

Property and Building Nuisance Reform Law

Article I General Provisions

Findings.

The Town Board of the Town of Oneonta ("Town") finds that public nuisances exist in the Town of Oneonta in the operation of certain residential premises and commercial establishments and the use and alteration of residential and commercial property, in violation of the building code, zoning regulations, health laws, multiple dwelling law, penal laws regulating obscenity, prostitution and related conduct, gambling, controlled substances and dangerous drugs, possession of stolen property and licensing laws. All of these interfere with the interest of the public in property values, public health, safety and welfare, and the quality of life and community environment. The Town Board further finds that the continued occurrence of such activities and violations is detrimental to the health, safety and welfare of the people of the Town of Oneonta and of the businesses thereof and visitors thereto. It is the purpose of the Town Board to create one standardized procedure for securing legal and equitable remedies relating to the subject matter encompassed by this chapter, without prejudice to the use of procedures available under existing and subsequently enacted laws, and to strengthen existing laws on the subject.

Title.

This chapter shall be known as the "Property and Building Nuisance Reform Law."

Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADVERSE IMPACT — Includes, but is not limited to, the following:

- A. Any search warrants served on the property where the illegal sale of alcohol or controlled substances, cash used in the sale of a controlled substance to any person or of alcohol to a minor and/or weapons were seized.
- B. Investigative purchases of alcohol or controlled substances on or near the property by law enforcement agencies or their agents.
- C. Arrests for violations relating to the illegal sale or use of alcohol or any arrests for violation of the Controlled Substance Law and/or possession of weapons.
- D. Loitering for the purposes of engaging in illegal activity.
- E. An increase in the volume of traffic associated with property.
- F. Complaints made to law enforcement officials of illegal activity associated with the property.

BUILDING as defined in Section 103-3B.

BUILDING, ACCESSORY as defined in Section 103-3B.

BUSINESS

An activity, occupation, employment or enterprise which requires time, attention, labor and material and wherein merchandise is exhibited or sold, or services offered.

BUSINESS OFFICE

A building or portion thereof utilized to accommodate the activities of a business.

CONVICTION

- A. A conviction for an offense in a court of competent jurisdiction or in or by an administrative agency or bureau shall not be required to prove a violation under this chapter. Instead, the Town's burden of proof shall be by a preponderance of the evidence that the violations have occurred. However, a conviction, as defined and applied in accordance with the provisions of §1.20 of the Criminal Procedure Law, in any court of competent jurisdiction, or a plea of guilty shall constitute conclusive proof of a violation. Conviction of an attempt to commit a violation of any of the specified provisions shall be considered a conviction for a violation of the specified provision.

- B. Notwithstanding the provisions of Subsection A above, under no circumstances shall a conviction or a plea of guilty constitute a violation under this chapter where said conviction or plea stemmed from a crime committed at the building, property or place in issue, and the crime was first reported by an owner or tenant of the property, place, building or, in the case of a multiunit building, the specific building unit where the crime occurred. Nor shall a conviction or a plea of guilty constitute a violation under this chapter where said conviction or plea stemmed from a domestic violence-related incident that occurred at the building unit, building, property or place in issue, which domestic violence incident was first reported by the victim thereof.

DISTURBANCE

Actions, behavior, or conduct by person or persons at a particular location that disturbs the peace.

KNOWLEDGE OF PUBLIC NUISANCE

The presumption of knowledge provided by Subdivision 1 of §235.10 of the Penal Law shall be applicable to this chapter. Notice, by mail or personal service of activities detailing a public nuisance to the property owner of record shall be evidence of knowledge of the public nuisance.

LOT as defined in Section 103-3B.

PENAL LAW

New York State Penal Law.

PUBLIC NUISANCE - Includes, but is not limited to:

- A. Any building, accessory building, business office, lot or yard used for the purpose of illegal drug or alcohol use, possession or distribution, and/or loitering for the purpose of

unlawfully using or possessing controlled substances as defined in Articles 220, 221 and §240.36 of the Penal Law.

