

By Senator Richter

23-00725A-13

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1                                   A bill to be entitled  
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  
29          period for giving notice to the assignor and

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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:

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

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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 of  
69 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  
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

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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 of  
107 Civil Procedure to determine whether to prosecute such claims or  
108 causes of actions.

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

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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:

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.

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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 interest.—

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

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

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

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

167 Section 6. Subsections (4), (6), and (8) of section  
168 727.111, Florida Statutes, are amended to read:

169 727.111 Notice.—

170 (4) The assignee shall give the assignor and all creditors  
171 at least ~~not less than~~ 21 ~~20~~ days' notice by mail of a proposed  
172 sale of assets of the estate other than in the ordinary course  
173 of business, the assignee's continued operation of the  
174 assignor's business for longer than 45 ~~14~~ calendar days, the

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

197 NOTICE OF OPPORTUNITY TO OBJECT AND REQUEST A HEARING

198  
 199 IN THE CIRCUIT COURT  
 200 OF THE ....  
 201 CIRCUIT, IN AND FOR  
 202 .... COUNTY,  
 203 FLORIDA

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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.



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.....

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

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262 section, to read:

263 727.113 Objections to claims.-

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

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

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

282 727.117 Assignee's deed form.-If an assignee sells property  
 283 of the estate, the deed shall be in substantially the following  
 284 form:

286 ASSIGNEE'S DEED

287  
 288 This Assignee's Deed is made and executed this .... day of  
 289 ...., ... (year)...., by ...., as Assignee for the Estate of ....,  
 290 Case No. .... in the Circuit Court of .... County, Florida,

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291 whose post office address is .... (hereinafter "Grantor"), to  
292 ...., whose post office address is .... (hereinafter "Grantee").

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

298  
299 WITNESSETH:

300  
301 That Grantor, for and in consideration of the sum of Ten  
302 Dollars (\$10.00) and other good and valuable consideration in  
303 hand paid to said Grantor by Grantee, the receipt of which is  
304 hereby acknowledged, hereby grants, bargains, sells, aliens,  
305 remises, releases, conveys, and confirms unto Grantee, all of  
306 that certain real property lying and being in the County of  
307 ...., State of Florida, more particularly described as follows:

308  
309 SEE ATTACHED "EXHIBIT A," which is incorporated herein by  
310 the term "Property".

311  
312 This conveyance is subject to taxes accruing for the year  
313 of conveyance and subsequent years, and all encumbrances,  
314 covenants, conditions, and restrictions of record, except  
315 nothing herein operates to reimpose same.

316  
317 TOGETHER with all the tenements, hereditaments, and  
318 appurtenances thereto belonging or in anywise appertaining.

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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

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...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:....

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