

**THE UNIFORM ASSIGNMENT FOR THE BENEFIT OF CREDITORS LAW IS HERE.
WILL IT OR WON'T IT BECOME LAW IN EVERY STATE?**

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Assignments for the Benefit of Creditors proceedings (“ABCs”) are popular alternatives to bankruptcy filings under certain circumstances. However, unlike federal bankruptcy, state court ABCs can differ drastically from one state to another. In an attempt to address this issue, in 2022, a Study Committee on ABCs commenced its work to develop a uniform law that could be adopted in each state. After several years of hard work, the Uniform Law Commission adopted a proposed Uniform Assignment for the Benefit of Creditors Act at its annual meeting in July 2025. This panelists will discuss this new proposal focusing on some of the provisions which were heatedly discussed and the resolutions reached. Some of the key points that will be discussed include:

- The structure of the new ABC statute
- Whether or not, or when Court Oversight will be required
- Claims Procedure
- Rights of the Assignor
- Rights of the Assignee
- Rights of the Creditors

As of this writing, only four (4) states have introduced bills to adopt the Uniform ABC. Prior to the Panel Discussion, updated information on which states have or are considering the adoption of the Uniform ABC will be prepared for distribution and discussion.

HANDOUT MATERIAL SUBMITTED FOR CLE CREDIT

- 1. Uniform Benefit of Creditors Act**, dated October 20, 2025 Approved and Recommended for Enactment by All States.
- 2. Uniform Benefit of Credits Act Summary**, prepared and submitted by the ULC Drafting Committee, October 2025
- 3. Modernizing ABCs with the Uniform Assignment for Benefit of Creditors Act**, reprinted from The Review of Banking & Financial Services, Vol 41, No.12 December 2025 (also printed on the Uniform Laws Commission ABC site)
- 4. Draft Report of the Permanent Editorial Board for the Uniform Commercial Code: The Provisions of Article 9 Relating to Assignments for Benefit of Creditors**, December 2025

Uniform Assignment for Benefit of Creditors Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES



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Uniform Assignment for Benefit of Creditors Act

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Uniform Assignment for Benefit of Creditors Act

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Uniform Assignment for Benefit of Creditors Act

Prefatory Note

An assignment for the benefit of creditors (“assignment”) is a voluntary, debtor-initiated state law alternative to federal bankruptcy, state receiverships, and voluntary workouts. An assignment is a liquidation procedure in which an “assignor” in financial distress, usually a company, voluntarily assigns all of its assets to an “assignee,” a fiduciary, which liquidates the assets and distributes the proceeds to the assignor’s creditors. The assignment operates through the creation of a fiduciary relationship, with the assignor’s creditors as the beneficiaries. As originally conceived, assignments were adapted from trust law to provide an informal liquidation option for debtors.

The process for carrying out an assignment varies widely from state to state. In some states, such as Florida, New York, and New Jersey, assignments are governed by statute. In other states, including California and Illinois, assignments are primarily or completely governed by the common law. Several states have little to no law governing assignments; in some, existing laws date back several decades or more.

Furthermore, the process of an assignment varies from state to state. In some states, such as Florida, assignments are carried out under the supervision of a court. In other states, an assignment occurs with little or no court supervision.

Despite these differences, an assignment for the benefit of creditors is often viewed as a cheaper and more flexible option than a bankruptcy proceeding. Because it is initiated by the debtor, rather than the debtor’s creditors, it also differs from a creditor-initiated receivership. However, due to the variation in state laws governing assignments, the frequency of their use also varies widely. In some states, assignment law is well developed, and assignments are used frequently. In other states, practitioners may have little to no experience with assignments.

Because bankruptcy is often too costly for businesses, there is increasing interest in bankruptcy alternatives, including assignments, among the fifty states. However, as assignments have grown in popularity, the lack of a uniform state law has contributed to complications, especially where a state’s law on assignments is underdeveloped or rarely utilized or when the business’s assets are located in more than one state. In particular, the varying state approaches to assignments have made it difficult to generalize what assignment law and practice look like. In recent years, some states have begun to blur the line between assignments and receiverships, essentially collapsing two different remedies into one.

The Uniform Assignment for Benefit of Creditors Act is intended to encourage further use of assignments by improving the clarity and integrity of the law. The act provides for a streamlined assignment process, giving states the tools to modernize outdated assignment statutes and codify aspects of common law assignment practice. The act comes at a particularly timely moment, as many states are beginning to think about reforming their laws relating to assignments.

