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CS/CS/HB 833

2013 Legislature

1
2 An act relating to general assignments; amending s.
3 727.103, F.S.; defining the term "negative notice";
4 amending s. 727.104, F.S.; requiring an assignee's
5 bond to be in at least a specific amount or double the
6 liquidation value of the unencumbered and liquid
7 assets of the estate, whichever is higher; amending s.
8 727.108, F.S.; authorizing an assignee to conduct
9 certain discovery to determine whether to prosecute
10 certain claims or causes of action; extending the time
11 period an assignee may conduct the business of the
12 assignor; authorizing the assignee to continue
13 conducting the business of the assignor under certain
14 circumstances by serving negative notice; amending s.
15 727.109, F.S.; extending the time period for which a
16 court may authorize an assignee to conduct the
17 business of the assignor; amending s. 727.110, F.S.;
18 providing procedures for an assignee's rejection of an
19 unexpired lease of nonresidential real property or of
20 personal property; requiring the assignee to serve a
21 notice of rejection on certain persons and file it
22 with the court; requiring that a notice of rejection
23 for personal property include certain information
24 about the affected property; specifying the effective
25 date of the rejection; requiring the estate's rights
26 and obligations to and liability for the affected
27 property to terminate under certain circumstances;
28 amending s. 727.111, F.S.; extending the minimum time

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29 | period for giving notice to the assignor and
30 | creditors; conforming language; providing a procedure
31 | for serving notice on certain persons; requiring an
32 | objection to be filed and served within a specific
33 | time period; requiring the notice to be in a specified
34 | form; providing that the assignee may take certain
35 | actions if an objection is not filed; requiring the
36 | court to hear a filed objection; authorizing the court
37 | to shorten negative notice under certain
38 | circumstances; providing that a party may raise the
39 | shortened notice period in certain objections;
40 | requiring a certificate of service for negative notice
41 | to be filed with the court under certain
42 | circumstances; requiring negative notice to be given
43 | to certain persons under certain circumstances;
44 | amending s. 727.113, F.S.; providing procedures for
45 | serving an objection to a claim; providing that the
46 | Florida Rules of Civil Procedure apply to objections
47 | to claims in all pending cases beginning on a specific
48 | date; creating s. 727.117, F.S.; requiring an
49 | assignee's deed to be in a specific form; providing an
50 | effective date.

51 |
52 | Be It Enacted by the Legislature of the State of Florida:

53 |
54 | Section 1. Present subsection (13) of section 727.103,
55 | Florida Statutes, is redesignated as subsection (14), and a new
56 | subsection (13) is added to that section, to read:

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57 727.103 Definitions.—As used in this chapter, unless the
58 context requires a different meaning, the term:

59 (13) "Negative notice" means notice as set forth in s.
60 727.111(4) which, unless a response is filed within 21 days
61 after the date of service thereof, allows certain actions set
62 forth in the notice to occur.

63 Section 2. Subsection (2) of section 727.104, Florida
64 Statutes, is amended to read:

65 727.104 Commencement of proceedings.—

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

68 (a) Record the original assignment in the public records
69 of the county in which the assignor had its principal place of
70 business and shall thereafter promptly record a certified copy
71 of the assignment in each county where assets of the estate are
72 located.~~‡~~

73 (b) File, in the office of the clerk of the court in the
74 county of the assignor's place of business if it has one, in the
75 county of its chief executive office if it has more than one
76 place of business, or in the county of the assignor's residence
77 if the assignor is an individual not engaged in business, in
78 accordance with the procedures for filing a complaint as set
79 forth in the Florida Rules of Civil Procedure, a petition
80 setting forth the name and address of the assignor and the name
81 and address of the assignee; a copy of the assignment, together
82 with Schedules A and B; and a request that the court fix the
83 amount of the assignee's bond to be filed with the clerk of the
84 court. This bond is ~~shall be~~ subject to reconsideration upon the

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85 motion of any party in interest after notice and hearing. The
86 bond is ~~shall be~~ payable to the clerk of the court, in an amount
87 not less than \$25,000 or double the liquidation value of the
88 unencumbered and liquid assets of the estate as set forth in
89 Schedule B, whichever is higher, conditioned upon the assignee's
90 faithful discharge of her or his duties. Within 30 days after
91 the court enters an order setting the amount of such bond, the
92 assignee shall file the bond with the clerk of the court, who
93 shall approve the bond.

