

## Assignments for the Benefit of Creditors: Florida

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A Q&A guide to an assignment for the benefit of creditors (ABC) in Florida. This Q&A addresses the process by which assignments are generally administered in Florida, including the commencement and administration of the ABC, the duties and actions of assignees, creditor claims, and the jurisdiction of the court. Answers to questions can be compared across a number of jurisdictions (see Assignments for the Benefit of Creditors: State Q&A Tool).

### Commencing an ABC Proceeding

#### 1. What are the applicable statutes for an assignment for the benefit of creditors (ABC) in your jurisdiction?

In Florida, the ABC statutes are relatively comprehensive and provide rules for:

- Commencing proceedings (§ 727.104, Fla. Stat.).
- Turnover of assets (§ 727.106, Fla. Stat.).
- Assignor's duties (§ 727.107, Fla. Stat.).
- Assignee's duties (§ 727.108, Fla. Stat.).
- Actions by an assignee and other parties in interests (§ 727.110, Fla. Stat.).
- Notice (§ 727.111, Fla. Stat.).
- Proof of claim (§ 727.112, Fla. Stat.).
- Objections to claims (§ 727.113, Fla. Stat.).
- Priority of claims (§ 727.114, Fla. Stat.).
- Assignee's final report and discharge (§ 727.116, Fla. Stat.).
- Assignee's deed form (§ 727.117, Fla. Stat.).

#### 2. Generally, in which court can an assignment for the benefit of creditors (ABC) be commenced in your jurisdiction? Please explain if an ABC can be conducted without a court filing in your jurisdiction.

In Florida, ABCs begin with the contractual assignment of the assignor's assets to an assignee. The assignment is then recorded in the county in which the assignor had its principal place of business. The assignee must promptly record a certified copy of the assignment in each county where assets of the estate are located. (§ 727.104(2)(a), Fla. Stat.)

After properly recording the assignment, the assignee must commence the case in the office of the clerk of the circuit court located in the county where the assignor has:

- A place of business, if it has one.
- A chief executive office, if it has more than one place of business.
- A residence, if the assignor is an individual not engaged in business.

Following the procedures for filing a complaint under the Florida Rules of Civil Procedure, the assignee commences the case by filing a petition containing:

- The assignor's name and address.
- The assignee's name and address.
- A copy of the assignment, together with form Schedules A and B, provided within Section 727.104(1)(d) of the Florida Statutes.
- A request that the court fix the amount of the assignee's bond, which must be filed with the clerk of the court.

(§ 727.104(2)(b), Fla. Stat.)

The assignor must verify the assignment and Schedules A and B under oath and the assignee must accept the assignment under oath. (§ 727.104(1)(e), Fla. Stat.).

## Assignments for the Benefit of Creditors: Florida

Under Chapter 727 of Florida's Amended Statutes, effective July 1, 2023, the assignee must also:

- Within 10 days of receiving the assignment, record the original assignment, with or without the schedules, in the official records of the county where the assignor had its principal place of business.
- Promptly record a certified copy of the assignment, with or without the schedules, in each Florida county where real property assets of the assignment estate are located, and a certified copy of the assignment, without schedules, in each jurisdiction outside of Florida where real property assets of the assignment estate are located. If a certified copy of the assignment is not acceptable for recording in a particular jurisdiction, the assignee must instead record a lis pendens or similar notice of action permitted in that jurisdiction referencing the pendency of the proceedings. All recorded documents must include a legal description of any real property located in the recording jurisdiction.

(§ 727.104(2), Fla. Stat.)

### 3. What is required to file an assignment for the benefit of creditors (ABC) in your jurisdiction? Please include information on:

- Documents, including any official forms and a description of the operative document.
- Corporate actions of approval.
- Filing requirements (including what needs to be filed and where, timing, electronic versus paper, and any fees that must be filed).

### Documents

The Florida Statutes contain a form assignment for an ABC (§ 727.104(1)(b), Fla. Stat.). The assignment document must substantially conform to this form and:

- Be in writing.
- Contain the assignor's and assignee's names and addresses.
- Provide for an equal distribution of the estate according to the priorities of Section 727.114 of the Florida Statutes (§ 727.104(1)(a), Fla. Stat.; see Question 15).

