

## **ARTICLE 9A. CASINO LICENSE CONSERVATORSHIP**

### **5:12-130.1 Institution of conservatorship and appointment of conservators**

a. Notwithstanding any other provision of the Casino Control Act, (1) upon the revocation or denial of a casino license, or (2) upon, in the discretion of the commission, the suspension of a casino license or the suspension of an operation certificate for a period of in excess of 120 days, and notwithstanding the pendency of any appeal therefrom, the commission may appoint and constitute a conservator to, among other things, take over and into his possession and control all the property and business of the licensee relating to the casino and the approved hotel; provided, however, that this subsection shall not apply in any instance in which the casino in the casino hotel facility for which the casino license had been issued has not been, in fact, in operation and open to the public, and provided further that no person shall be appointed as conservator unless the commission is satisfied that he is individually qualified according to the standard applicable to casino key employees, except that casino experience shall not be necessary for qualification.

b. (Deleted by amendment, P.L.1987, c.410.)

c. The commission may proceed in a conservatorship action in a summary manner or otherwise and shall have the power to appoint and remove one or more conservators and to enjoin the former or suspended licensee from exercising any of its privileges and franchises, from collecting or receiving any debts and from paying out, selling, assigning or transferring any of its property to other than a conservator, except as the commission may otherwise order. The commission shall have such further powers as shall be appropriate for the fulfillment of the purposes of this act.

d. Every conservator shall, before assuming his duties, execute and file a bond for the faithful performance of his duties payable to the commission in the office of the commission with such surety or sureties and in such form as

the commission shall approve and in such amount as the commission shall prescribe.

e. When more than one conservator is appointed pursuant to this section, the provisions of this article applicable to one conservator shall be applicable to all; the debts and property of the former or suspended licensee may be collected and received by any of them; and the powers and rights conferred upon them shall be exercised by a majority of them.

f. The commission shall require that the former or suspended licensee purchase liability insurance, in an amount determined by the commission, to protect a conservator from liability for any acts or omissions of the conservator occurring during the duration of the conservatorship which are reasonably related to, and within the scope of, the conservator's duties.

L.1978, c. 7, §31, eff. Mar. 17, 1978.

Amended by:

L.1987, c.410, §15, eff. Jan. 14, 1988.

L.1991, c.182, §54, eff. June 29, 1991.

L.2011, c. 19, §88, eff. Feb. 1, 2011.

### **5:12-130.1a Instructions to, supervision of conservator**

Upon the appointment of a conservator, the commission shall provide the conservator with written instructions which enumerate the specific powers and duties conferred by the commission on the conservator with respect to the conservatorship. A conservator shall be under the direct supervision of the commission and shall exercise only those powers and perform only those duties expressly conferred on the conservator by the commission. The commission may, at any time after a conservatorship is established, modify the powers of the conservator by providing the conservator with a new set of written instructions.

L.1991, c.182, §55, eff. June 29, 1991.

### **5:12-130.2 Powers, authority and duties of conservators**

a. Upon his appointment, the conservator shall become vested with the title of all the property of the former or suspended licensee relating to the casino and the approved hotel, subject to any and all valid liens, claims, and encumbrances. The conservator shall have the duty to conserve and preserve the assets so acquired to the end that such assets shall continue to be operated on a sound and businesslike basis.

b. Subject to the direct supervision of the commission and pursuant to the written instructions of the commission issued pursuant to section 55 of P.L.1991, c.182 (C.5:12-130.1a) and any other order the commission may deem appropriate, a conservator shall have power to:

(1) Take into his possession all the property of the former or suspended licensee relating to the casino and the approved hotel, including its books, records and papers;

(2) Institute and defend actions by or on behalf of the former or suspended licensee;

(3) Settle or compromise with any debtor or creditor of the former or suspended licensee, including any taxing authority;

(4) Continue the business of the former or suspended licensee and to that end enter into contracts, borrow money and pledge, mortgage or otherwise encumber the property of the former or suspended licensee as security for the repayment of the conservator's loans; provided, however, that such power shall be subject to any provisions and restrictions in any existing credit documents;

