

1                                   A bill to be entitled  
2           An act relating to assignments involving insolvent  
3           estates; amending s. 727.103, F.S.; providing a  
4           definition; amending s. 727.104, F.S.; revising the  
5           amount of a bond filed with the clerk of court by an  
6           assignee accepting an assignment involving an  
7           insolvent estate; amending s. 727.108, F.S.;  
8           authorizing an assignee to proceed with evidentiary  
9           discovery under the Florida Rules of Civil Procedure  
10          in order to determine whether to prosecute certain  
11          claims and causes of action; increasing the number of  
12          days that an assignee may conduct the business of the  
13          assignor under certain circumstances; requiring an  
14          assignee to provide a specified type notice if the  
15          assignee requests the court to authorize the operation  
16          of the assignor's business for longer than a specified  
17          time; authorizing an assignee to conduct the  
18          assignor's business up to a specified number of  
19          additional days if a timely objection is not filed  
20          with the court; amending s. 727.109, F.S.; conforming  
21          a provision to changes made by the act; amending s.  
22          727.110, F.S.; providing requirements, procedures, and  
23          effects relating to an assignee's rejection of an  
24          unexpired lease of nonresidential real property or  
25          personal property; amending s. 727.111, F.S.; revising  
26          the amount of prior notice an assignee must give  
27          concerning the proposed sale of estate assets and the  
28          continued operation of the assignor's business beyond

29 | a specified number of days; providing requirements for  
 30 | serving certain notices on specified individuals;  
 31 | requiring such notice to be substantially in a certain  
 32 | form; authorizing the court to shorten certain  
 33 | notification periods under specified circumstances;  
 34 | providing construction; amending s. 727.113, F.S.;  
 35 | providing requirements, procedures, and applicability  
 36 | relating to the filing of objections to claims against  
 37 | an insolvent estate; creating s. 727.117, F.S.;  
 38 | requiring a deed to substantially conform to a certain  
 39 | form when an assignee sells real property of an  
 40 | insolvent estate; providing an effective date.

41 |

42 | Be It Enacted by the Legislature of the State of Florida:

43 |

44 | Section 1. Subsection (13) of section 727.103, Florida  
 45 | Statutes, is renumbered as subsection (14), and a new subsection  
 46 | (13) is added to that section to read:

47 | 727.103 Definitions.—As used in this chapter, unless the  
 48 | context requires a different meaning, the term:

49 | (13) "Negative notice" means the notice required under s.  
 50 | 727.111(4) that an assignee must give concerning the actions  
 51 | that the assignee proposes to take or may take unless objections  
 52 | are filed with the court and served on or before the 21st day  
 53 | after the date of service of such notice.

54 | Section 2. Paragraph (b) of subsection (2) of section  
 55 | 727.104, Florida Statutes, is amended to read:

56 | 727.104 Commencement of proceedings.—

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57 (2) Within 10 days after delivery of the assignment to the  
58 assignee, the assignee shall:

59 (b) File, in the office of the clerk of the court in the  
60 county of the assignor's place of business if it has one, in the  
61 county of its chief executive office if it has more than one  
62 place of business, or in the county of the assignor's residence  
63 if the assignor is an individual not engaged in business, in  
64 accordance with the procedures for filing a complaint as set  
65 forth in the Florida Rules of Civil Procedure, a petition  
66 setting forth the name and address of the assignor and the name  
67 and address of the assignee; a copy of the assignment, together  
68 with Schedules A and B; and a request that the court fix the  
69 amount of the assignee's bond to be filed with the clerk of the  
70 court. This bond shall be subject to reconsideration upon the  
71 motion of any party in interest after notice and hearing. The  
72 bond shall be payable to the clerk of the court, in an amount  
73 that is at least the greater of \$25,000 or ~~not less than~~ double  
74 the liquidation value of the assets of the estate as set forth  
75 in Schedule B, conditioned upon the assignee's faithful  
76 discharge of her or his duties. Within 30 days after the court  
77 enters an order setting the amount of such bond, the assignee  
78 shall file the bond with the clerk of the court, who shall  
79 approve the bond.