### Corporation Actions of Approval

The required corporate action for commencing an assignment under the Florida Statutes depends on the relevant law governing the assignor's specific type of

business. However, the commencement of an ABC typically requires approval from any of the following:

- The board of directors.
- Shareholders.
- Managing members.

### Filing Requirements

The assignment must be printed, signed, and notarized. The original assignment document must be recorded in the office of the clerk of the circuit court located in the county where the assignor has:

- A place of business, if it has one.
- A chief executive office, if it has more than one place of business.
- A residence, if the assignor is an individual not engaged in business.

The assignee must then:

- Pay all recording fees, as established by the applicable county recorder.
- File an electronic copy of the assignment with the clerk of the circuit court.
- Pay all applicable filing fees required by the clerk of court.

(§ 727.104(1)(b), Fla. Stat.)

Under Chapter 727 of Florida's Amended Statutes, effective July 1, 2023, the assignee must also:

- Within 10 days of receiving the assignment, record the original assignment, with or without the schedules, in the official records of the county where the assignor had its principal place of business.
- Promptly record a certified copy of the assignment, with or without the schedules, in each Florida county where real property assets of the assignment estate are located, and a certified copy of the assignment, without schedules, in each jurisdiction outside of Florida where real property assets of the assignment estate are located. If a certified copy of the assignment is not acceptable for recording in a particular jurisdiction, the assignee must instead record a lis pendens or similar notice of action permitted in that jurisdiction referencing the pendency of the proceedings. All recorded documents must include a legal description of any real property located in the recording jurisdiction.

(§ 727.104(2), Fla. Stat.)

### 4. Please identify the assignor's preliminary requirements and obligations, including any statutory requirements for completing and filing the schedules of assets. List all applicable statutes.

Under the Florida Statutes, the assignor must:

- Assist the assignee in the administration of the estate.
- Comply with all orders of the court.
- On delivery of the assignment to the assignee, deliver to the assignee all the assets of the estate in the assignor's possession, custody, or control, including, but not limited to:
  - all accounts;
  - books;
  - papers;
  - records; and
  - other documents.
- Within 30 days after the filing date, submit to an examination by the assignee, under oath, concerning:
  - the assignor's acts, conduct, assets, liabilities, and financial condition; or
  - any matter related to the assignee's administration of the estate.

(§ 727.107, Fla. Stat.)

### 5. If your jurisdiction requires an assignor to file a schedule of assets, please explain if there are any statutory requirements regarding extensions of time or amendments to the filing of schedules. List all applicable statutes.

Under the Florida Statutes, there are no specific rules governing extensions of time for filing schedules, or amendments in an assignment for the benefit of creditors. However, Florida Statutes provide that the court may exercise any other powers that are necessary to enforce or carryout the provisions of the statutes. Therefore, the court in its discretion may choose to allow extensions or amendments. (§ 727.109(15), Fla. Stat.)

## Selecting an Assignee

### 6. Please explain how an assignee is selected in your jurisdiction and whether there are any statutory requirements or qualifications to be appointed as assignee.

There are no specific qualifications or certification standards that assignees must meet to be appointed in a Florida assignment for the benefit of creditors. Selecting an assignee typically depends on the amount, number, and nature of the company's debt. The assignee is often a professional or businessperson with experience in liquidating and administering estates. For example, CPAs, attorneys, and liquidation or turnaround professionals commonly serve as assignees in Florida.

Because the purpose of the assignment is to amicably and efficiently resolve a distressed situation, the company should exercise care to choose an impartial professional that has:

- The trust and confidence of creditors and other stakeholders.
- The trust and confidence of the court.
- The expertise to collect, manage, and liquidate assets.

## Duties and Actions of the Assignee

### 7. Please identify and describe the main statutory duties and responsibilities for assignees, as applicable, in your jurisdiction (for example, providing notice to creditors, holding meetings of creditors, etc.).

In Florida, the assignee's duties are prescribed by statute. The duties of the assignee include, but are not limited to:

- Collecting and liquidating the assets of the estate. This can be done by:
  - bringing a suit in any court of competent jurisdiction;
  - conducting a public or private sale; or
  - prosecuting any causes of action previously held by the assignor.

