§ 131E-244. Accounting lien for expenses.

(a) Within 30 days after termination of the temporary management, the temporary manager shall give the court a complete accounting of:

(1) All property of which the temporary manager took possession;

(2) All funds collected under this Article;

(3) Expenses of the temporary management; and

(4) All disbursements or transfers of facility funds or other assets made during the period of temporary management. On the same day the accounting is filed with the court, the temporary manager shall serve on the respondent by registered mail a copy of this accounting.

(b) If the operating funds collected during the temporary management exceed the reasonable expenses of the temporary management, the court shall order payment of the excess to the respondent, after reimbursement to the contingency fund. If the operating funds are insufficient to cover the reasonable expenses of the temporary management, the respondent shall be liable for the deficiency, except as described in this section. If the respondent demonstrates to the court that repayment of amounts spent from the contingency fund would significantly impair the provision of appropriate care or services to residents, the court may order repayment over a period of time with or without interest or may order that the respondent be required to repay only part or none of the amount spent from the contingency fund. In reaching this decision, the court may consider all assets, revenues, debts and other obligations of the long-term care facility, the likelihood of the sale of the long-term care facility where repayment forgiveness would result in unjust enrichment of the respondent, and shall consider the impact of its determination on the provision of care to residents. The respondent may petition the court to determine the reasonableness of any expenses of the temporary management. The respondent shall not be responsible for expenses in excess of amounts the court finds to be reasonable. Payment recovered from the respondent shall be used to reimburse the contingency fund for amounts used by the temporary manager.

(c) The court may order that the Department have a lien for any reasonable costs of the temporary management that are not covered by the operating funds collected by the temporary manager and for any funds paid out of the contingency fund during the temporary management upon any beneficial interest, direct or indirect, of any respondent in the following property:

(1) The building in which the long-term care facility is located;

(2) The land on which the long-term care facility is located;

(3) Any fixtures, equipment, or goods used in the operation of the long-term care facility; or

(4) The proceeds from any conveyance of property described in subdivisions (1), (2), and (3) of this subsection made by the respondent within one year prior to the filing of the petition for temporary management unless such transfers were made in good faith, in the ordinary course of business, and without intent to frustrate the intent of subsection (b) of this section. Transfers made coincidental with serious deficiencies in resident care may be considered evidence of intent to frustrate the intent of subsection (b) of this section.

(d) To the extent permitted by other provisions of applicable State or federal law, the lien provided for in this section is superior to any lien or other interest that arises subsequent to the filing of the petition for temporary management under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the temporary manager.

(e) The clerk of court in the county in which the long-term care facility is located shall record the filing of the petition for temporary management in the lien docket opposite the names of the respondents and licensees named in the petition.

(f) Within 60 days after termination of the temporary management, the temporary manager shall file a notice of any lien created under this section. If the lien is on real property, the notice shall be filed with the clerk of court in the county where the long-term care facility is located and entered on the lien docket. If the lien is on personal property, the lien shall be filed with the person against whom the lien is claimed, and shall state the name of the temporary manager, the date of the petition for temporary management, the date of the termination of temporary management, a description of the property involved, and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this section. (1993, c. 390, s. 1.)