- B. Any building, accessory building, business office, lot or yard used for the purposes of prostitution, as defined in § 230.00 of the Penal Law, and loitering for the purposes set forth in §240.37 of the Penal Law.
- C. Any building, accessory building, business office, lot or yard used for the purposes of loitering, as defined in §240.35 of the Penal Law.
- D. Any building, accessory building, business office, lot or yard used for the purposes of obscene performances and/or promotion of obscene material as defined in Article 235 of the Penal Law.
- E. Any building, accessory building, business office, lot or yard used for purposes of a business, activity or enterprise which is not licensed as required by federal, state or local law and/or ordinance.
- F. Any building, accessory building, business office, lot or yard used for the purpose of unlawful activities described in §106.6 and/or §123 of the Alcohol Beverage Control Law (Unlawful sale, manufacture or consumption).
- G. Any building, accessory building, business office, lot or yard used for the purpose of gambling activities described in Article 225 of the Penal Law.
- H. Any building, accessory building, business office, lot or yard wherein there exists or is occurring a violation of the Zoning Code of the Town of Oneonta.
- I. Any building, accessory building, business office, lot or yard wherein there is or has occurred a criminal nuisance as defined in §§240.45 and 240.46 of the Penal Law.
- J. Any building, accessory building, business office, lot or yard wherein there is or has occurred a violation of the provisions of §§ 165.40, 165.45 and 165.50 (Criminal possession of stolen property), 170.65 (Forgery of vehicle identification number), 170.70 (Illegal possession vehicle identification number) or 175.10 (Falsifying business receipts) of the Penal Law or § 415-a (Vehicle dismantlers) of the Vehicle and Traffic Law.
- K. Any building, accessory building, business office, lot or yard used for the purpose of, or to aid in, the commission of a violation of Article 265 of the Penal Law (Firearms and Other Dangerous Weapons).
- L. Any building, accessory building, business office, lot or yard used for the purpose of animal fighting, as defined in §351 of the Agriculture and Markets Law of the State of New York.
- M. Penal Law violations considered to be more serious than those enumerated in this section, including but not limited to murder, attempted murder, felony assault, felony attempted assault, felony arson, felony attempted arson, felony sex offenses, felony attempted sex offenses and felony crimes related to the unlawful manufacture of methamphetamine or other illegal drugs.

TESTIMONY

Oral, written or other documented evidence tending to show or prove the truth of the matter asserted.

VIOLATION

Conduct, or evidence of conduct, prohibited under this chapter. A violation does not require criminal prosecution and conviction but only a preponderance of evidence that the prohibited conduct is occurring or has occurred. Evidence of prohibited conduct and/or illegal business activity conduct may include, but is not limited to, police reports, investigative reports, execution of search warrants, results of police surveillance, arrest and/or conviction based on local and state and federal laws, activities associated with trafficking of controlled substances, finding of weapons and/or controlled substances on or near the property, increased volume of traffic associated with the business activities at the property. Notwithstanding the foregoing, evidence obtained during the course of responding to a request for assistance made by an owner or tenant of the at issue property, place, building or, in the case of a multiunit building, the specific building unit where the violation occurred, shall not constitute evidence of prohibited conduct under this chapter, except an owner, manager or tenant who participates in or persistently condones or allows such public nuisance to occur shall not be entitled to the protection of this paragraph.

YARD as defined in Section 103-3B.

Evidentiary presumptions.

- A. Evidence. In any action under this chapter, evidence in admissible form of the common fame and general reputation of the building, structure or place, or of the inhabitants or occupants thereof, or of those residing thereto, shall be competent evidence to prove the existence of a property or building nuisance.
- B. Scierter. Admissible evidence of the general reputation of the building, structure or place, or of the inhabitants or occupants thereof shall be prima facie evidence of knowledge the nuisance and acquiescence and participation therein and responsibility therefor, on the part of the owners, lessors, lessees, and all those in possession of or having charge of, as agent or manager or otherwise, or having any interest in any form in the property, real or personal, used in conducting or maintaining the property or building nuisance.
- C. Presumptions.
 - (1) Any building, accessory building, business office, lot or yard wherein, within the period of one year prior to the commencement of an action under this chapter, there have occurred two or more convictions, as defined in herein, on the part of the lessees, owners, operators or occupants, of the provisions of this chapter shall be prima facie evidence that a public nuisance exists at said location.
 - (2) Any building, accessory building, business office, lot or yard wherein, within a one-year period prior to the commencement of an action under this chapter, there have occurred four or more violations, as defined herein, on the part of the lessees, owners, operators or occupants, of the provisions of this chapter, shall be prima facie evidence

that a public nuisance exists at said location.

- (3) Any building, accessory building, business office, lot or yard wherein, within the period of one year prior to the commencement of an action under this chapter, there has been presented a preponderance of evidence of repeated criminal activity which has an adverse impact, as defined herein, on such property or neighborhood, shall be prima facie evidence that a public nuisance exists at said location.