- Within 30 days after the filing date, examining, or deposing, the assignor under oath, concerning the acts, conduct, assets, liabilities, and financial condition of the assignor.
- Giving notice to creditors of all matters concerning the administration of the estate, according to Section 727.111 of the Florida Statutes.
- Conducting the assignor's business for a limited period of no more than 45 calendar days if it is in the best interest of the estate, or for a longer period if in the best interest of the estate, on notice and until the time that an objection, if any, is sustained by the court.
- Exercising the assignee's business judgment to reject any unexpired lease of nonresidential real property or personal property under which the assignor is the lessee.
- Paying reasonable administrative expenses of the estate, subject to Section 727.114(1) of the Florida Statutes.
- At the expense of the estate, employing one or more appraisers, auctioneers, accountants, attorneys, or other professional persons, to assist the assignee in carrying out their duties.
- Keeping regular accounts and providing information concerning the estate reasonably requested by creditors or other parties in interest.
- Within six months after the filing date, filing an interim report of receipts and disbursements with the court.
- Examining the validity and priority of all claims against the estate.
- Abandoning assets to duly perfected secured or lien creditors, where the assignee determines:
  - the estate has no equity in the assets; or
  - the assets are burdensome or of inconsequential value to the estate.
- Paying dividends to creditors and close the estate as expeditiously as possible.
- Filing a final report with the court of all receipts and disbursements.
- Filing an application for the assignee's discharge according to Section 727.116 of the Florida Statutes.

(§ 727.108, Fla. Stat.)

**8. In addition to statutory duties, please summarize any common law duties imposed on an assignee in your jurisdiction.**

There are no common law duties imposed on an assignee in Florida.

### **9. Please explain if the assignee must post a bond in your jurisdiction and take any actions before beginning its duties.**

In Florida, within ten days of delivery of the assignment to the assignee, the assignee must request that the court fix the amount of the assignee's bond, which will be filed with the court (§ 727.104(2)(b), Fla. Stat.). The bond is:

- After notice and a hearing, subject to reconsideration on the motion of any party in interest.
- Payable to the clerk of the court, in the higher amount of either:
  - at least \$25,000; or
  - double the liquidation value of the unencumbered and liquid assets of the estate as set out in Schedule B of the assignment.
- Conditioned on the assignee's faithful discharge of its duties.

Within 30 days after the court enters an order setting the amount of the bond, the assignee must file the bond with the clerk of the court, who then must approve the bond. (§ 727.104(2)(b), Fla. Stat.)

If the assignee acts in good faith and does not engage in acts that are outside the scope of their duties or constitute gross negligence or malfeasance, the assignee cannot be held personally liable and any creditor or party in interest asserting a claim against the assignee may only look to the assets of the assignment estate and any bond of the assignee to satisfy such claim (§§ 727.105(4)(a), 727.105(3), Fla. Stat.)

### **10. Under what circumstances can an assignee be removed in your jurisdiction?**

In Florida, an assignee may be removed or replaced on application of the assignor, assignee, any creditor, or on the court's own motion. An assignee may be removed:

- If the assignee has not executed and filed the bond required by Section 727.104(2) of the Florida Statutes.
- If the assignee resigns, refuses, or fails to serve for any reason.
- For good cause.

(§ 727.115(1), Fla. Stat.)

### 11. Please explain the process for terminating or removing an assignee, including all relevant notice requirements.

In Florida, on removal, resignation, or death of the assignee, the court must appoint a replacement assignee if the court deems in its discretion that the estate requires further administration.

After executing and filing a bond under Section 727.104(2) of the Florida Statutes, the replacement assignee must take possession of the estate and assume its duties as assignee (§ 727.115(2), Fla. Stat.).

After notice and a hearing, the court must enter an order discharging the replaced assignee from all further duties, liabilities, and responsibilities when it is satisfied that the replaced assignee:

- Has fully accounted for and turned over all property of the estate to the replacement assignee.
- Filed a report of all receipts and disbursements made during its tenure as assignee.

(§ 727.115(3), Fla. Stat.)

There is no specific time requirement for providing notice when removing and replacing an assignee. Reasonable notice is therefore the standard for any hearing on a motion to remove an assignee.

## Administration of the ABC

### 12. What are the key processes during the assignment for the benefit of creditors (ABC) in your jurisdiction? Please describe:

- Assets sales, including whether sales are held at private or public auction and the circumstances for each, as well as notice requirements.
- Avoidance powers, including the specific avoidance powers given to an assignee in your jurisdiction and the relevant time period for recovering preferences.
- Assumption or rejection of executory contracts, including what actions an assignee must take to assume or reject a contract in your jurisdiction.