(5) Hire, fire and discipline employees;

(6) Review all outstanding agreements to which the former or suspended licensee is a party that fall within the purview of section 104b. of P.L.1977, c.110 (C.5:12-104) and advise the commission as to which, if any, of such agreements should be the subject of scrutiny, examination or investigation by the commission; and

(7) Do all further acts as shall best fulfill the purposes of the Casino Control Act.

c. Except during the pendency of a suspension or during the pendency of any appeal from any action or event set forth in section 31 a. of this amendatory and supplementary act which precipitated the conservatorship or in instances in which the commission finds that the interests of justice so require, the conservator, subject to the prior approval of and in accordance with such terms and conditions as may be prescribed by the commission, and after appropriate prior consultation with the former licensee as to the reasonableness of such terms and conditions, shall endeavor to and be authorized to sell, assign, convey or otherwise dispose of in bulk, subject to any and all valid liens, claims, and encumbrances, all the property of a former licensee relating to the casino and the approved hotel only upon prior written notice to all creditors and other parties in interest and only to such persons who shall be eligible to apply for and shall qualify as a casino licensee in accordance with the provisions of the Casino Control Act. Prior to any such sale, the former licensee shall be granted, upon request, a summary review by the commission of such proposed sale.

d. The commission may direct that the conservator, for an indefinite period of time, retain the property and continue the business of the former or suspended licensee relating to the casino and the approved hotel. During such period of time or any period of operation by the conservator, he shall pay when due, without in any way being personally liable, all secured obligations and shall not be immune from foreclosure or other legal proceedings to collect the secured debt, nor with respect thereto shall such conservator have any legal rights, claims, or defenses other than those which would have been available to the former or suspended licensee.

e. A conservator shall cooperate fully with any investigation or inquiry conducted by the commission or the division during the conservatorship or after the discontinuation of the conservatorship.

L.1978, c. 7, §32, eff. Mar. 17, 1978.

Amended by:

L.1987, c.410, §16, eff. Jan. 14, 1988.

L.1991, c.182, §56, eff. June 29, 1991.

### **5:12-130.3 Compensation of conservators and others**

In any proceeding pursuant to section 31 of P.L.1978, c.7 (C.5:12-130.1), the commission shall, upon the appointment of a conservator, establish a reasonable rate of compensation for the services, costs and expenses in the conservatorship action of the conservator. The commission shall also designate the party or parties responsible for the payment of compensation to the conservator and shall direct that the responsible party or parties guarantee payment in such manner as the commission shall deem appropriate. The rate of compensation payable to the attorney for the conservator, the appraiser, the auctioneer, the accountant and such other persons as the commission may appoint in connection with the conservatorship action shall be established by the commission at the time of appointment. All requests for payment by the conservator and other persons appointed by the commission in connection with the conservatorship shall be subject to the approval of the commission, and the commission shall reduce any fee which it deems to be excessive. Fees payable to the conservator and expenses incurred in the course of the conservatorship shall have priority for payment over all other debts or obligations of the former or suspended licensee, including debts or obligations secured by the former or suspended licensee's property.

L.1978, c. 7, §33, eff. Mar. 17, 1978.

Amended by:

L.1991, c.182, §57, eff. June 29, 1991.

#### **5:12-130.4 Assumption of outstanding debts**

As an incident of its prior approval pursuant to section 32c. of this amendatory and supplementary act of the sale, assignment, conveyance or other disposition in bulk of all property of the former licensee relating to the casino and the approved hotel, the commission may, in its discretion, require that the purchaser thereof assume in a form and substance acceptable to the commission all of the outstanding debts of the former licensee that arose from or were based upon the operation of either or both the casino or the approved hotel.

L.1978, c. 7, §34, eff. Mar. 17, 1978.

Amended by:

L.1987, c.410, §17, eff. Jan. 14, 1988.