Article II

Remedies for Property and Building Nuisances

Applicability.

This article shall be applicable to all public nuisances as determined in accordance with the definitions contained in Article I of this chapter.

Types of remedies.

The *Town Attorney* may bring and maintain a civil proceeding in the name of the Town for the following types of relief:

- (1) Permanent injunction.
- (2) Temporary closing order.
- (3) Temporary restraining order.
- (4) Temporary injunction.
- (5) Civil penalties.

The Summons.

The Summons shall name as defendants the building, structure or place wherein the public nuisance is being conducted, maintained or permitted by describing it by Tax Map number and/or street address and at least one of the owners of some part of or interest in the property.

The Complaint.

- A. The Town Attorney shall bring and maintain a civil proceeding in the name of the Town of Oneonta in the Supreme Court of Otsego County or any other court of competent jurisdiction to permanently enjoin the public nuisance and the persons conducting, maintaining or permitting the public nuisance as defined herein from further conducting, maintaining, or permitting the public nuisance in the manner provided in Article II of this chapter. The owner, operator, manager and/or lessee of a building, structure or place wherein the public nuisance is being conducted, maintained or permitted may be made defendants in the action.
- B. The venue of such action shall be in the county where the public nuisance is being conducted, maintained or permitted.

- C. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter.
- D. The civil action shall be commenced by the filing of a summons and complaint alleging the facts constituting the public nuisance.
- E. The complaint shall name as defendants the building, structure, lot, or place wherein the nuisance is being conducted, maintained or permitted by describing it by Tax Map number and/or street address and at least one of the owners who possesses some part of or an interest in the property.
- F. Any complaint filed under this chapter shall be verified or accompanied by an affidavit(s) for purposes of showing that the owner or his or her agent or manager has notice of the nuisance and has had an opportunity to abate the nuisance.
 - a. The ***Town Attorney or Code Enforcement Officer*** will give the owner and any designated property agent or manager written notice of the nuisance and 10 business days to personally meet with and provide to Town Code Enforcement Officer a written plan to abate the nuisance within 30 days. If part of the plan to abate the nuisance is to evict a tenant, then the owner will commence the eviction proceeding within 10 business days from the meeting with ***Town Code Enforcement Officer***, or on the earliest possible date allowed by law, if such date is longer than 10 business days from the date of said meeting. The complaint or affidavit shall contain a description of the attempts by the ***Town Code Enforcement Officer*** to notify and locate the owner of the property and/or the owner's agent. The complaint or affidavit shall describe the factual circumstances giving rise to the determination that the property constitutes a public nuisance.

In rem jurisdiction over building, structure, lot, or place.

In rem jurisdiction shall be complete over the building, structure or place wherein the public nuisance is being conducted, maintained or permitted by affixing the summons to the door of the building, structure or place and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners who possesses some part of or an interest in the property. Proof of service shall be filed within five days thereafter with the Clerk of the court designated in the summons. Service shall be complete upon such filing.

Service of summons on other defendants.

Defendant(s), other than the building, structure or place wherein the public nuisance is being conducted, maintained or permitted, shall be served with the summons as provided in the Civil Practice Law and Rules.

Notice of pendency.

With respect to any action commenced or to be commenced pursuant to this chapter, the Town may file a notice of pendency pursuant to the provisions of Article 65 of the Civil Practice Law and Rules.

Presumption of ownership.

The owner of the real estate affected by the action shall be presumed to be the person in whose name the real estate is recorded in the office of the Town of Oneonta and/or the office of the Clerk of the County of Otsego.

Presumption of employment or agency.

Whenever there is testimony that a person was the manager, operator, supervisor, or in any other way in charge of the premises at the time a public nuisance was being conducted, maintained or permitted, such evidence shall be presumptive that he or she was an agent or employee of the owner or lessee of the building, structure or place considered to be a nuisance.

Penalty.

If, upon the trial of an action under this chapter or upon a motion for summary judgment in an action under this chapter, a finding is made that the defendant has conducted, maintained, condoned or permitted a public nuisance defined in Article I of this chapter, a penalty may be awarded in an amount not to exceed \$1,000 for each day it is found that the defendant conducted, maintained or permitted the public nuisance after notice to abate has been given by the Town. Upon recovery, such penalty shall be paid into the general fund of the Town.

Enforcement.

A judgment pursuant to this chapter shall be enforced by the Town and the agents of the Town.

Judgment awarding permanent injunction.