### Asset Sales

In Florida, on notice to creditors, the assignor's assets may be sold at either a private or public auction. There are no

specific circumstances in which assets must be sold at either a public or private sale.

Regarding notice of any sale not in the ordinary course, the assignee must:

- Provide the assignor and all creditors with at least 21 days' notice by mail of a proposed sale of assets of the estate, unless it is a sale in the ordinary course of business.
- Serve the notice on all creditors and counsel at the address provided in the proof of claim. If a proof of claim has not been filed by a creditor registered to do business in Florida, the notice must be served on the creditor's registered agent as listed with the Division of Corporations of the Department of State.

(§ 727.111(4), Fla. Stat.)

Parties must file and serve any objections to the proposed sale on the assignee and the assignee's attorney within 21 days after service of the notice (§ 727.111(4), Fla. Stat.). If there are no objections, or objections are not timely filed and served, the assignee may:

- Proceed with the sale as described in the notice without further order of the court.
- Obtain an order approving the sale without further notice or hearing.

If an objection is filed, the court must hold a hearing on the objection. (§ 727.111(4), Fla. Stat.)

### Forms

Section 727.117 of the Florida Statutes contains the form for an assignee's deed if the assignee sells real property owned by the assignment estate.

### Avoidance Powers

An assignee's avoidance powers are set out in the assignment provisions of Section 727.110 of the Florida Statutes. Avoidance actions are brought by bringing supplemental proceedings within the assignment. The assignee has the power to bring actions to:

- Determine the validity, priority, or extent of a lien or other interest in property.
- Subordinate or avoid an unperfected security interest under Section 727.109(8)(b) of the Florida Statutes.
- Avoid any conveyance or transfer void or voidable by law under Section 727.109(8)(c) of the Florida Statutes.

(§ 727.110(1)(b), (c), Fla. Stat.)

To bring an avoidance action, the assignee must commence a supplemental proceeding according to the Florida Rules of Civil Procedure, except where inconsistent with the provisions of Chapter 727 of the Florida Statutes (§ 727.110(2)(a), Fla. Stat.).

The clerk of the court docket a supplemental proceeding under both:

- The case number assigned to the assignee's original assignment petition.
- A separate supplemental proceeding number, with the same division and judge assigned to both cases (§ 727.110(2)(b), Fla. Stat.).

All pleadings and other papers filed in a supplemental proceeding must include a separate sub-caption with the supplemental proceeding number, together with the caption and case number for the main case (§ 727.110(2)(c), Fla. Stat.).

The statute of limitations for fraudulent transfers in Florida varies between one and four years after the transfer was made, depending on the nature and circumstances of the transaction (§ 726.110, Fla. Stat.).

There is no specific statutory section that contemplates recovery of preference actions in Florida's assignment statutes.

### Rejection of Unexpired Leases for Real or Personal Property

In Florida, to reject unexpired leases for real or personal property in an ABC, the assignee must:

- File a notice of rejection with the court.
- Serve a copy of the notice on the owner or lessor of the affected property on 21 day's negative notice. If rejecting personal property, the notice must be served on the landlord of the premises on which the personal property is located.

A notice of rejection relating to personal property must identify:

- The affected property.
- The address of the affected property.
- The name and telephone number of the person in possession of the affected property.
- The deadline for removal of the affected property by the lessor.

(§ 727.110(3)(a), Fla. Stat.)

The effective date of rejection is the date the court enters an order authorizing the rejection, unless the court orders otherwise (§ 727.110(3)(b), Fla. Stat.). If the lessor of the affected property fails to take possession after the notice of the rejection, the estate's rights and obligations to and liability for the property terminate on the effective date of the rejection (§ 727.110(3)(c), Fla. Stat.).

## Creditor Claims

**13. What is the procedure for notifying creditors of their rights to file claims in your jurisdiction? Please explain all notice requirements, including proof of claim requirements and deadlines. List all applicable statutes.**

### Notice

In Florida, the assignment should identify the names and addresses of all known claimants. When filing the assignment with the clerk of the court, the assignee must give notice of the assignment by:

- Publication in a newspaper of general circulation in the county where the petition is filed, once a week for four consecutive weeks. The first notice must be published within ten days after the petition date.
- Publication in a newspaper of general circulation in any other county or counties where the assignment must be recorded under Section 727.104(2) of the Florida Statutes, once a week for four consecutive weeks. The first notice must be published within ten days after the petition date.
- Mailing notice to all known creditors within 20 days after the petition date.