The act provides a roadmap for understanding how existing state and federal statutes, including

the Bankruptcy Code, interact with assignments. It sets out a straightforward, streamlined process for commencing and completing an assignment and provides a scheme for distributions to the assignor's creditors. It lays out the duties and powers of the assignor and assignee, a process for allowing and disputing claims, and limitations on liability for the assignor and assignee. It also addresses interstate assignments and court involvement. Importantly, although the act neither mandates nor specifically contemplates court involvement, it does not preclude court involvement, and thus may be attractive to states, regardless of any state's current usage of court-supervised assignments.

The act is thus intended to provide greater clarity, consistency and uniformity to the assignment process across the fifty states, in the hope that assignments will, where appropriate, become a robust tool for debtors throughout the country.

Uniform Assignment for Benefit of Creditors Act

Section 1. Title

This [act] may be cited as the Uniform Assignment for Benefit of Creditors Act.

Section 2. Definitions

In this [act]:

(1) “Affiliate” means:

(A) a person that directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting interests of another person, other than a person that holds the interests:

(i) in a fiduciary or agency capacity without sole discretionary power to vote the interests; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(B) a person with 20 percent or more of the person’s outstanding voting interests directly or indirectly owned, controlled, or held, with power to vote, by another person;

(C) a person whose business is operated under a lease or operating agreement by another person, or a person substantially all of whose assets are controlled by the other person; or

(D) a person that operates the business or substantially all the assets of another person under a lease or operating agreement.

(2) “Asset” means a legal or equitable interest in property of an assignor, regardless of the person holding or in possession, custody, or control of the property or where the property is located. The term does not include:

(A) a legal or equitable interest in property restricted from assignment if the restriction is effective under other law, unless the other law permits assignment with the consent of another person and the person consents to the assignment in a manner permitted by the other law; or

(B) if the assignor is an individual, a legal or equitable interest in property to the extent it is exempt from legal process under other law.

(3) “Assigned asset” means an asset transferred under an assignment.

(4) “Assignee” means a person to which assets are transferred under an assignment.

(5) “Assignment” means a transfer by a person of all the person’s assets to another person for the benefit of the transferor’s creditors.

(6) “Assignment agreement” means an agreement that transfers or provides for a transfer of all the assignor’s assets.

(7) “Assignment estate” means the assets held at a given time by the assignee under an assignment.

(8) “Assignor” means a person whose assets are transferred under an assignment.

(9) “Claim” means a creditor’s right to payment or to an equitable remedy, regardless of whether the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(10) “Cohabitant” means each of two individuals not married to each other who live together as a couple after each has reached the age of majority or been emancipated.

(11) “Creditor” means a person that has a claim against an assigned asset or the assignor.

(12) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(13) “Good faith” means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(14) “Insider” includes:

(A) in the case of an individual:

(i) a relative of the individual;

(ii) a partnership or limited liability company in which the individual is a general partner or managing member; or

(iii) an organization of which the individual is a director, officer, or person in control;

(B) in the case of an organization:

(i) a director, officer, manager, or other person in control of or with controlling equity interest in the organization;

(ii) a partnership or limited liability company in which the organization is a general partner or managing member;

(iii) a general partner or managing member of the organization; or

(iv) a relative of a general partner, managing member, director, officer, manager, or other person in control of or with controlling equity interest in the organization;

(C) an affiliate; or

(D) a managing agent of an organization.

(15) “Lien” means an interest in an asset that secures payment or performance of

an obligation.

(16) “Organization” means a person other than an individual.

(17) “Perfected lien” means a lien on:

(A) real property other than fixtures on which a bona fide purchaser of the property cannot acquire an interest superior to the interest of the lienholder; or

(B) fixtures or property other than real property on which a creditor cannot acquire a lien by attachment, levy, or the like that is superior to the interest of the lienholder.

(18) “Person” means an individual, estate, business or nonprofit entity, government or governmental subdivision, agency, or instrumentality, or other legal entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law that limits, or limits if conditions specified under law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(19) “Proof of claim” means a record a creditor submits to an assignee to evidence the creditor’s claim.

(20) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(21) “Relative” means an individual related by affinity or consanguinity within the third degree or a cohabitant.

(22) “Security interest” means a lien created by an agreement.

(23) “Send”, in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time it would have been received if properly sent under subparagraph (A).