80 Section 3. Paragraph (a) of subsection (1) and subsection  
81 (4) of section 727.108, Florida Statutes, are amended to read:

82 727.108 Duties of assignee.—The assignee shall:

83 (1) Collect and reduce to money the assets of the estate,  
84 whether by suit in any court of competent jurisdiction or by

85 public or private sale, including, but not limited to,  
 86 prosecuting any tort claims or causes of action which were  
 87 previously held by the assignor, regardless of any generally  
 88 applicable law concerning the nonassignability of tort claims or  
 89 causes of action, and;

90 (a) With respect to the estate's claims and causes of  
 91 action, the assignee may:

92 1. Proceed with discovery under the Florida Rules of Civil  
 93 Procedure to determine whether to prosecute such claims or  
 94 causes of action;

95 2. Prosecute such claims or causes of action as provided  
 96 in this section; or

97 3. Sell and assign, in whole or in part, such claims or  
 98 causes of action to another person or entity on the terms that  
 99 the assignee determines are in the best interest of the estate  
 100 under to s. 727.111(4); and

101 (4) Conduct the business of the assignor for a limited  
 102 period that may not exceed 45 ~~14~~ calendar days, if in the best  
 103 interest of the estate, or for a longer period if, in the best  
 104 interest of the estate, upon notice and until such time as an  
 105 objection, if any, is sustained by the court; ~~however, the~~  
 106 ~~assignee may not operate the business of the assignor for longer~~  
 107 ~~than 45 calendar days without a court order authorizing such~~  
 108 ~~operation if an objection by a party in interest is interposed~~  
 109 ~~to the assignee's motion for authority to operate the assignor's~~  
 110 ~~business.~~ An assignee who requests the court to conduct the  
 111 business of the assignor for a period longer than 45 days must  
 112 serve negative notice of such proposed action. Unless a timely

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113 objection is filed with the court, the assignee may continue to  
114 conduct the business of the assignor for up to an additional 90  
115 days. The court may authorize the assignee to continue to  
116 conduct the business of the assignor for a period beyond the 90-  
117 day additional time period if the court finds such authorization  
118 is in the best interest of the estate.

119 Section 4. Subsection (3) of section 727.109, Florida  
120 Statutes, is amended to read:

121 727.109 Power of the court.—The court shall have power to:

122 (3) Upon notice and a hearing, if requested, authorize the  
123 business of the assignor to be conducted by the assignee for  
124 longer than 45 ~~14~~ calendar days, if in the best interest of the  
125 estate.

126 Section 5. Subsection (3) is added to section 727.110,  
127 Florida Statutes, to read:

128 727.110 Actions by assignee and other parties in  
129 interest.—

130 (3) If an assignee rejects an unexpired lease of  
131 nonresidential real property or of personal property in  
132 accordance with s. 727.108(5) or s. 727.109(6):

133 (a) The assignee must file a notice of rejection with the  
134 court and serve a copy of the notice:

135 1. With respect to affected real property, on the owner  
136 and the lessor of the real property.

137 2. With respect to affected personal property, on the  
138 landlord of the premises where the personal property is located.

139 (b) With respect to personal property, the notice of  
140 rejection must identify:

- 141           1. The affected property.
- 142           2. The address where the affected property is located.
- 143           3. The name and telephone number of the person in
- 144 possession of the affected property.
- 145           4. The deadline for removal of the affected property.

146           (c) The rejection takes effect on the date the court  
 147 enters an order authorizing the rejection.

148           (d) On or after the date the rejection takes effect, the  
 149 estate's rights, obligations, and liabilities with respect to  
 150 personal property terminate if the lessor of the affected  
 151 property fails to take possession of the property after notice  
 152 of rejection.

153           Section 6. Subsections (4), (6), and (8) of section  
 154 727.111, Florida Statutes, are amended to read:

155           727.111 Notice.—

156           (4) The assignee shall give the assignor and all creditors  
 157 not less than 21 ~~20~~ days' notice by mail of a proposed sale of  
 158 assets of the estate other than in the ordinary course of  
 159 business, the assignee's continued operation of the assignor's  
 160 business for longer than 45 ~~44~~ calendar days, the compromise or  
 161 settlement of a controversy, and the payment of fees and  
 162 expenses to the assignee and to professional persons employed by  
 163 the assignee pursuant to s. 727.108(7). The notice must be  
 164 served on any creditor and the creditor's attorney, if any, at  
 165 the addresses provided on the creditor's proof of claim. If a  
 166 proof of claim has not been filed by an entity creditor that is  
 167 registered to do business in this state, the notice must be  
 168 served on the creditor's registered agent as listed with the