94 Section 3. Subsections (1) and (4) of section 727.108,
95 Florida Statutes, are amended to read:

96 727.108 Duties of assignee.—The assignee shall:

97 (1) Collect and reduce to money the assets of the estate,
98 whether by suit in any court of competent jurisdiction or by
99 public or private sale, including, but not limited to,
100 prosecuting any tort claims or causes of action that ~~which~~ were
101 previously held by the assignor, regardless of any generally
102 applicable law concerning the nonassignability of tort claims or
103 causes of action. ~~and,~~

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

106 1. Conduct discovery as provided under the Florida Rules
107 of Civil Procedure to determine whether to prosecute such claims
108 or causes of actions.

109 2. Prosecute such claims or causes of action as provided
110 in this section. ~~or~~

111 3. Sell and assign, in whole or in part, such claims or
112 causes of action to another person or entity on the terms that

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113 the assignee determines are in the best interest of the estate
114 under ~~to~~ s. 727.111(4). ~~and~~

115 (b) In an action in any court by the assignee or the first
116 immediate transferee of the assignee, other than an affiliate or
117 insider of the assignor, against a defendant to assert a claim
118 or chose in action of the estate, the claim is not subject to,
119 and any remedy may not be limited by, a defense based on the
120 assignor's acquiescence, cooperation, or participation in the
121 wrongful act by the defendant which forms the basis of the claim
122 or chose in action.

123 (4) Conduct the business of the assignor for a limited
124 period ~~that may not to~~ exceed 45 ~~14~~ calendar days, if doing so
125 is in the best interest of the estate, or for a longer period
126 if, in the best interest of the estate, upon notice and until
127 such time as an objection, if any, is sustained by the court,
128 ~~however, the assignee may not operate the business of the~~
129 ~~assignor for longer than 45 calendar days without a court order~~
130 ~~authorizing such operation if an objection by a party in~~
131 ~~interest is interposed to the assignee's motion for authority to~~
132 ~~operate the assignor's business. An assignee's authorization to~~
133 conduct the business of the assignor may be extended for a
134 period longer than 45 days upon service of negative notice. If
135 no timely objection is filed with the court, the assignee may
136 continue to operate the assignor's business for an additional 90
137 days. The court may extend the 90-day period if it finds an
138 extension to be in the best interest of the estate.

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

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141 727.109 Power of the court.—The court shall have power to:

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

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

148 727.110 Actions by assignee and other parties in
149 interest.—

150 (3) As to an assignee's rejection of an unexpired lease of
151 nonresidential real property or of personal property, as
152 provided under ss. 727.108(5) and 727.109(6):

153 (a) The assignee shall file a notice of rejection with the
154 court and serve a copy on the owner or lessor of the affected
155 property and, for personal property, on the landlord of the
156 premises on which the property is located. A notice of rejection
157 relating to personal property must identify the affected
158 property, the address at which the affected property is located,
159 the name and telephone number of the person in possession of the
160 affected property, and the deadline for removal of the affected
161 property.

162 (b) The effective date of the rejection is the date of
163 entry of a court order authorizing such rejection.

164 (c) If the lessor of the affected property fails to take
165 possession thereof after notice of the rejection, the estate's
166 rights and obligations to and liability for the property
167 terminate upon the effective date of the rejection.

168 Section 6. Subsections (4), (6), and (8) of section

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169 727.111, Florida Statutes, are amended to read:

170 727.111 Notice.—

171 (4) The assignee shall give the assignor and all creditors
172 at least not less than 21 20 days' notice by mail of a proposed
173 sale of assets of the estate other than in the ordinary course
174 of business, the assignee's continued operation of the
175 assignor's business for longer than 45 14 calendar days, the
176 compromise or settlement of a controversy, and the payment of
177 fees and expenses to the assignee and to professional persons
178 employed by the assignee pursuant to s. 727.108(7). The notice
179 shall be served on all creditors and their attorneys, if any, at
180 the address provided in the creditor's proof of claim. If a
181 proof of claim has not been filed by a creditor that is
182 registered to do business in this state, the notice must be
183 served on the creditor's registered agent as listed with the
184 Division of Corporations of the Department of State and on the
185 creditor's attorney, if known. If a proof of claim has not been
186 filed and the creditor does not have a registered agent within
187 the state, the notice must be served on the creditor at the
188 address listed in the schedules filed by the assignor. Objection
189 ~~Any objections~~ to the proposed action must be filed and served
190 upon the assignee and the assignee's attorney, if any, within 21
191 days after service of the notice not less than 3 days before the
192 date of the proposed action. The notice shall be in the
193 following form: must include a description of the proposed
194 action to be taken, the date of the proposed action, and the
195 date and place for the hearing at which any objections will be
196 heard.

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NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST A HEARING

IN THE CIRCUIT COURT

OF THE

CIRCUIT, IN AND FOR

. . . . COUNTY,

FLORIDA

IN RE: ,

Assignor,

TO: ,

Assignee.

TO CREDITORS AND OTHER INTERESTED PARTIES:

PLEASE TAKE NOTICE that, pursuant to s. 727.111(4), Florida
Statutes, the assignee may . . . (List applicable action(s)
described in s. 727.111(4)) . . . , and the Court may consider these
actions without further notice or hearing unless a party in
interest files an objection within 21 days from the date this
paper is served. If you object to the relief requested in this
paper, you must file your objection with the Clerk of the Court
at . . . (Clerk's address) . . . , and serve a copy on the assignee's
attorney, . . . (attorney's name and address) . . . , and any other
appropriate person.

If you file and serve an objection within the time permitted,

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225 | the Court shall schedule a hearing and notify you of the
 226 | scheduled hearing. If a hearing is already scheduled, list the
 227 | date, time, and location of the hearing: ...(date, time, and
 228 | location)...

229 |
 230 | If you do not file an objection within the time permitted, the
 231 | assignee and the Court will presume that you do not oppose the
 232 | granting of the relief requested in the paper.

233 |
 234 |
 235 | ASSIGNEE

236 | Attorney for assignee (if any):.....
 237 | Address:.....

238 |
 239 | If ~~no~~ objections are ~~not~~ timely filed and served, the assignee
 240 | may take such action as described in the notice without further
 241 | order of the court or may obtain an order approving the action
 242 | without further notice or hearing ~~of the court granting such~~
 243 | ~~motion if the assignee reasonably believes that the order is~~
 244 | ~~necessary to proceed with the action contemplated by the motion.~~
 245 | If an objection is filed, the court shall hold a hearing on the
 246 | objection.

247 | (6) For good cause shown and without notice of hearing,
 248 | the court may shorten the notice or negative notice period or
 249 | limit the parties to whom notice or negative notice need be
 250 | given, pursuant to subsection (3) or subsection (4). This
 251 | subsection does not affect the right of a party in interest to
 252 | raise the shortened notice period in any objection to the relief

253 | sought under subsection (4).

254 | (8) Wherever notice or negative notice is required to be
255 | given under this chapter, a certificate of service of such
256 | notice or negative notice shall be filed with the court, and
257 | notice or negative notice shall be given to all consensual
258 | lienholders and counsel who have filed a notice of appearance
259 | with the court or who are identified in the assignor's
260 | schedules.

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

264 | 727.113 Objections to claims.—

265 | (1) At any time before ~~prior to~~ the entry of an order
266 | approving the assignee's final report, the assignee or any party
267 | in interest, ~~including another creditor of the assignor,~~ may
268 | file with the court an objection to a claim, which objection
269 | must be in writing and set forth the nature of the objection,
270 | and shall serve a copy thereof on the creditor at the address
271 | provided in the proof of claim, and to the assignee and the
272 | assignee's attorney, if any. The objection may be served on
273 | negative notice. ~~A copy of the objection, together with notice~~
274 | ~~of hearing thereon, shall be mailed to the creditor at least 20~~
275 | ~~days prior to the hearing.~~ All claims properly filed with the
276 | assignee and not disallowed by the court constitute all claims
277 | entitled to distribution from the estate.