(24) “Sign” means, with present intent to authenticate or adopt a record:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(25) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(26) “Transfer” means disposing of or parting with an asset or with an interest in an asset, regardless of whether the disposition or parting is indirect, conditional, or involuntary.

Legislative Note: *A state should enact the definition of “person” that includes a “protected series” regardless of whether the state has enacted the Uniform Protected Series Act or otherwise recognizes a protected series under its law. Inclusion of the sentence does not require the enacting state to recognize a limit on liability of a protected series organized under the law of another state or a limit on liability of the entity that established the protected series. It clarifies the status of a protected series as a “person” under the choice-of-law and substantive law rules of the enacting state’s law.*

Comment

The definition of “affiliate” is derived from Section 101(2) of the Bankruptcy Code, and the concept of an affiliate is intended to be understood as that term is understood under bankruptcy law.

The term “asset” has a limited definition. If an asset is not assignable by its terms or under other law, that asset is not part of the assignment estate unless either the counterparty assents or other law overrides the anti-assignment provision. This act does not preclude the assignee from negotiating with a counterparty to obtain its consent for the assignment of an asset.

The definition of “cohabitant” is derived from Section 2(1) of the Uniform Cohabitants’ Economic Remedies Act, and the concept of a cohabitant is intended to be understood as that term is defined and explained in the text and comments of that act.

The definition of “insider” is derived from Section 101(31) of the Bankruptcy Code, and the concept of an insider is intended to be understood as that term is understood under bankruptcy law.

Although included in the definition of “organization,” a governmental unit cannot make an assignment unless permitted to do so under other law. This act does not address whether other law permits a governmental unit to make an assignment.

For the purpose of defining the term “perfected lien” in paragraph (17), the term “property other than real property” includes intangible assets. The phrase “attachment, levy, or the like” in clause (B) of the paragraph is derived from the definition of “lien creditor” in UCC § 9-102(a)(52). The words “or the like” contemplate that a state may provide for other means for a judgment or other involuntary lien to be perfected.

The concept of a “perfected lien” is derived from Section 547 of the Bankruptcy Code and Section 6 of the Uniform Voidable Transactions Act. If a party has a perfected lien on a debtor’s property, a subsequent creditor of the debtor cannot obtain a superior lien on that property.

The meaning of the phrase “affinity or consanguinity” in the definition of “relative” is intended to encompass relationships beyond those that share common ancestry. The definition of “relative” is intended to include familial relations recognized under other law. The definition of “relative” is derived from Section 101(45) of the Bankruptcy Code and Section 1(14) of the Uniform Voidable Transactions Act and includes an individual’s spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether by the whole or half blood or by adoption.

The term “transfer” in paragraph (26) includes a security interest under Article 9 of the Uniform Commercial Code.

Section 3. Scope

This [act] applies to an assignment made by an assignor that is:

- (1) an organization whose principal place of business is in this state;
- (2) an organization whose internal affairs are governed by other law of this state;
- (3) an individual whose principal residence is in this state;
- (4) an organization wholly owned, directly or indirectly, by an assignor that

satisfies paragraph (1), (2), or (3); or

(5) an organization that:

(A) is partly owned, directly or indirectly, and controlled by an assignor that satisfies paragraph (1), (2), or (3);

(B) has no place of business or employees; and

(C) relies on the services the organization receives from an assignor that satisfies paragraph (1), (2), or (3).

Comment

This act creates a statutory assignment that displaces common law assignment procedures in the adopting state.

The assignee's jurisdiction of organization or principal place of business is not of itself a basis for jurisdiction for an assignment under this act. *See In re Vernon Hills Serv. Co.*, 2024 Del. Ch. C.A. No. 2021-0783 (Mar. 28, 2024) (finding lack of subject matter jurisdiction over an assignment commenced in Delaware Chancery Court where the assignor was an Illinois corporation with no assets or operations in Delaware, and the sole connection with the State of Delaware was that the assignee was a Delaware entity).

Section 4. Requirements for Assignee and Assignment Agreement

(a) An assignee must be a person that:

(1) is not a creditor, affiliate, or insider of the assignor;

(2) is not an affiliate or insider of a creditor of the assignor;

(3) does not have a claim against the assignment estate, other than a claim for fees and expenses to be paid under the assignment agreement;

(4) does not have a material financial interest in the outcome of the assignment, other than a claim for fees and expenses to be paid under the assignment agreement;

(5) does not hold an equity interest in the assignor other than a noncontrolling interest in a publicly traded company; and

(6) is not an affiliate of a person that fails to satisfy paragraph (1), (2), (3), (4), or (5).

