

CHAPTER 2013-244

Committee Substitute for Committee Substitute for House Bill No. 833

An act relating to general assignments; amending s. 727.103, F.S.; defining the term “negative notice”; amending s. 727.104, F.S.; requiring an assignee’s bond to be in at least a specific amount or double the liquidation value of the unencumbered and liquid assets of the estate, whichever is higher; amending s. 727.108, F.S.; authorizing an assignee to conduct certain discovery to determine whether to prosecute certain claims or causes of action; extending the time period an assignee may conduct the business of the assignor; authorizing the assignee to continue conducting the business of the assignor under certain circumstances by serving negative notice; amending s. 727.109, F.S.; extending the time period for which a court may authorize an assignee to conduct the business of the assignor; amending s. 727.110, F.S.; providing procedures for an assignee’s rejection of an unexpired lease of nonresidential real property or of personal property; requiring the assignee to serve a notice of rejection on certain persons and file it with the court; requiring that a notice of rejection for personal property include certain information about the affected property; specifying the effective date of the rejection; requiring the estate’s rights and obligations to and liability for the affected property to terminate under certain circumstances; amending s. 727.111, F.S.; extending the minimum time period for giving notice to the assignor and creditors; conforming language; providing a procedure for serving notice on certain persons; requiring an objection to be filed and served within a specific time period; requiring the notice to be in a specified form; providing that the assignee may take certain actions if an objection is not filed; requiring the court to hear a filed objection; authorizing the court to shorten negative notice under certain circumstances; providing that a party may raise the shortened notice period in certain objections; requiring a certificate of service for negative notice to be filed with the court under certain circumstances; requiring negative notice to be given to certain persons under certain circumstances; amending s. 727.113, F.S.; providing procedures for serving an objection to a claim; providing that the Florida Rules of Civil Procedure apply to objections to claims in all pending cases beginning on a specific date; creating s. 727.117, F.S.; requiring an assignee’s deed to be in a specific form; providing an effective date.

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

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

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

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

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

727.104 Commencement of proceedings.—

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

(a) Record the original assignment in the public records of the county in which the assignor had its principal place of business and shall thereafter promptly record a certified copy of the assignment in each county where assets of the estate are located;

(b) File, in the office of the clerk of the court in the county of the assignor’s place of business if it has one, in the county of its chief executive office if it has more than one place of business, or in the county of the assignor’s residence if the assignor is an individual not engaged in business, in accordance with the procedures for filing a complaint as set forth in the Florida Rules of Civil Procedure, a petition setting forth the name and address of the assignor and the name and address of the assignee; a copy of the assignment, together with Schedules A and B; and a request that the court fix the amount of the assignee’s bond to be filed with the clerk of the court. This bond is ~~shall be~~ subject to reconsideration upon the motion of any party in interest after notice and hearing. The bond is ~~shall be~~ payable to the clerk of the court, in an amount not less than \$25,000 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.

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

727.108 Duties of assignee.—The assignee shall:

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

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

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

2. Prosecute such claims or causes of action as provided in this section, or

3. 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~~

(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:

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

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

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

727.110 Actions by assignee and other parties in interest.—

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

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

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

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

Section 6. Subsections (4), (6), and (8) of section 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 14 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.

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, 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 sought under subsection (4).

(8) Wherever 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.

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

727.113 Objections to claims.—

(1) At any time before 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 must be in writing and set forth the nature of the objection, and shall serve a copy thereof on the creditor at the address provided in the proof of claim, and to the assignee and the assignee's attorney, if any. The objection may be served on negative notice. 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. All claims properly filed with the assignee and not disallowed by the court constitute all claims entitled to distribution from the estate.

(5) 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 thereafter.

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:

SEE ATTACHED "EXHIBIT A," which is incorporated herein by the term "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 operates to reimpose 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, said Grantor has caused these presents to be executed the day and year first written above.

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’s Signature)...

Witness

...(Witness’s Name Printed)...

Print Name

...Witness’s Signature...

Witness

...(Witness’s Name Printed)...

Print Name

STATE OF FLORIDA

COUNTY OF

Sworn to and subscribed before me this day of, ...(year)...., by ...
(Assignee’s Name)...., as Assignee for the Estate of ...(Assignor’s Name)....,
Case No., Circuit Court of County, Florida, on behalf of said estate.

...(Signature of Notary Public – State of Florida)...

...(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.

Approved by the Governor June 28, 2013.

Filed in Office Secretary of State June 28, 2013.