#### **5:12-130.5 Payment of net earnings during the period of the conservatorship**

No payment of net earnings during the period of the conservatorship may be made by the conservator without the prior approval of the commission, which may, in its discretion, direct that all or any part of same be paid either to the suspended or former licensee or to the Casino Revenue Fund in accordance with regulations of the commission; provided, however, that the former or suspended licensee shall be entitled to a fair rate of return out of net earnings, if any, during the period of the conservatorship on the property retained by the conservator, taking into consideration that which amounts to a fair rate of return in the casino industry or the hotel industry, as the case may be.

L.1978, c. 7, §35, eff. Mar. 17, 1978.

Amended by:

L.1987, c.410, §18, eff. Jan. 14, 1988.

### **5:12-130.6 Payments following a bulk sale**

Following any sale, assignment, conveyance or other disposition in bulk of all the property subject to the conservatorship, the net proceeds therefrom, if any, after payment of all obligations owing to the State of New Jersey and any political subdivision thereof and of those allowances set forth in section 33 of this amendatory and supplementary act, shall be paid by the conservator to the former or suspended licensee.

L.1978, c. 7, §35A, eff. Mar. 17, 1978.

Amended by:

L.1987, c.410, § 19, eff. Jan. 14, 1988.

### **5:12-130.7 Continuing jurisdiction of commission**

A conservator appointed pursuant to section 31 of this amendatory and supplementary act shall at all times be subject to the Casino Control Act and such regulations, limitations, restrictions, terms and conditions as the commission may from time to time prescribe. Except as may be otherwise provided in this amendatory and supplementary act, during the period of any conservatorship imposed by the provisions of section 31 of this amendatory and supplementary act the casino operation in the form of the conservatorship shall be deemed to be a licensed casino operation and any reference in the Casino Control Act to any obligations or responsibilities incumbent upon a casino licensee or those persons dealing with, affiliated with, having an interest in, or employed by a casino licensee shall be deemed to apply to the said casino operation.

L.1978, c.7, §36, eff. Mar. 17, 1978.

### **5:12-130.8 Discontinuation of a conservatorship**

a. The commission shall direct the discontinuation of any conservatorship action instituted pursuant to section 31 of this amendatory and supplementary act when the conservator has, pursuant to section 32 of this amendatory and supplementary act and with the prior approval of the

commission, consummated the sale, assignment, conveyance or other disposition in bulk of all the property of the former licensee relating to the casino and the approved hotel.

b. The commission may direct the discontinuation of any such conservatorship action when it determines that for any reason the cause for which the action was instituted no longer exists.

c. Upon the discontinuation of the conservatorship action and with the approval of the commission, the conservator shall take such steps as may be necessary in order to effect an orderly transfer of the property of the former or suspended licensee.

d. The sale, assignment, transfer, pledge or other disposition of the securities issued by a former or suspended licensee during the pendency of a conservatorship action instituted pursuant to this article shall neither divest, have the effect of divesting, nor otherwise affect the powers conferred upon a conservator by this amendatory and supplementary act.

L.1978, c. 7, §37, eff. Mar. 17, 1978.

Amended by:

L.1987, c.410, §20, eff. Jan. 14, 1988.

### **5:12-130.9 Required reports**

A conservator appointed and constituted pursuant to section 31 of this amendatory and supplementary act shall file with the commission such reports with regard to the administration of the conservatorship in such form and at such intervals as the commission shall prescribe. Such reports shall be available for examination and inspection by any creditor or party in interest and, in addition, the commission may direct that copies of any such reports be mailed to such creditors or other parties in interest as it may designate and that summaries of any such reports be published in such newspapers of general circulation as it may designate.

L.1978, c.7, §38, eff. Mar. 17, 1978.



**5:12-130.10 Review of actions of conservator**

A creditor or party in interest aggrieved by any alleged breach of a fiduciary obligation of a conservator in the discharge of his duties shall be entitled, upon request, to a review thereof in accordance with regulations to be promulgated by the commission.

L.1978, c.7, §39, eff. Mar. 17, 1978.

**5:12-130.11 Investigation by the division of gaming enforcement**

The division shall investigate and report to the commission with regard to the qualifications of each person who is proposed as a candidate to serve as a conservator pursuant to this amendatory and supplementary act.

L.1978, c.7, §40, eff. Mar.17, 1978.