(b) A person that satisfies subsection (a) is not precluded from being an assignee merely because the person performed services for the assignor before the assignment.

(c) An assignment agreement must be in a record signed by the assignor and the assignee.

The record must:

(1) state the name and address of the assignor and of the assignee;

(2) transfer or provide for a transfer of all the assignor's assets;

(3) describe the assigned assets in sufficient detail to identify the assets;

(4) provide for the distribution of the assignment estate;

(5) describe the fees to be charged by the assignee in connection with the assignment, including the basis on which they are to be calculated; and

(6) include a representation by the assignor, under penalty of perjury, that the assignor is assigning all the assignor's assets.

(d) If an assignee relies in good faith on the assignor's representation made under subsection (c)(6), all the assignor's assets are deemed to be assigned, even if the representation is inaccurate.

Comment

The term "equity interest" in subsection (a)(5) refers to an interest in an organization, not a beneficial interest in a trust.

Prior to becoming an assignee, a person may waive any claim to payment from the assignor. Subsection (b) is intended to clarify that a person remains eligible to be an assignee even if the person contracted with, or performed services for, the assignor prior to the assignment, as long as the person is paid for this work, or payment is provided for, prior to the assignment.

A lawyer may act as an assignee. A lawyer acting as an assignee should ensure that funds

received as a result of the assignment or any subsequent asset sales are deposited in a bank account separate from the lawyer's client trust accounts. The bank account should be solely for funds received as a result of the assignment and any subsequent collections or asset sales. It should not be part of any operating account or trust account for client funds.

The assignor must assign all assets to the assignee. If the assignor needs funds for the purpose of winding up the business, the assignor may arrange to have the funds paid in advance of the assignment, or the assignor and assignee may agree in the assignment agreement that the assignee may pay the funds from the assigned assets. If the assignor needs to compensate remaining officers or directors, any compensation or payment should be addressed before the assignment is made through a transition services, consulting, or similar agreement that provides for both the services and for payment for the services from the assignment estate. The assignee may also retain former employees of the assignor as independent contractors. In any of these cases, any payments should be only for those services necessary to wind up the business or, if applicable, to operate the business until the assets may be sold. *See* Section 10(b)(1).

The definition of "asset" in Section 2(2) contains an exclusion for an individual's exempt property. Some state law exemption provisions allow the beneficiary of an exemption to waive the exemption, either expressly or by implication. This act does not preclude an individual assignor from waiving an exemption under other law.

The assignment agreement should describe the assignee's fees in sufficient detail so that either the amount of the fees, or the method of computing the amount, is reasonably determinable. A mere reference to a side fee agreement is not sufficient to comply with subsection (c)(5), unless the fee agreement is attached to the assignment agreement.

The assignment agreement should be notarized if other law requires notarization to transfer an asset or if the assignment includes a power of attorney to be used to transfer an asset otherwise requiring notarization for the transfer.

Section 5. Effect of Assignment; When Assignment Agreement Effective

(a) An assignee obtains the rights, title, and interests of the assignor in the assigned assets.

(b) If the assignor is an organization, an assignee obtains the rights, title, and interests of the assignor in assets acquired after the assignment.

(c) Except as provided in Section 10(b)(12), an assignee takes each assigned asset subject to an existing interest in the asset held by another person.

(d) An assignee holds the assigned assets subject to the assignee's duties under Section 9.

(e) An assignment is subject to other law under which the assignment may be fraudulent or otherwise voidable.

(f) The effective date of an assignment agreement is the date the agreement is signed by the last party to the agreement that is required to sign the agreement unless a later date is identified in the agreement as the effective date.

Comment

The transfer of assets from an assignor to an assignee is not intended to be treated as a taxable sale. *See* Section 6, Legislative Note.

This act does not require that a creditor consent to an assignment. As a practical matter, however, the consent of a secured party, mortgagee or lienholder will in most cases be necessary for the use of cash collateral or to avoid immediate foreclosure of the lien.

Subsection (e) makes the assignment subject to state voidable transactions law; this act does not preempt that law.

Proceeds of the assigned assets are included in the assignment estate.

The scope of the assignee's fiduciary duty is delineated in Section 9(a).

Section 6-103(3)(f) of the Uniform Commercial Code exempts an assignment from the scope of Article 6's bulk transfer laws if otherwise applicable.