(§ 727.111(1), Fla. Stat.)

The notice of assignment must include and identify:

- The petition date.
- The name of the court where the petition is filed.
- The case number assigned to the petition.
- The deadline for serving proofs of claim on the assignee, which is 120 days from the date that the original petition is filed.
- The assignor's name and address.



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- The assignee's name and address.
- The assignee's attorney name and address.

(§ 727.111(1), Fla. Stat.)

The notice of assignment must be substantially in the form provided at Section 727.111(2) of the Florida Statutes.

Section 727.111(4) of the Florida Statutes also contains a form of notice for the assignee to provide notice of:

- A proposed sale of assets other than in the ordinary course of business.
- The assignee's continued operation of the assignor's business for longer than 45 days.
- The settlement of a controversy.
- The payment of fees and expenses to the assignee and the assignee's professionals.

### Proof of Claim

Creditors must timely file a proof of claim or be barred from further recovery from the estate (§ 727.112, Fla. Stat.).

Proofs of claim must:

- Be in a written form, entitled "proof of claim."
- Contain:
  - the name and address of the creditor; and
  - the nature and amount of the claim.
- Be executed by the creditor or the creditor's authorized agent.
- Be accompanied by a copy of any writing that supports the proof of claim.

(§ 727.112(3), Fla. Stat.)

If the claim or an interest in property of the assignor securing the claim is based on a writing, the creditor must include an original or copy of the writing with the proof of claim, together with evidence of perfection of any security interest (§ 727.112(4), Fla. Stat.).

A proof of claim that is executed and delivered in compliance with Section 727.112 of the Florida Statutes is prima facie evidence of the validity and amount of the claim (§ 727.112(5), Fla. Stat.).

If a claim for damages results from the assignee's rejection of a lease of real property, the claim must be limited to:

- The rent amount of the lease, without acceleration, for the greater of one year or 15 percent of the remaining term of the lease, following the earlier of:

- the date of assignment;
- the date on which the lessor repossessed; or
- the date the lessee surrendered the leased property.

(§ 727.112(6)(a), Fla. Stat.)

- Any unpaid rent due under the lease, without acceleration, on the earlier of the dates specified in Section 727.112(6)(a).
- Reasonable attorneys' fees and costs incurred by the lessor in connection with the lease.
- The lessor's reasonable costs incurred in reletting the premises.

(§ 727.112(6), Fla. Stat.)

If a claim for damages results from the termination of an employment contract, the claim must be limited to:

- The compensation provided by the contract, without acceleration, for one year following the earlier of:
  - the date of assignment;
  - the date on which the assignor or assignee, as applicable, directed the employee's termination; or
  - the date on which the employee terminated its performance under the contract.

(§ 727.112(7)(a), Fla. Stat.)

- Any unpaid compensation due under the contract, without acceleration, on the earlier of the dates specified in Section 727.112(7)(a) of the Florida Statutes.

(§ 727.112(7), Fla. Stat.)

### 14. Please explain the process for determining allowance and disallowance of claims in your jurisdiction, including the power and authority of the court regarding the process.

In Florida, all claims properly filed with the assignee and not disallowed by the court are the claims entitled to distribution from the estate (§ 727.113(1), Fla. Stat.).

However, at any time before the entry of an order approving the assignee's final report, the assignee, any creditor, or other party in interest may file an objection to a claim with the court (§ 727.113(3), Fla. Stat.).

The objection must:

- Be in writing.
- State the nature of the objection.
- Be served on:
  - the creditor at the address provided in the proof of claim;
  - the assignee; and
  - the assignee’s attorney.

The objection may also be served on negative notice under Section 727.111 of the Florida Statutes, which allows the court to sustain the objection without a hearing if a response is not received. (§ 727.113(1), Fla. Stat.)

After expiration of the claim’s bar date, the assignee must create a register of all filed claims and make the register available on request to any creditor or other party in interest (§ 727.113(2), Fla. Stat.; see Question 13: Proof of Claim).