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169 Department of State and on the creditor's attorney, if known.  
 170 All ~~Any~~ objections to the proposed action must be filed and  
 171 served upon the assignee and the assignee's attorney, if any, on  
 172 or before the 21st day after service of the notice ~~not less than~~  
 173 ~~3 days before the date of the proposed action.~~ The notice must  
 174 be in substantially the following form:

NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST FOR HEARING

177  
 178 IN THE CIRCUIT COURT  
 179 OF THE....  
 180 CIRCUIT, IN AND FOR  
 181 ....COUNTY,  
 182 FLORIDA

183  
 184 IN RE: .....,  
 185 Assignor,

186  
 187 TO:.....,  
 188 Assignee.

TO CREDITORS AND OTHER INTERESTED PARTIES:

189  
 190  
 191  
 192 PLEASE TAKE NOTICE that, pursuant to s. 727.111(4), Florida  
 193 Statutes, the assignee may take the following actions:

194 .....  
 195 .....  
 196 .....,

197 and/or the Court may consider the actions proposed herein  
 198 without further notice or hearing, unless a party in interest  
 199 files an objection within 21 days from the date this paper is  
 200 served. If you object to the relief requested in this paper, you  
 201 must file your objection with the Clerk of the Court at (Clerk's  
 202 address) and serve a copy on the assignee's attorney (attorney's  
 203 name and address) and any other appropriate person. If you file  
 204 and serve an objection within the time permitted, the Court will  
 205 schedule a hearing and you will be notified (or, if a hearing is  
 206 scheduled, state the date, time, and location). If you do not  
 207 file an objection within the time permitted, the assignee and  
 208 the Court will conclude that you do not oppose the granting of  
 209 the relief requested in the paper.

.....

ASSIGNEE

214 Attorney for assignee (if any):.....

215 Address:.....

216  
 217 ~~include a description of the proposed action to be taken, the~~  
 218 ~~date of the proposed action, and the date and place for the~~  
 219 ~~hearing at which any objections will be heard. If objections are~~  
 220 ~~not timely filed and served, the assignee may take action as~~  
 221 ~~described in the notice without further order of the court or~~  
 222 ~~may obtain an order approving the action without further notice~~  
 223 ~~or hearing. If an objection is filed, the court shall hold a~~  
 224 ~~hearing on the objection of the court granting such motion if~~

225 | ~~the assignee reasonably believes that the order is necessary to~~  
 226 | ~~proceed with the action contemplated by the motion.~~

227 | (6) For good cause shown and without notice of hearing,  
 228 | the court may shorten the notice or negative notice period or  
 229 | limit the parties to whom notice or negative notice need be  
 230 | given, pursuant to subsection (3) or subsection (4); however,  
 231 | the court's shortening of a notice or negative notice period  
 232 | under this subsection does not affect the right of a party in  
 233 | interest to raise such action by the court as the basis for any  
 234 | objection to the relief sought under subsection (4).

235 | (8) Wherever notice or negative notice is required to be  
 236 | given under this chapter, a certificate of service of such  
 237 | notice or negative notice shall be filed with the court, and  
 238 | notice or negative notice shall be given to all consensual  
 239 | lienholders and counsel who have filed a notice of appearance  
 240 | with the court or who are identified in the assignor's  
 241 | schedules.

242 | Section 7. Subsection (1) of section 727.113, Florida  
 243 | Statutes, is amended, and subsection (5) is added to that  
 244 | section, to read:

245 | 727.113 Objections to claims.—

246 | (1) At any time before ~~prior to~~ the entry of an order  
 247 | approving the assignee's final report, the assignee or any party  
 248 | in interest, ~~including another creditor of the assignor,~~ may  
 249 | file with the court an objection to a claim, which objection  
 250 | must be in writing and set forth the nature of the objection. A  
 251 | copy of the objection shall be served on the creditor at the  
 252 | address set forth on the proof of claim and to the assignee and

253 the assignee's attorney, if any. The objection may be served  
 254 using negative notice, ~~together with notice of hearing thereon,~~  
 255 ~~shall be mailed to the creditor at least 20 days prior to the~~  
 256 ~~hearing.~~ All claims properly filed with the assignee and not  
 257 disallowed by the court constitute all claims entitled to  
 258 distribution from the estate.