Although the act does not provide explicit rules for doing so, it is anticipated that the assignor and assignee would negotiate and prepare a budget prior to the assignment to ensure that there are sufficient funds available to accomplish the administration of the assignment.

Section 6. Filing, Recording, and Title Transfer Requirements

(a) In this section, "financing statement" has the meaning in [cite to Uniform Commercial Code Section 9-102(a)(39)].

(b) An assignee of a legal or equitable interest in personal property may file a financing statement in the filing office of:

(1) this state established for purposes of [cite to Uniform Commercial Code Section 9-501(a)(2)];

(2) any other state in which:

(A) the assignor would be located under [cite to Uniform Commercial Code Section 9-307] if the assignor were a debtor for the purpose of that section; or

(B) an asset of the assignment estate may be located.

(c) A financing statement filed under subsection (b) must indicate that it is filed in connection with an assignment.

(d) When filing a financing statement under subsection (b), the assignee must:

(1) attach a copy of the assignment agreement to the financing statement; or

(2) state on the financing statement that a copy of the assignment agreement is available on request to the assignee.

(e) A financing statement filed under subsection (b) may:

(1) designate the assignor as “debtor” and the assignee as “secured party”; or

(2) use the terms “assignor” and “assignee” or words of similar import.

(f) The filing of a financing statement under subsection (b) is not itself a factor in determining whether an asset secures an obligation. The rights of the assignee under the assignment are not affected if the assignee does not file a financing statement under subsection (b).

(g) An assignee of a legal or equitable interest in real property shall record the assignment of the interest or notice of the assignment under the real estate recording law of the jurisdiction where the property is located.

(h) An assignee shall comply with other law governing the transfer of title to an asset.

(i) By signing an assignment agreement, the assignor authorizes the assignee to take the actions required by this section.

***Legislative Note:** For the purposes of state transfer tax applicability, it is intended that the transfer of assets from an assignor to an assignee be treated as the equivalent of a bankruptcy plan or actions pending lien foreclosure. Accordingly, to the extent that state transfer tax provisions would apply, the enacting state should consider amending those provisions so that an assignment does not constitute a taxable transaction.*

Comment

The definition of “financing statement” in Uniform Commercial Code Section 9-102(a)(39) includes a continuation statement as an amendment to the initial financing statement.

This act does not change the status of the assignee as a lien creditor under UCC § 9-102(52)(B), or, to the extent that the assignment constitutes a security interest, change the automatic perfection of the security interest under UCC § 9-309(12) for an assignee or any subsequent transferee.

This act recognizes that the assignee may wish to file a financing statement in the interests of transparency to indicate to searchers of Uniform Commercial Code filing offices that the assignment has occurred. Because Article 9 of the Uniform Commercial Code does not otherwise authorize the filing of a financing statement in these circumstances, the assignee could be subject to penalties for filing an unauthorized financing statement. See UCC § 9-625. This act gives the assignee the necessary authorization to file a financing statement if the assignee chooses to do so. However, if the assignee does not file a financing statement, this section does not invalidate the assignment, nor does the assignee’s filing of a financing statement perfect any lien.

This section does not displace any rules under other law, including the Uniform Commercial Code and a state’s real property recording act. All real property transfers in an assignment must satisfy all the formalities applicable to real property transfers in the state where the real property is located. The filings and recordings made under this section are for transparency purposes only.

For purposes of the filing in subsection (b), the assignee should check “non-UCC filing” in Box 6b on the initial financing statement form, as found in UCC § 9-521(a).

For purposes of complying with subsection (c), the assignee may indicate that the financing statement is filed in connection with an assignment in the collateral description box on the initial financing statement form, as found in UCC § 9-521(a). A financing statement sufficiently indicates that it is filed in connection with an assignment if the financing statement so states and provides an indication that it covers all assets or all personal property of the assignor.

An assignee’s duty to comply with the requirements of title transfer laws includes compliance with certificate of title laws, stock transfer laws, and intellectual property laws.

Section 7. Notification to Creditors

(a) Unless a creditor waives in a signed record the right to notification, an assignee shall send a notification of the assignment to each creditor known to the assignee within a reasonable time not to exceed [30] days after the effective date of the assignment agreement.

(b) The notification must:

(1) be in a record signed by the assignee;

(2) include the assignee's name, address, and other contact information reasonably necessary to communicate with the assignee;

(3) provide reasonable instructions for submitting a proof of claim using the method established by the assignee under Section 9(b)(5); and

(4) identify the date established under Section 9(b)(6) by which each creditor whose claim is not otherwise allowed without a timely proof of claim under this [act] must submit a proof of claim.