The discovery provisions of the Florida Rules of Civil Procedure apply to objections to claims in all cases pending on July 1, 2013, or filed after (§ 727.113(5), Fla. Stat.).

The court has the power to allow or disallow claims against the estate and determine their priority (§ 727.109(4), Fla. Stat.; see Question 15).

A secured creditor with a lien against property of the estate has 60 days following the sale or disposition of the property securing its claim to file a claim for an unsecured deficiency. If the creditor fails to file a deficiency claim within ten days after the assignee files and serves its final report of all receipts and disbursements, then:

- The secured creditor’s deficiency claim is disallowed as untimely.
- The secured creditor is not entitled to share in distributions to unsecured creditors on account of the disallowed deficiency claim.

(§ 727.113(4), Fla. Stat.)

### 15. Please explain the priority scheme for the payment of creditors’ claims in your jurisdiction and the applicable statutes.

In Florida, allowed claims in an assignment for the benefit of creditors receive distributions in the following order:

- Secured creditors with perfected liens receive the proceeds from the disposition of their collateral, less

the reasonable, necessary expenses of preserving or disposing of the collateral to the extent of any benefit to the creditors. If the proceeds are less than the amount of a creditor’s claim or a creditor’s lien is avoided under Section 727.109(8)(c) of the Florida Statutes, the secured creditor is deemed to be an unsecured creditor for the deficiency (§ 727.114(1)(a), Fla. Stat.).

- Expenses incurred during the administration of the estate, including:
  - the fees and expenses of the assignee and its professionals;
  - rent; and
  - other operating expenses incurred by the assignee in occupying any premises where the assets or business are located, from the date of the assignment through the earlier of the rejection date or termination of the lease.(§ 727.114(1)(b), Fla. Stat.)
- Unsecured claims of governmental units for taxes that accrued within three years before the filing date (§ 727.114(1)(c), Fla. Stat.).
- Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan up to an amount of \$10,000 per employee, earned on the earlier of:
  - 180 days before the filing date; or
  - the closing of the assignor’s business.(§ 727.114(1)(d), Fla. Stat.)
- Allowed unsecured claims for consumer deposits for the purchase, lease, or rental of property or the purchase of services for personal, family, or household that were not delivered or provided, up to an amount of \$2,225 per individual (§ 727.114(1)(e), Fla. Stat.).
- Unsecured claims (§ 727.114(1)(f), Fla. Stat.).

All claims, with the exception of secured claims, are distributed on a pro rata basis.

A subordination agreement is enforceable to the same extent that the agreement is enforceable under applicable law (§ 727.114(1)(f)(2), Fla. Stat.).

If all claims subject to distribution have been paid in full, any residue must be paid to the assignor (§ 727.114(4), Fla. Stat.).



### Compensation of Assignee and Professionals

#### 16. Please explain how assignees are compensated in your jurisdiction, including:

- Whether there is a statutory or state law threshold compensation fee for assignees.
- Whether court approval is required for compensation.
- Whether parties must receive notice.

#### Compensation Fee

Florida does not have a statutory or state law threshold compensation fee for an assignee. The assignee generally agrees to its fee with the assignor before taking on the case. The assignee is often compensated as a percentage of the amounts disbursed to creditors.

#### Court Approval and Notice

In Florida, the assignee's fees must be approved by the court on 21 days' notice to creditors, according to Sections 727.109(10) and 727.111(4) of the Florida Statutes (see Question 12: Asset Sales).

#### 17. What professionals are assignors permitted to retain in your jurisdiction? Please explain how an assignor's professionals are compensated.

The Florida Statutes provide that the court may approve the fees and costs of professionals retained by the assignee, with the claims having the same priority as other administrative expenses (see Question 15), but the statutes are silent regarding:

- The professionals that assignors are permitted to retain.
- How an assignor's professionals are compensated.

Assignees typically retain general counsel and may also retain special counsel to handle specialized matters, such as real estate closings or the prosecution of certain litigation claims on behalf of the estate.

The fees and expenses incurred by the assignee's professionals must be approved by the court on 21 days' notice to creditors, according to Sections 727.109(10) and

727.111(4) of the Florida Statutes (see Question 12: Asset Sales).

#### 18. What professionals are assignees permitted to retain in your jurisdiction? Please describe how an assignee retains professionals and the compensation approval process for professionals.

