

**2012 Proposed Amendments
To Chapter 727, Florida Statutes**
proposed additional language bolded
~~proposed deleted language strikethrough~~

727.103 Definitions.

(13) “Negative Notice” means notice as set forth in s. 727.111(4) that, unless a response is filed within 21 days of the date of service thereof, certain action(s) set forth in the notice will or may occur.

~~(13)~~**(14) “Petition” means . . .**

727.104 Commencement of proceedings.

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

(b) File . . . a request that the court fix the amount of the assignee's bond to be filed with the clerk of the court. This bond shall be subject to reconsideration upon the motion of any party in interest after notice and hearing. The bond shall be payable to the clerk of the court, in an amount not less than **\$10,000.00 or** double the liquidation value of the **unencumbered and liquid** assets of the estate as set forth in Schedule B, **whichever is higher**, conditioned upon the assignee's faithful discharge of her or his duties. Within 30 days after the court enters an order setting the amount of such bond, the assignee shall file the bond with the clerk of the court, who shall approve the bond.

Issue: The bond amount is too high in cases where most of the debt is secured and thus the assets are already protected. It should be twice the liquidation value of the *unencumbered* assets.

727.108 Duties of Assignee. The assignee shall:

(1)(a) With respect to the estate's claims and causes of action, the assignee may **conduct discovery as provided for in the Florida Rules of Civil Procedure in order to determine whether to prosecute such claims or causes of action, prosecute such claims and causes of action** as provided in this section, or sell and assign, in whole or in part, such claims or causes of action to another person or entity on the terms that the assignee determines are in the best interest of the estate under ~~to~~ s. 727.111(4); and

Issue: The assignee needs to be able to conduct discovery in some cases.

(4) Conduct the business of the assignor for a limited period that may not exceed ~~14~~ **45** calendar days, if in the best interest of the estate, or for a longer period, if, in the best interest of the estate, upon notice and until such time as an objection, if any, is sustained by the court.; ~~however, the assignee may not operate the business of the assignor for longer than 45 calendar days without a court order authorizing such operation if any objection by a party in interest is interposed to the assignee's motion for authority to operate the assignor's business.~~ **An assignee's request for authorization to conduct the business of the assignor for a period longer than**

Issue: The Notice period is 20 days, but the operations may not exceed 14 days.

45 days may be served on negative notice. If no timely objection is filed with the court, the assignee may continue to operate the assignor's business for an additional 90 days. Such time period may be further extended by the court if in the best interest of the estate.

727.109 Actions by assignee and other parties in interest.

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

727.110 Actions by assignee and other parties in interest.

(3) The following provisions apply to an assignee's rejection of an unexpired lease of nonresidential real property or of personal property, in accordance with s. 727.108(5) and s. 727.109(6).

(a) The assignee shall file a notice of rejection with the court and serve a copy thereof on the owner and/or lessor of the affected property and, for personal property, on the landlord of the premises where the property is located. The notice of rejection may be served on Negative Notice and, for personal property, shall identify (i) the affected property, (ii) the address of the affected property, (iii) the contact name and telephone number of the person in possession of the affected property, and (iv) the deadline date for removal of the affected property.

(b) The effective date of the rejection shall be the earlier of:

(i) If the notice of rejection is served on Negative Notice and no objection is filed within the time prescribed, the day after expiration of the negative notice period; or

(ii) The date of entry of a court order allowing said rejection.

(c) If the lessor of the affected property fails to take possession thereof after notice of the rejection, upon the effective date of the rejection, the estate's right(s) and obligation(s) to, and liability for, the property shall terminate.

727.111 Notice.

(4) The assignee shall give the assignor and all creditors not less than ~~20~~ **21** days' notice by mail of a proposed sale of assets of the estate other than in the ordinary course of business, the assignee's continued operation of the assignor's business for longer than ~~14~~ **45** calendar days, the compromise or settlement of a controversy, and the payment of fees and expenses to the assignee and to professional persons employed by the assignee pursuant to s. 727.108(6). ~~All~~ **Any** objections to the proposed action must be filed and served upon the assignee and the assignee's attorney, if any, ~~not less than 3~~

Issues: There needs to be an effective date on which the Assignee is deemed to have rejected.