(c) An assignee shall use reasonable means to provide the information in subsection (b) to unknown creditors, including by any means the assignor regularly used to:

(1) provide information to the assignor's creditors; or

(2) communicate information about the assignor, other than advertising, to the public.

Comment

The waiver in subsection (a) is intended to address situations where a creditor is already aware of the assignment.

The effective date of the assignment agreement referenced in subsection (a) is addressed in Section 5(f).

This act does not preclude the assignee from providing notification of the assignment to the assignor's equityholders, or to other parties, such as governmental authorities or licensing issuers that may have an interest in the assignment. The assignee should determine whether to send such notification in accordance with its duties and the requirements of other law, including

Section 9(b)(9).

Significant transactions or transactions outside the ordinary course of the assignor's business may in some circumstances need to be completed quickly to maximize recoveries. If so, notice earlier than 30 days may be reasonably required under subsection (a). The assignee should determine a reasonable period of time for notification of such transactions in accordance with its fiduciary duties.

Section 12 provides the process for the assignee to dispute creditor claims.

In the assignment agreement, the assignor may provide the assignee with a description of the type(s) of electronic media the assignor uses for purposes of the assignee's compliance with subsection (c).

The assignee may decide on the content of the notification described in subsection (c) using its reasonable judgment in compliance with any statutory duty.

Section 8. Duties of Assignor

(a) Subject to Section 23, an assignor has a duty to take all reasonable actions necessary for the assignee to administer the assignment, the assigned assets, and the assignment estate.

(b) In furtherance of the duty under subsection (a), the assignor shall:

(1) preserve and turn over to the assignee the assigned assets in the assignor's possession or control;

(2) provide to the assignee information reasonably necessary to administer the assignment, the assigned assets, and the assignment estate;

(3) sign any record reasonably necessary to transfer an assigned asset and comply with any notarization required under other law;

(4) designate, and provide the assignee with the name, address, and other contact information reasonably necessary to communicate with, an appropriate person willing and able to act as a representative on behalf of the assignor as may be reasonably necessary to administer the assignment, the assigned assets, and the assignment estate;

(5) if the assignment includes a legal or equitable interest in real property or titled

personal property, cooperate with the assignee in taking actions under Section 6;

(6) on or as soon as practicable after the effective date of the assignment agreement, provide the assignee:

(A) a list of all assets;

(B) a list of all the assignor's employees, including those whose employment is terminated in connection with the assignment; and

(C) a list of all the assignor's known creditors, including, for each creditor, the creditor's address and other contact information reasonably necessary to communicate with the creditor;

(7) verify under penalty of perjury the accuracy of the lists required under paragraph (6);

(8) with respect to a legal or equitable interest in property restricted from assignment, cooperate with the assignee to obtain consent from a person whose consent to assign the interest is necessary under other law; and

(9) provide assistance to the assignee as required by the assignment agreement.

(c) The duties in this section also apply to a representative designated under subsection (b)(4).

Comment

It is anticipated that the assignment agreement will set forth specific information concerning assignor assistance. The parties can expand, narrow, or otherwise modify by agreement the standards measuring the fulfillment of these duties to the extent set forth in Section 23.

As indicated in subsection (b)(4), the assignor may designate an individual to act on the assignor's behalf and to remain available to the assignee during the assignment. As referenced in Section 17(c), that individual has the same exculpation as provided to directors and officers under state entity law. However, some unincorporated organization statutes permit fiduciary duties to be limited or eliminated. To the extent that the relevant organizational documents of the

assignor effectively limit or eliminate an individual's fiduciary duties, this act does not create fiduciary duties for the individual.

For purposes of subsection (b)(4), an "appropriate" person is anyone who may be necessary to assist the assignee in carrying out its responsibilities related to the assignment. If the assignor has not already purchased insurance relating to the person's post-assignment acts before the assignment is made, the assignee may be able to purchase the insurance under the assignee's powers in Section 10.

If a contract is assigned to the assignee, and the contract counterparty is a contingent creditor entitled to notice, the contract counterparty should be included on the list of the assignor's known creditors provided in subsection (b)(6)(C).

The effective date of the assignment agreement referenced in subsection (b)(6) is addressed in Section 5(f).