In Florida, assignees may employ, at the expense of the estate, one or more appraisers, auctioneers, accountants, attorneys, or other professional persons, to assist the assignee in carrying out its duties (§ 727.108(7), Fla. Stat.).

It is best practice to obtain a court order approving the assignee's retained professionals on notice and a hearing to creditors. The petition to retain professionals should contain:

- The reason for the retention.
- How the retention benefits the estate.
- The terms of the professional's proposed compensation

The court has the power to approve reasonable fees and the reimbursement of expenses for the assignee and all of the assignee's retained professionals, either on its own motion or over the objections of a party in interest (§ 727.109(10), Fla. Stat.).

### Closing the ABC

#### 19. What is the process for closing an assignment for the benefit of creditors (ABC) proceeding in your jurisdiction? Where a court order is required, please explain the key provisions of an order closing the case.

To close a Florida ABC case, the assignee must:

- File a final report listing all the estate's receipts and disbursements (§ 727.116(2), Fla. Stat.).
- On notice and a hearing, petition the court for its discharge according to Section 727.111(5) of the Florida Statutes (§ 727.116(1), Fla. Stat.).

On approval of the final report, the court discharges the assignee and releases its bond (§ 727.116(3), Fla. Stat.).

The assignee's discharge has the effect of releasing it from any duties, liabilities, and responsibilities as assignee

(§ 727.116(4), Fla. Stat.). In addition, any claim against the assignee, their agents, or professionals not brought before the discharge is deemed released and barred if the claim is based on facts that are known or reasonably should have been known at the time of the discharge (§ 727.105(5), Fla. Stat.).

### 20. Is there a process in your jurisdiction for dissolving the assignor company after the assignment for the benefit of creditors (ABC) concludes?

In Florida, there is no formal process within the ABC statute for dissolving the assignor's company after the ABC concludes. Florida has other statutes providing for the dissolution of companies (for example, §§ 607.1403 and 605.0702, Fla. Stat.).

## Jurisdiction and Power of the Court

### 21. What statutes, if any, confer powers on the court relating to the estate, assignees, assignor, and creditors in your jurisdiction? Please explain those powers.

In Florida, the court overseeing the assignment for the benefit of creditors has the power to:

- Enforce all provisions of Chapter 727 of the Florida Statutes (§ 727.109(1), Fla. Stat.).
- Set, approve, or reconsider the amount of the assignee's bond (§ 727.109(2), Fla. Stat.).
- On notice and a hearing, authorize the assignee to operate the assignor's business for longer than 45 calendar days, if in the best interest of the estate (§ 727.109(3), Fla. Stat.).
- Determine the status of claims by:
  - allowing or disallowing claims against the estate;
  - determining the priority of claims; and
  - on motion of the assignee, establishing a deadline, for the filing of all claims arising on or after the assignor's petition date. Creditors must receive at least 30 days' notice of the claim's deadline.(§ 727.109(4), Fla. Stat.)
- Determine any of the assignor's claims of exemption, if disputed (§ 727.109(5), Fla. Stat.).

- Authorize the assignee to reject an unexpired lease where the assignor is the lessee under Section 727.108(5) of the Florida Statutes (§ 727.109(6), Fla. Stat.).
- Hear and determine motions for approval of a proposed sale of estate assets, other than in the ordinary course of business or the compromise or settlement of a controversy. The court also has the power to enter an order granting these motions, regardless of no objections filed, if the assignee reasonably believes that the order is necessary to proceed with the action contemplated by the motion. (§ 727.109(7), Fla. Stat.)
- Hear and determine actions to:
  - turn over assets to the estate;
  - determine the validity, priority, and extent of a lien or other interests in assets of the estate;
  - subordinate or avoid an unperfected security interest under the assignee's rights as a lien creditor; and
  - avoid any conveyance or transfer void or voidable by law.(§ 727.109(8), Fla. Stat.)
- Approve the assignees' final report and interim and final distributions to creditors (§ 727.109(9), Fla. Stat.).
- Approve the assignee's reasonable fees and expenses, and all the assignee's retained professionals (§ 727.109(10), Fla. Stat.).
- Hear and determine any motion brought by a party in interest or by the court to close the estate after one year has passed from the petition filing date (§ 727.109(11), Fla. Stat.).
- Hear and determine any request for leave to permit a creditor or party in interest to assert a claim against the assignee (§ 727.105(4)(b), Fla. Stat.).
- Discharge the assignee and the assignee's surety from liability on matters included in the assignee's final report (§ 727.109(12), Fla. Stat.).
- Reopen the assignor's estate for cause (§ 727.109(13), Fla. Stat.).
- Punish by contempt any failure to comply with the provisions of Chapter 727 or any order of the court made under Chapter 727 (§ 727.109(14), Fla. Stat.).
- Exercise any other powers that are necessary to enforce or carry out the provisions of Chapter 727 (§ 727.109(15), Fla. Stat.).