- A. A judgment awarding a permanent injunction, pursuant to this chapter, may direct the Town through its departments or by third-party contractors to seize and remove from the building, structure and/or place all material, equipment and instrumentalities used in the creation and maintenance of the public nuisance and shall direct the sale by the Town of such property in the manner provided for the sale of personal property under execution pursuant to the provisions of the Civil Practice Law and Rules. The net proceeds of any such sale, after deduction of the lawful expenses involved, shall be paid into the general fund of the Town.
- B. A judgment awarding a permanent injunction pursuant to this chapter may authorize agents of the Town to remove and/or correct violations of the Town Code. Any and all costs associated with said removal or repairs shall become a lien against the property and shall have priority over any prior mortgage or other lien that exists on said property, except tax and assessment liens and any nuisance abatement lien.
- C. A judgment awarding a permanent injunction pursuant to this chapter may direct the closing of the building, structure or place by the Town, to the extent necessary to abate the nuisance, and shall direct the Town to post a copy of the judgment and a printed notice of such closing conforming to the requirements of this chapter. Any person who defaces, destroys or removes such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be guilty of a violation punishable by a fine of not more than \$250 or by imprisonment not exceeding 15 days, or by both, provided such judgment contains therein a notice of such penalty.

- D. The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than one year from the posting of the judgment provided for in this section.
- E. If the owner shall file a bond in the value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained, condoned or permitted for such period of time as the building, structure or place has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the building, structure or place.
- F. A closing by the Town pursuant to a judgment providing for the closing of a building shall not constitute an act of possession, ownership or control by the Town of the closed premises.
- G. Intentional disobedience or resistance to any provision of a judgment awarding a permanent injunction pursuant to this chapter, in addition to any other punishment prescribed by law, shall be punishable by a fine of not more than \$5,000, imprisonment not exceeding ninety (90) days, or both.
- H. Upon the request of the Town Board, the New York State Police or the Otsego County Sherriff's Department shall assist in the enforcement of a judgment awarding a permanent injunction entered in an action brought pursuant to this chapter.
- I. A judgment rendered awarding a permanent injunction pursuant to this chapter shall be and become a lien upon the building, structure or place named in the complaint in such action, such lien to date from the time of filing a notice of liens pending in the office of the Otsego County Clerk being the county wherein the building, structure, lot, or place is located. Every such nuisance abatement lien shall have priority over any mortgage or other lien that exists prior to such filing except tax and assessment liens.
- J. A judgment awarding a permanent injunction pursuant to this chapter shall provide, in addition to the costs and disbursements allowed by the Civil Practice Law and Rules, upon satisfactory proof by affidavit or such other evidence as may be submitted, the actual costs, expenses and disbursements of the Town in investigating, bringing and maintaining the action, including reasonable attorney's fees and court costs.

Temporary and preliminary injunctive relief.

A. Preliminary injunction.

(1) Pending an action for a permanent injunction as provided for in this article, the court may grant a preliminary injunction enjoining a public nuisance within the scope of this chapter and the person or persons conducting, maintaining or permitting the public nuisance from further conducting, maintaining or permitting the public nuisance. An order granting a preliminary injunction shall direct a trial of the issues at the earliest possible time. Where a preliminary injunction has been granted, the court shall render a decision with respect to a permanent injunction at its earliest convenience after the conclusion of the trial.

(2) Enforcement of preliminary injunction. A preliminary injunction shall be enforced by

the Town Constable, New York State Police or the Otsego County Sherriff's Department.

(3) Preliminary injunctions, inventory, closing of premises, posting of order and notices, offenses. If the court grants a preliminary injunction, the provisions of this article shall be applicable.

B. Motion papers for preliminary injunction.

(1) The Town shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action for a permanent injunction abating a nuisance within the scope of this chapter.

C. Temporary closing order.

(1) If, on a motion for a preliminary injunction pursuant to this section the Town shall show by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, condoned or permitted and that the public health, safety or welfare requires an immediate, temporary closing order, the court may issue without notice a temporary order closing only so much of the building, structure, lot, or place as is necessary to temporarily abate the nuisance that is being conducted, maintained or permitted, pending a subsequent order of the court granting or denying the preliminary injunction. Upon granting a temporary closing order, the court shall direct the holding of a hearing for the preliminary injunction at the earliest possible time; a decision on the motion for a preliminary injunction shall be rendered by the court at the earliest possible time thereafter.