Otherwise, landlords charge rent from the date of the assignment to the date of the rejection order. There also needs to be notice to the landlord so you cut off claims against the estate.

There needs to be a timetable placed on the actual removal of the asset. Leasing companies often agree to remove an asset, but it takes them months, causing storage fees and removal cost problems.

Issue: Negative notice.

~~days before the date of the proposed action by the 21st day after service of the notice. The notice must include a description of the proposed action to be taken, the date of the proposed action, and the date and place for the hearing at which any objections will be heard.~~
The notice shall be in the form set forth below. If no objections are not timely filed and served, the assignee may take such action as described in the notice without further order of the court or may obtain an order of the court granting such motion if the assignee reasonably believes that the order is necessary to proceed with the action contemplated by the motion approving the action without further notice or hearing.

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

PLEASE TAKE NOTICE that, pursuant to s. 727.111(4), Florida Statutes, the assignee may take the action(s) described herein, and/or the Court may consider this [Notice/Motion/Objection/other matter] 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 [address], and serve a copy on the assignee's attorney, [name and address], and any other appropriate person(s).

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified [or, if a hearing is scheduled, state the date, time and location]. If you do not file an objection within the time permitted, the assignee and the Court will consider that you do not oppose the granting of the relief requested in the paper.

(6) For good cause shown and without notice of hearing, the court may shorten the notice **or Negative Notice** period, or limit the parties to whom notice **or Negative Notice** need be given, pursuant to subsection (3) or subsection (4).

(8) Whenever notice **or Negative Notice** is required to be given under this chapter, a certificate of service of such notice **or Negative Notice** shall be filed with the court, and notice **or Negative Notice** shall be given to all consensual lienholders and counsel who have filed a notice of appearance with the court or who are identified in the assignor's schedules.

727.113 Objections to claims.

(1) At any time prior to the entry of an order approving the assignee's final report, the assignee or any party in interest, ~~including another creditor of the assignor,~~ may file with the court an objection to a claim, which objection shall be in writing and shall set forth the nature of the objection, **and shall serve a copy thereof on** ~~A copy of the objection, together with notice of hearing thereon, shall be mailed to the creditor at least 20 days prior to the hearing at the address set~~

Issue: The Notice of Hearing on an objection to claim should match the amended notice provisions in section 727.111 above.

forth on the proof of claim, and to the assignee and the assignee's attorney, if any. The objection may be served on Negative Notice.

All claims properly filed with the assignee and not disallowed by the court shall constitute all claims entitled to distribution from the estate.

(5) The discovery provisions of the Florida Rules of Civil Procedure shall apply to objections to claims in all cases pending on the effective date of this amendment, or filed thereafter.

Issue: Discovery
should be allowed in
claim objection
proceedings.

727.117 Approved forms.

(1) Assignee's deed. An assignee's deed should conform substantially to the following:

ASSIGNEE'S DEED

This Assignees' Deed is made and executed this ____ day of _____, 20__ by _____, as Assignee for the Estate of _____, Case No. _____ in the Circuit Court of _____ County, Florida, whose post office address is _____ (hereinafter called the "Grantor"), to _____, whose post office address is _____ (hereinafter "Grantee").

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

WITNESSETH:

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

SEE ATTACHED EXHIBIT "A", attached hereto and incorporated herein by this reference (the "Property").

This conveyance is subject to taxes accruing for the year of conveyance and subsequent years, and all encumbrances, covenants, conditions, and restrictions of record, except nothing herein shall operate to re-impose same.

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

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

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

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

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

GRANTOR:

Grantor's Signature

Print Name:

As Assignee for the Estate of (assignor's name)

Case No.

Circuit Court of _____ County, Florida

**Signed, sealed and delivered
in the presence of:**

Witness

Print Name

Witness

Print Name

**STATE OF FLORIDA
COUNTY OF**

**Sworn and subscribed before me this ___ day of (month and year), by (name of person making statement),
as Assignee for the Estate of (assignor's name), Case No. _____, Circuit Court of
County, Florida, on behalf of said estate.**

**Notary Public/Deputy Clerk
Personally Known OR Produced Identification
Type of Identification Produced**