278 | (5) The discovery provisions of the Florida Rules of Civil
279 | Procedure apply to objections to claims in all cases pending on
280 | July 1, 2013, or filed thereafter.

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281 Section 8. Section 727.117, Florida Statutes, is created
282 to read:

283 727.117 Assignee's deed form.—

284 (1) If an assignee sells real property of the estate, the
285 deed shall be in substantially the following form:

286
287 ASSIGNEE'S DEED

288
289 This Assignee's Deed is made and executed this day of
290, ... (year) ..., by, as Assignee for the Estate of,
291 Case No. in the Circuit Court of County, Florida,
292 whose post office address is (hereinafter "Grantor"), to
293, whose post office address is (hereinafter "Grantee").

294 Wherever used herein, the terms "Grantor" and "Grantee"
295 include all the parties to this instrument, singular and plural,
296 and the heirs, legal representatives, and assigns of these
297 individuals, and the successors and assigns of corporations,
298 wherever the context so admits or requires.

299
300 WITNESSETH:

301
302 That Grantor, for and in consideration of the sum of Ten
303 Dollars (\$10.00) and other good and valuable consideration in
304 hand paid to said Grantor by Grantee, the receipt of which is
305 hereby acknowledged, hereby grants, bargains, sells, aliens,
306 remises, releases, conveys, and confirms unto Grantee, all of
307 that certain real property lying and being in the County of
308, State of Florida, more particularly described as follows:

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309
310 SEE ATTACHED "EXHIBIT A," which is incorporated herein by
311 the term "Property."

312
313 This conveyance is subject to taxes accruing for the year
314 of conveyance and subsequent years, and all encumbrances,
315 covenants, conditions, and restrictions of record, except
316 nothing herein operates to reimpose same.

317
318 TOGETHER with all the tenements, hereditaments, and
319 appurtenances thereto belonging or in anywise appertaining.

320
321 TO HAVE AND TO HOLD the same in fee simple forever.

322
323 AND the Grantor hereby covenants with said Grantee that
324 Grantor has good right and lawful authority to sell and convey
325 said Property.

326
327 Grantor executed this instrument only in Grantor's capacity
328 as Assignee of the above referenced Assignment estate and no
329 personal judgment shall ever be sought or obtained against
330 Grantor individually by reason of this instrument.

331
332 IN WITNESS WHEREOF, said Grantor has caused these presents
333 to be executed the day and year first written above.

334
335 GRANTOR:

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337 | ...(Grantor's Signature)...
 338 | Print Name:.....
 339 | As Assignee for the Estate of ...(Assignor's Name)...
 340 | Case No.
 341 | Circuit Court of County, Florida
 342 |
 343 | Signed, sealed and delivered
 344 | in the presence of:
 345 |
 346 | ...(Witness's Signature)...
 347 | Witness
 348 | ...(Witness's Name Printed)...
 349 | Print Name
 350 |
 351 | ...Witness's Signature...
 352 | Witness
 353 | ...(Witness's Name Printed)...
 354 | Print Name
 355 |
 356 | STATE OF FLORIDA
 357 | COUNTY OF
 358 |
 359 | Sworn to and subscribed before me this day of,
 360 | ...(year)...., by ...(Assignee's Name)...., as Assignee for the
 361 | Estate of ...(Assignor's Name)...., Case No., Circuit Court
 362 | of County, Florida, on behalf of said estate.
 363 |
 364 | ...(Signature of Notary Public - State of Florida)...

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365 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 366 Personally Known OR Produced Identification
 367 Type of Identification Produced:....
 368 (2) The form for an assignee's deed shall include a blank
 369 space for the property appraiser's parcel identification number
 370 describing the property conveyed, which number, if available,
 371 shall be entered on the deed before it is presented for
 372 recording. The failure to include such blank space or the parcel
 373 identification number, or the inclusion of an incorrect parcel
 374 identification number, does not affect the validity of the
 375 conveyance or the recordability of the deed. Such parcel
 376 identification number is not a part of the legal description of
 377 the property otherwise set forth in the deed and may not be used
 378 as a substitute for the legal description of the property being
 379 conveyed.

380 Section 9. This act shall take effect upon becoming a law.