259 (5) Discovery under the Florida Rules of Civil Procedure  
 260 applies to any objection made to any claim in any case pending  
 261 or filed on or after July 1, 2013.

262 Section 8. Section 727.117, Florida Statutes, is created  
 263 to read:

264 727.117 Approved form; assignee's deed.—When an assignee  
 265 sells real property of the estate, the deed must substantially  
 266 conform to the following:

267  
 268 ASSIGNEE'S DEED

269  
 270 This Assignee's Deed is made and executed this .... day of  
 271 ....., ... (year)...., by ... (assignee's name)...., as assignee  
 272 for the Estate of ....., Case No. .... in the  
 273 Circuit Court of the .... Circuit, in and for ..... County,  
 274 Florida, whose post office address is: .... (assignee's address)  
 275 .....  
 276 (hereinafter called the "grantor"), to ....., whose  
 277 post office address is ..... (hereinafter called  
 278 the "grantee").

279  
 280 (Wherever used herein, the terms "grantor" and "grantee" include

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281 all the parties to this instrument, singular and plural, and the  
 282 heirs, legal representatives, and assigns of individuals, and  
 283 the successors and assigns of corporations, wherever the context  
 284 so admits or requires.)

285  
 286 WITNESSETH:

287  
 288 That grantor, for and in consideration of the sum of ....  
 289 dollars and other good and valuable consideration to said  
 290 grantor, in hand paid by grantee, the receipt of which is hereby  
 291 acknowledged, hereby grants, bargains, sells, aliens, remises,  
 292 releases, conveys, and confirms unto grantee all that certain  
 293 real property lying and being in the County of .....,  
 294 State of Florida, more particularly described as follows:  
 295 SEE ATTACHED EXHIBIT "A," attached hereto and incorporated  
 296 herein by this reference (the "property").

297  
 298 This conveyance is subject to taxes accruing for the year of  
 299 conveyance and subsequent years and all encumbrances, covenants,  
 300 conditions, and restrictions of record, except nothing herein  
 301 shall operate to reimpose same.

302  
 303 TOGETHER with all the tenements, hereditaments, and  
 304 appurtenances thereto belonging or in anywise appertaining.

305  
 306 TO HAVE AND TO HOLD the same in fee simple forever.

307  
 308 AND the grantor hereby covenants with said grantee that grantor

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309 | has good right and lawful authority to sell and convey said  
310 | property.

311 |  
312 | Grantor executed this instrument only in grantor's capacity as  
313 | assignee of the above referenced assignment estate, and no  
314 | personal judgment shall ever be sought or obtained against  
315 | grantor individually by reason of this instrument.

316 |  
317 | IN WITNESS WHEREOF, the said grantor has caused these presents  
318 | to be executed the day and year first written above.

319 |  
320 | GRANTOR:

321 |  
322 | ..... (grantor's Signature) .....  
323 | Print Name: .....

324 | As assignee for the Estate of ..... (assignor's name) .....  
325 | Case No. ....

326 | Circuit Court of the .... Circuit, in and for ..... County,  
327 | Florida

328 |  
329 | Signed, sealed, and delivered  
330 | in the presence of:

331 |  
332 | .....

333 | Witness

334 |  
335 | .....

336 | Print Name

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337

338 .....

339 Witness

340

341 .....

342 Print Name

343

344 STATE OF FLORIDA

345 COUNTY OF .....

346

347 Sworn and subscribed before me this ..... day of .....,

348 ...(year)..., by...(assignee's name)..., as assignee for the

349 Estate of .....(assignor's name)....., Case No. ....,

350 Circuit Court of the .... Circuit, in and for ..... County,

351 Florida, on behalf of said estate.

352

353 ..... (Signature and title of notary public or officer

354 administering oath) .....

355

356 Personally known .... OR Produced identification ....

357 Type of identification produced: .....

358 Section 9. This act shall take effect July 1, 2013.