

Chapter 8

An Overview of Assignments for the Benefit of Creditors

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Scope

General Assignments (or ABCs) have been and continue to be a well-recognized option for the orderly wind down of corporations, limited liability companies, and in some instances, nonprofit corporations and even general partnerships.¹ This chapter paints a broad-brush picture of how assignments for the benefit of creditors work.²

Research References

Additional References

Berman and Vance, Model Statute for General Assignments for the Benefit of Creditors: The Genesis of Change, 17 Am. Bankr. Inst. L. Rev. (Spring 2009)

West's Key Number Digest

Debtor and Creditor ⇨2, 6

Westlaw Databases

Norton Bankruptcy Law and Practice 3d (NRTN-BLP)

¹The general concepts that follow will not address issues specific to any one of these business forms versus others. It should be noted, however, that partnerships, by their nature, are a more difficult business form to apply ABCs to, as there is no built-in mechanism to effect a release of the partners' individual liability to the partnership's creditors.

²This chapter is intended to provide readers with the necessary context to best use the state-specific chapters 16 to 33 of this book and the statutory compilation in chapters 34 to 38 of this book.

STRATEGIC ALTERNATIVES FOR DISTRESSED BUSINESSES

Legal Encyclopedias

Am. Jur. 2d, Assignment for the Benefit of Creditors §§ 1 to 3

Treatises and Practice Aids

Norton Bankruptcy Law and Practice 3d §§ 171:1, 171:3, 171:4

Law Reviews and Other Periodicals

Kupetz, Assignment for the Benefit of Creditors: Exit Vehicle of Choice for Many Dot-com, Technology, and Other Troubled Enterprises, 11 J. Bankr. L. & Prac. 71 (2001)

Vance and Berman, Do “Insured vs. Insured” Exclusions Apply to Assignees in Assignments for the Benefit of Creditors?, 23-FEB Am. Bankr. Inst. J. 12 (2004)

KeyCite®: Cases and other legal materials listed in KeyCite Scope can be researched through the KeyCite service on Westlaw®. Use KeyCite to check citations for form, parallel references, prior and later history, and comprehensive citator information, including citations to other decisions and secondary materials.

§ 8:1 Introduction

So just what is an ABC? Practically speaking, an ABC is the state law equivalent to liquidation under Chapter 7 of the Bankruptcy Code. Most states have at least some statutory support for ABCs, ranging from the mere mention of the rights of an assignee as a lien creditor pursuant to that state’s enactment of the Uniform Commercial Code¹ to the recently revised, comprehensive statutory scheme enacted in Florida.²

The process is relatively simple—the debtor selects a neutral third party to close down the business. That “person,” upon signing and accepting the assignment contract, has a duty to marshal the business’ assets, liquidate the assets, and then distribute the proceeds to creditors pursuant to the priority scheme established under that state’s laws.

[Section 8:1]

¹See Louisiana Revised Statutes 10:9-309(12).

²See Florida Statutes, Title XLI, Chapter 727.101 to 727.117 (as revised, 2006). Also see Davis, Florida’s Beefed-Up Assignment for the Benefit of Creditors as an Alternative to Bankruptcy, 19 U. Fla. J. L. & Pub. Pol’y 17 (2008).