powers and duties.

A temporary manager appointed under this section:

(1) May exercise those powers and shall perform those duties ordered by the court;

(2) Shall operate the long-term care facility in compliance with State and federal laws and assure the safety of the residents and the delivery of services to them;

(3) May operate the facility under a temporary license issued by the Department in the event that the license of the original operator has been revoked or suspended or was never issued;

(4) Shall have the same rights as the respondent to possession of the building in which the long-term care facility is located and of all goods and fixtures located in the building at the time the temporary manager is appointed. If the court finds that between the time the petition is filed and the temporary manager is appointed, the respondent has transferred assets for the purpose of frustrating the intent of this section, the court may require the respondent to repay to the temporary manager the value of such transferred assets. The temporary manager shall take all actions necessary to protect and conserve the assets and property of which the temporary manager takes possession, and the proceeds of any transfer, and may use them only in the performance of the powers and duties set forth in this section and as may be ordered by the court;

(5) May use the building, fixtures, furnishings, and any accompanying consumable goods in providing care and services to residents and to any other persons receiving services from the long-term care facility at the time the petition for temporary management was filed. The temporary manager shall collect payment for all goods and services provided to residents or others at the same rate and method of payment as was charged by the respondent at the time the petition for temporary management was filed, unless a different rate is set by the State or other third-party payors. The temporary manager shall owe a duty to the owner of the long-term care facility to protect and preserve, and to avoid the waste or diminution of, the building, fixtures, furnishings, consumable goods, receipts, and other assets of the facility and to prevent the use of those assets for any purpose other than the reasonable operation of the facility;

(6) May correct or eliminate any deficiency in the structure or furnishings of the long-term care facility that endangers the safety or health of residents, provided the total cost of correction of all such deficiencies does not exceed one thousand dollars ($1,000);

(7) Shall submit to the court a plan in accordance with G.S. 131E-239 for correction or elimination of any deficiency or deficiencies in the structure or furnishings of the long-term care facility that endanger the safety or health of residents and that are estimated to exceed one thousand dollars ($1,000), and shall carry out the plan with any modification approved by the court;

(8) May enter into contracts and hire agents and employees to carry out the powers and duties created under this section, provided that the temporary manager must notify the court and the respondent prior to entering into any substantially new contract obligating the respondent to pay more than one thousand dollars ($1,000);

(9) Except as specified in G.S. 131E-241, shall honor all leases, mortgages, and secured transactions governing the building in which the long-term care facility is located and all goods and fixtures in the building of which the temporary manager has taken possession, but, in the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the temporary management, or, in the case of a purchase agreement, come due during the period of the temporary management;

(10) Shall have full power to direct, manage, and discharge employees of the long-term care facility, consistent with applicable State and federal laws governing the employment of these employees;

(11) If transfer of the residents is necessary, shall cooperate with the Department or local departments of social services or both in carrying out the transfer of residents to an alternative placement;

(12) Shall be entitled to and shall take possession of all property or assets of residents in the possession of the respondents. The temporary manager shall preserve all property, assets, and records of residents of which the temporary manager takes possession and shall provide for the prompt transfer of the property, assets, and records to the alternative placement of any transferred resident. No owner, licensee, or administrator of a facility under temporary management shall be liable for the waste, mismanagement, or other negligent or intentional wrongful act of a temporary manager with respect to the property or assets of residents; and

(13) May be held liable in his personal capacity only for his own gross negligence or intentional acts. (1993, c. 390, s. 1.)