(2) Service of temporary closing order. Unless the court orders otherwise, a temporary closing order, together with the papers upon which it was based and a notice of hearing for the preliminary injunction, shall be personally served, in the same manner as a summons as provided in the Civil Practice Law and Rules.

D. Temporary restraining order.

(1) A temporary restraining order may be granted pending a hearing for preliminary injunction where it appears by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, or permitted and that the public health, safety, or welfare immediately requires the granting of a temporary restraining order. This order shall restrain the defendants and all persons from removing or transferring off the property or in any manner interfering with the fixtures and movable property used in conducting, maintaining or permitting the public nuisance and from further conducting, maintaining or permitting the public nuisance. A temporary restraining order may be granted without notice, pending order of the court granting or refusing the preliminary injunction and until further order of the court. Upon granting a temporary restraining order, the court shall direct the holding of a hearing for the preliminary injunction.

(2) Service of temporary restraining order. Unless the court orders otherwise, a temporary restraining order and the papers upon which it was based and a notice of hearing for the preliminary injunction shall be personally served in the same manner as a summons as provided in the Civil Practice Law and Rules.

- E. Temporary closing order; temporary restraining order.
- (1) If, on motion for a preliminary injunction, the Town submits evidence warranting both a temporary closing order and a temporary restraining order, the court shall grant both orders.
 - (2) Enforcement of temporary closing orders and temporary restraining orders. Temporary closing orders and temporary restraining orders shall be enforced by the Town Constable, the New York State Police or the Otsego County Sherriff's Department.
- F. Inventory upon service of temporary closing orders and temporary restraining orders. The officers serving a temporary restraining order shall forthwith make and return to the court an inventory of personal property used in conducting, maintaining or permitting a public nuisance within the scope of this chapter and shall enter upon the building, structure or place for such purpose. Such inventory shall be taken in any manner which is deemed likely to evidence a true and accurate representation of the personal property subject to such inventory, including, but not limited to, photographing such personal property.
- G. Closing of premises pursuant to temporary closing orders and temporary restraining orders. The officers serving a temporary closing order and/or a temporary restraining order shall, upon service of the order, command all persons present in the portion of the building, property or place that is subject to the order to vacate the premises forthwith. Upon the vacation of the relevant portion of the building, property or place, the portion of said building, property or place shall be securely locked and all keys delivered to the officers serving the order who thereafter shall deliver the keys to the fee owner, lessor or lessee of the building, structure or place involved. If the fee owner, lessor or lessee is not at the building, structure or place when the order is being executed, the officers shall securely padlock the premises and retain the keys until the fee owner, lessor or lessee of the building is ascertained, at which time, the officers shall deliver the keys to such owner, lessor or lessee, if such individual resides within Otsego County.
- H. Posting of temporary closing orders and temporary restraining orders. Upon service of a temporary restraining order, the officer shall post a copy thereof in a conspicuous place or upon one or more of the principal doors at entrances of such premises where the public nuisance is being conducted, maintained or permitted. In addition, where a temporary restraining order has been granted, the officers shall affix, in a conspicuous place or upon one or more of the principal doors at entrances of such premises, a printed notice that shall state that certain described activity is prohibited by court order and that removal of property is prohibited by court order. If the temporary restraining order directs that the premises are to be closed by court order, the notice shall contain the legend "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises, the date of the order, the court from which issued and the name of the office or agency posting the notice. Any person who defaces, destroys or removes such a posted order or notice while it remains in force, in addition to any other punishment prescribed by law, shall be punishable, on conviction, by a fine of not more than \$1,000 or by imprisonment not exceeding ninety (90) days, or by both, provided such order or notice contains therein a notice of such penalty. The New York State Police, Otsego County Sherriff's Department, or Town Constable shall, upon the request of the Town, assist in the enforcement of this subsection.

- I. Intentional disobedience of or resistance to temporary restraining order or injunction. Intentional disobedience of, or resistance to, a temporary restraining order, preliminary or permanent injunction shall, in addition to any other punishment prescribed by law, be punishable, on conviction by a fine of not more than \$5,000 or by imprisonment not exceeding ninety (90) days or by both.
- J. Temporary restraining order or preliminary injunction bond may be required. A temporary restraining order or preliminary injunction shall not issue under this chapter, except upon the giving of a bond or security by the applicant, in the amount of \$1,000, for the payment of such costs and damages as may be incurred or suffered by any party who is found to be wrongfully restrained or enjoined. A bond or security shall not be required of the State of New York, Municipal corporations, or political subdivisions of the State of New York.