### 22. What responsibilities does the clerk of court in your jurisdiction have in relation to maintaining the records of the assignment for the benefit of creditors (ABC)?

In Florida, the clerk of the court must maintain the records of the assignment estate, as governed by the Florida Rules of General Practice and Judicial Administration. The clerk must also approve the assignee's bond under Section 727.104(2)(b) of the Florida Statutes.

### 23. May the court appoint a referee in your jurisdiction?

In Florida, there is no statute permitting the court to appoint a referee in an assignment for the benefit of creditors.

## Bankruptcy Considerations

### 24. If an involuntary petition is filed during the course of the assignment for the benefit of creditors (ABC) in your jurisdiction, what action, if any, must the assignee take?

An involuntary bankruptcy case may generally be filed by three creditors holding at least \$18,600 in liquidated unsecured claims, not subject to a bona fide dispute if they can show that the debtor is generally not paying its debts (§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process](#)).

If creditors file an involuntary petition during the ABC, the bankruptcy court may:

- If the involuntary filing requirements are satisfied:
  - remove the ABC from state court; and
  - appoint a Chapter 7 trustee to administer the estate instead of the assignee.
- Abstain from hearing the case on the ground that there is already a pending proceeding in Florida state court that can adequately protect the interests of both the debtor and creditors (§ 305(a), Bankruptcy Code).

There are no published Florida decisions regarding whether to abstain in favor of a pending ABC, but at least two Florida bankruptcy courts have abstained

because the pending ABCs could protect the parties' interests (*In re NNN Realty Advisors, Inc.*, Case No. 15-30508-RBR, Dkt. No. 96 (Bankr. S.D. Fla. Apr. 15, 2016); *In re Great W. Steamship Co.*, Case No. 06-11989-PGH, Dkt. Nos. 101, 99 (Bankr. S.D. Fla. Oct. 16, 2006)). At least one other Florida bankruptcy court has also abstained in favor of a pending Florida state law receivership as the receivership had already been pending for years (see *In re Sun World Broadcasters, Inc.*, 5 B.R. 719 (Bankr. M.D. Fla. 1980)).

If the bankruptcy court enters an order for relief, the assignee must typically turn over all books, records, and assets to the bankruptcy trustee.

If the bankruptcy court dismisses the case other than on the consent of the petitioning creditors and the assignor, the bankruptcy court may award damages against the petitioning creditors (see *In re Ed Jansen's Patio, Inc.*, 183 B.R. 643 (Bankr. M.D. Fla. 1995)).

### 25. May an assignee challenge an involuntary bankruptcy proceeding in your jurisdiction? Please explain.

In Florida, a assignee may oppose the involuntary bankruptcy case or request that the bankruptcy court abstain from the proceeding, often on the basis that the assignment for the benefit of creditors proceeding has advanced to a point where the change in forum or fiduciary would not serve the best interests of creditors.

## Other Topics

### 26. Are there any statutes or case law in your state that would prevent a business directly engaged in cannabis business (i.e. cultivators, dispensaries), or a business that provides ancillary services to a cannabis business (i.e. commercial landlords), from utilizing assignment for the benefit of creditors (ABC) statutes to liquidate its assets? If yes, please list and explain the statutes.

Section 381.986(8)(b) of the Florida Statutes provides that medical marijuana treatment centers must meet various requirements to maintain their license to manufacture and distribute marijuana, including that they have:

## Assignments for the Benefit of Creditors: Florida

- The ability to secure the premises, resources, and personnel needed to operate.
- The financial ability to maintain operations for at least two years.

Section 381.986(8)(e)(1) of the Florida Statutes provides that the Florida Department of Health must approve any transfer of ownership of a medical marijuana treatment center.

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