

PART I ADMINISTRATION OF THE GOVERNMENT
(Chapters 1 through 182)

TITLE XVI PUBLIC HEALTH

CHAPTER 111 PUBLIC HEALTH

Section 127I Enforcement of sanitary code; remedies; receiver

Section 127I. Upon the filing of a petition to enforce the provisions of the sanitary code, or any civil action concerning violations of the sanitary code by any affected occupants or a public agency, whether begun in the district, housing or superior court, and whether brought under section one hundred and twenty-seven C or otherwise, the court may: issue temporary restraining orders, preliminary or permanent injunctions; order payment by any affected occupants to the clerk of court, in accordance with the provisions of section one hundred and twenty-seven F; or appoint a receiver whose rights, duties and powers shall be specified by the court in accordance with the provisions of this section.

Upon receipt of service of any petition in which the appointment of a receiver is sought, the owner shall provide to the petitioner, within three days, a written list of all mortgagees and lienors of record. At least fourteen days prior to any hearing in any such proceeding, the petitioner shall send by certified or registered mail a copy of the petition to all mortgagees and lienors included in the owner's list as well as to all other mortgagees and lienors of which the petitioner may be aware, and shall notify them of the time and place of the hearing. Upon motion of the petitioner, the court may order such shorter periods of prior notice as may be justified by the facts of the case.

Whenever a petitioner shows that violations of the sanitary code will not be promptly remedied unless a receiver is appointed and the court determines that such appointment is in the best interest of occupants residing in the property, the court shall appoint a receiver of the property. Any receiver appointed under this paragraph may be removed by the court upon a showing that the receiver is not diligently carrying out the work necessary to bring the property into compliance with the code, or that it is in the best interest of any tenants residing in the property that removal occur.

No receiver shall be appointed until the receiver furnishes a bond or such other surety and provides proof of such liability insurance as the court deems sufficient in the circumstances of the case. Upon appointment, the receiver shall promptly repair the property and maintain it in a safe and healthful condition. The receiver shall have full power to borrow funds and to grant security interests or liens on the affected property, to make such contracts as the receiver may deem necessary, and, notwithstanding any special or general law to the contrary, shall not be subject to any public bidding law nor considered a state, county or municipal employee for any purpose. In order to secure payment of any costs incurred and repayment of any loans for repair, operation, maintenance or management of the property, the receiver shall have a lien with priority over all other liens or

mortgages except municipal liens, and such lien priority may be assigned to lenders for the purpose of securing loans for repair, operation, maintenance or management of the property. No such lien shall be effective unless recorded in the registry for the county in which the property is located.

The receiver shall be authorized to collect rents and shall apply the rents to payment of any repairs necessary to bring the property into compliance with the sanitary code and to necessary expenses of operation, maintenance, and management of the property, including insurance expenses and reasonable fees of the receiver, and then to payment of any unpaid taxes, assessments, penalties or interest. Any excess of income in the hands of the receiver shall then be applied to payments due any mortgagee or lienor of record.

Nothing in this section shall be deemed to relieve the owner of property of any civil or criminal liability or any duty imposed by reason of acts or omissions of the owner, nor shall appointment of a receiver suspend any obligation the owner or any other person may have for payment of taxes, of any operating or maintenance expense, or of mortgages or liens, or for repair of the premises.

The receiver shall be liable for injuries to persons and property to the same extent as the owner would have been liable; however, such liability shall be limited to the assets and income of the receivership, including any proceeds of insurance purchased by the receiver in its capacity as receiver. The receiver shall in no instance be personally liable for actions or inactions within the scope of the receiver's capacity as receiver. No suit shall be brought against the receiver except as approved by the court which appointed the receiver. Nothing herein shall be construed to limit the right of tenants to raise any counterclaims or defenses in any summary process or other action regarding possession brought by a receiver.

The remedies set forth herein shall be available to condominium unit owners and tenants in condominium units. Whenever used in this section, the term "petitioner" shall include a condominium unit owner or tenant, the term "owner" shall include a condominium association, the terms "mortgagees" and "lienors" shall include mortgagees and lienors of individual condominium units, and the term "rents" shall include condominium fees. The receiver shall have the right to impose assessments upon individual condominium units for payment of expenses incurred in the exercise of his powers, which liens shall have priority over all other liens and mortgages, except municipal liens.

The receiver shall file with the court and with all parties of record, on a bimonthly basis, an accounting of all funds received by and owed to the receiver, and all funds disbursed, and shall comply with such other reporting requirements mandated by court, unless, for cause shown, the court determines that less frequent or less detailed reports are appropriate; provided that said notice shall not be less than five days.