Section 9. Duties of Assignee

(a) Subject to Section 23, an assignee has a fiduciary duty to the assignment estate for the benefit of creditors:

(1) of loyalty, including the duty to manage the assignment in good faith;

(2) to use reasonable care to maximize distributions under Section 15; and

(3) to wind up the assignment under Section 19 in a manner compatible with the

best interests of the assignment estate and creditors.

(b) Without limitation on the duties under subsection (a), and subject to Section 23, the assignee also has a duty to:

(1) maintain a separate deposit account for funds related to the assignment;

(2) collect on or dispose of each assigned asset, unless the assignee determines it is more economically efficient to abandon the asset;

(3) prepare and retain appropriate business records, including a record of each receipt, disbursement, and collection on or disposition of an assigned asset;

(4) pay administrative expenses of the assignment estate, to the extent the

assignment estate has sufficient unencumbered assets;

(5) establish a method that is reasonably designed to permit a creditor to submit a proof of claim;

(6) establish a single date by which creditors whose claims are not otherwise allowed without timely proofs of claim under this [act] must submit proofs of claim, which must be [[insert a number not less than 90 and not more than 210][not less than [90] and not more than [210]] days after the effective date of the assignment agreement;

(7) unless a claim would receive minimal or no distribution without regard to the claim's validity or asserted priority, examine the validity and priority of claims against the assignment estate and, if necessary, consult with the representative designated by the assignor under Section 8(b)(4);

(8) at least every six months, provide to each creditor a summary of the assets, liabilities, and expenses of the assignment estate;

(9) comply with all requirements of the Internal Revenue Service and state and local taxing authorities;

(10) send a notification to each creditor of the assignee's compensation and any change in the method of determining the assignee's compensation from the method provided in the assignment agreement;

(11) send a final accounting under Section 19(a); and

(12) comply with the other requirements imposed on the assignee under this [act].

Legislative Note: In subsection (b)(6), a state should choose a number of days for a creditor to submit a proof of claim. A state should (1) insert a single number, e.g., 90 days, for all claims, which is not less than 90 days and not more than 210 days, or (2) allow an assignee to establish a single date within a range of days, e.g., 90 to 210 days. To decide the number of days, the state may wish to consider local practice, including the practice under state receiverships.

Comment

An assignee's fiduciary duty under this act is equivalent to the fiduciary duty of an estate representative in a bankruptcy case. The assignee's fiduciary duties are owed to the assignment estate for the benefit of its creditors.

An assignee's duty of loyalty is derived from trust law, and it is intended that the scope of the assignee's duty of loyalty be understood as that concept is understood under trust law. See Uniform Trust Code Section 802 and comments thereto.

Consistent with the assignee's fiduciary duties, the assignee should take reasonable steps to identify other creditors of the assignor beyond those provided by the assignor under Section 8(b)(6)(C).

It is anticipated that the assignment agreement will set forth specific information concerning the assignee's duties. With the exception of the assignee's duties delineated in subsection (a), the parties can expand, narrow, or otherwise modify by agreement the standards measuring the fulfillment of these duties to the extent set forth in Section 23. In addition, any relevant court may require compliance with its local rules and orders that may delete, modify, or provide additional requirements.

It is expected that the assignee will undertake a cost-benefit analysis in exercising its duties under subsection (a). The reference to maximizing distributions in paragraph (a)(2) does not require the assignee to incur unreasonable costs and expenses.

Determination of any other specific duties that constitute the assignee's fiduciary duty is left to other law. The assignee's fiduciary duty may, for example, include preserving and insuring assigned assets, obtaining liability insurance, or making a good faith effort to obtain insurance at a reasonable price. An assignee is empowered to take these actions under Section 10(b)(1) and (2). The assignee also has a fiduciary duty with respect to funds in its custody, consistent with a trustee's fiduciary obligations under the Uniform Trust Code or other applicable trust law.

The reference to a "separate deposit account" in subsection (b)(1) means an account solely for funds related to the assignment.

The act leaves to other law the process of abandonment of an asset under subsection (b)(2); however, abandoning an asset under subsection (b)(2) does not invalidate the assignment or convert the assignment into a partial assignment of assets.

To comply with its duty under subsection (b)(9), the assignee must use the appropriate IRS form, currently IRS Form 56, Notice of Fiduciary Relationship, which must be filed at the IRS office where the assignor filed its tax returns, to notify the IRS of the assignment.

Section 6-103(3)(f) of the Uniform Commercial Code exempts an assignee's disposition of assets from the scope of Article 6's bulk transfer laws if otherwise applicable.

