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

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

(4) Conduct the business of the assignor for a limited
period ~~that may not to~~ exceed 45 ~~14~~ calendar days, if doing so
is 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 an objection by a party in~~
~~interest is interposed to the assignee's motion for authority to~~
~~operate the assignor's business. An assignee's authorization to~~
conduct the business of the assignor may be extended for a
period longer than 45 days upon service of 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. The court may extend the 90-day period if it finds an
extension to be in the best interest of the estate.

Section 4. Subsection (3) of section 727.109, Florida
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 ~~44~~ 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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727.111, Florida Statutes, are amended to read:

727.111 Notice.—

(4) The assignee shall give the assignor and all creditors at least ~~not less than~~ 21 ~~20~~ 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 45 ~~44~~ 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(7). The notice shall be served on all creditors and their attorneys, if any, at the address provided in the creditor's proof of claim. If a proof of claim has not been filed by a creditor that is registered to do business in this state, the notice must be served on the creditor's registered agent as listed with the Division of Corporations of the Department of State and on the creditor's attorney, if known. If a proof of claim has not been filed and the creditor does not have a registered agent within the state, the notice must be served on the creditor at the address listed in the schedules filed by the assignor. Objection ~~Any objections~~ to the proposed action must be filed and served upon the assignee and the assignee's attorney, if any, within 21 days after service of the notice ~~not less than 3 days before the date of the proposed action~~. The notice shall be in the following form: ~~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.~~

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

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

.....

ASSIGNEE

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

Address:.....

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 approving the action
without further notice or hearing ~~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.~~
If an objection is filed, the court shall hold a hearing on the
objection.

(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). This
subsection does not affect the right of a party in interest to
raise the shortened notice period in any objection to the relief

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

727.117 Assignee's deed form.—

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

ASSIGNEE'S DEED

This Assignee's Deed is made and executed this day of, ... (year) ..., by, as Assignee for the Estate of, Case No. in the Circuit Court of County, Florida, whose post office address is (hereinafter "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 these 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 in hand paid to said Grantor by Grantee, the receipt of which is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys, and confirms unto Grantee, all of that certain real property lying and being in the County of, 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:
336

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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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...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known OR Produced Identification
Type of Identification Produced:....

(2) The form for an assignee's deed shall include a blank space for the property appraiser's parcel identification number describing the property conveyed, which number, if available, shall be entered on the deed before it is presented for recording. The failure to include such blank space or the parcel identification number, or the inclusion of an incorrect parcel identification number, does not affect the validity of the conveyance or the recordability of the deed. Such parcel identification number is not a part of the legal description of the property otherwise set forth in the deed and may not be used as a substitute for the legal description of the property being conveyed.

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