Vacating temporary restraining order or temporary closing order.

- A. A temporary restraining order may be vacated by the court upon notice to and right to object by the Town Attorney when a defendant gives an undertaking and the court is satisfied that the public health, safety or welfare will be protected adequately during the pendency of the action. The undertaking shall be in an amount equal to the assessed valuation of the building, structure or place where the public nuisance is being conducted, maintained or permitted or in such other amount as may be fixed by the court. In the event the court should issue a permanent injunction against defendant(s), he/she/they shall pay to the Town its actual costs, expenses and disbursements in investigating, bringing and maintaining the action, including reasonable attorney's fees and court costs.
- B. An order vacating a temporary closing order or a temporary restraining order shall include a provision authorizing the Town or its authorized officers, agents or representatives to periodically inspect, without notice, the subject building, structure or place, during the pendency of the action, for the purpose of ascertaining whether or not the public nuisance has been resumed.
- C. Willful failure to cooperate with an inspection provision of an order vacating a temporary restraining order or temporary closing order, in addition to any other punishment prescribed by law, shall be punishable on conviction by a fine of not more than \$5,000, imprisonment not exceeding six months, or both. The New York State Police, Otsego County Sheriff's Department, or Town Constable shall, upon the request of the Town, assist in the enforcement of an inspection provision of an order vacating a temporary restraining order or temporary closing order.

Preliminary injunction of bulk transfer.

- A. Generally, pending an action pursuant to this chapter, the court may grant a preliminary injunction enjoining a defendant from making a bulk transfer as defined in this section.
- B. If, on a motion for a preliminary injunction of a bulk transfer, the Town shall show by clear and convincing evidence that a public nuisance within the scope of this chapter is being conducted, maintained, condoned or permitted, a temporary restraining order may be granted without notice restraining the defendants and all persons from making or permitting a "bulk

transfer" as defined in this article pending order of the court granting or refusing the preliminary injunction and until further order of the court.

- C. "Bulk transfer" defined. A "bulk transfer" is any transfer of a major part of the materials, supplies, merchandise or other inventory or equipment of the transferor in the building, structure or place where the public nuisance is being conducted, maintained or permitted that is not in the ordinary course of the transferor's business.
- D. Enforcement of preliminary injunction. A preliminary injunction shall be enforced by the Town Constable, the New York State Police or the Otsego County Sherriff's Department.
- E. Inventory. If the court grants a preliminary injunction, the provisions of the [ADD SECTION REFERENCE ONCE DONE]of this article shall be applicable.

Temporary receiver.

- A. Appointment, duration and removal. In any action wherein the complaint alleges that the public nuisance is being conducted or maintained in the residential portions of any building or structure or portion thereof which are occupied in whole or in part as the home, residence or sleeping place of one or more human beings, the court may, upon motion on notice by the plaintiff, appoint a temporary receiver to manage and operate the property during the pendency of the action in lieu of a temporary closing order. A temporary receivership shall not continue after final judgment unless otherwise directed by the court. Upon the motion of any party, including the temporary receiver, or on its own initiative, the appointing court may remove a temporary receiver at any time.
- B. Powers and duties. The temporary receiver shall have such powers and duties as the court shall direct, including, but not limited to, collecting and holding all rents due from all tenants, leasing or renting portions of the building or structure, making or authorizing other persons to make necessary repairs or to maintain the property, hiring security or other personnel necessary for the safe and proper operation of a dwelling, prosecuting or defending suits flowing from his or her management of the property and retaining counsel therefor, and expending funds from the collected rents in furtherance of the foregoing powers.
- C. Oath. A temporary receiver, before entering upon his or her duties, shall be sworn or shall affirm faithfully and fairly to discharge the trust committed to such receiver. The oath or affirmation may be waived upon consent of all parties.
- D. Undertaking. A temporary receiver shall give an undertaking, in an amount to be fixed by the court making the appointment that such receiver will faithful discharge his or her duties.
- E. Accounts. A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property. Upon motion of the temporary receiver, or of any person having an apparent interest in the property, the court may require the keeping of particular records, or direct or limit inspection, or require presentation of a temporary receiver's accounts. Notice of motion for the presentation of a temporary receiver's accounts shall be served upon the sureties on the

temporary receiver's undertaking as well as upon each party.

Chapter not exclusive remedy.

This chapter shall not be construed to exclude any other remedy provided by law for the protection of the health, safety and welfare of the people of the Town of Oneonta.