An assignee's duties may include the retention of documents as required under other law.

Section 10. Powers of Assignee

(a) An assignee has the powers necessary or appropriate to perform the assignee's duties.

(b) Unless the assignment agreement expressly provides otherwise, the assignee has power to:

(1) operate an existing business that uses an assigned asset, including preservation of the asset and collection on, or the sale, lease, license, or other disposition of, the asset;

(2) incur secured or unsecured debt and pay expenses incidental to the exercise of the power under paragraph (1);

(3) assert a right, claim, cause of action, or defense the assignor could have asserted that relates to the assignment estate;

(4) engage professionals, including a professional previously engaged by the assignor, to give advice, to prosecute or defend litigation, or for other purposes as the assignee considers appropriate, and pay professionals reasonable fees for services from the assignment estate;

(5) collect on, or sell, lease, license, or otherwise dispose of, an asset of the assignment estate regardless of whether the asset is subject to a lien or other encumbrance;

(6) exercise a right to redeem an asset of the assignment estate that is subject to a mortgage, deed of trust, security interest, or other encumbrance;

(7) settle a matter involving a debtor of the assignor;

(8) prosecute or defend a litigation pending on the effective date of the assignment agreement in favor of or against the assignor in the manner and with the same effect as the assignor could have done if the assignment had not been made;

(9) recover an asset in the manner and with the same effect as the assignor could have done if the assignment had not been made;

(10) settle claims against the assignment estate;

(11) abandon an assigned asset;

(12) subject to subsections (c) and (e), avoid a transfer or the incurrence of an obligation which a creditor that has filed a proof of claim could have avoided under other law if the assignment had not been made; and

(13) invest funds, subject to applicable prudent investor standards under other law.

(c) The power under subsection (b)(12) is exclusive to the assignee with respect to a creditor that submits a proof of claim. A recovery by the assignee in the exercise of this power must be for the benefit of the assignment estate but may not exceed the amount, asset, or other value the creditor could have obtained by the avoidance.

(d) For the purpose of exercising the assignee's power under subsection (b)(12), exercising a voidable-transaction remedy, or otherwise establishing the priority of the assignee's interest, an assignee has a lien on the assignment estate and the status of:

(1) a lien creditor under [cite to Uniform Commercial Code Section 9-102(a)(52)(B)] as to an asset that is a legal or equitable interest in personal property or fixtures;

(2) a bona fide purchaser under [the recording statute of this state] as to an asset that is a legal or equitable interest in real property, other than fixtures, located in this state; and

(3) a bona fide purchaser under the law of another state as to an asset that is a legal or equitable interest in real property, other than fixtures, located in the other state.

(e) An assignee's power under subsection (b)(12) to avoid a transfer made before the

effective date of the assignment agreement, under or in connection with a swap agreement, securities contract, commodity contract, forward contract, repurchase agreement, or master netting agreement, is limited to the extent a trustee would not have the power to avoid the transfer under the Bankruptcy Code, 11 U.S.C. Section 101 et seq.[, as amended].

(f) An assignee shall exercise the powers under this section consistent with the assignee's fiduciary duty under Section 9(a).

Legislative Note: *It is the intent of this act to incorporate future amendments to the federal law cited in subsection (e), Section 15(e) and (f), and Section 25. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Comment

The exercise of the assignee's power is subject to the assignee's fiduciary duties except as permitted in this act to be modified by the terms of the assignment agreement. See Section 23.

This act takes no position on whether an assignee is authorized to commence a bankruptcy case. However, this act does not preclude such authorization, whether in the assignment agreement or elsewhere, if consistent with the assignor's constituent documents and the statute under which the assignor was formed. *See In re N2N Commerce, Inc.*, 405 B.R. 34 (Bankr. D. Mass. 2009) (finding no case in which a court authorized an assignee to commence a bankruptcy case but concluding that authorization could come from assignment agreement).

Although the assignment agreement may limit the assignee's powers, the assignment agreement, like any other contract, is subject to the requirement under applicable state law that the parties to the contract act in good faith in the performance and enforcement of the contract.

An assignee's power to collect on or dispose of an asset under subsection (b)(5) is subject to the assignee's fiduciary duty under Section 9(a). This duty may or may not be equivalent to the standard of commercial reasonableness applied to dispositions under Article 9 of the Uniform Commercial Code.

Although subsection (b)(8) gives the assignee the power to defend a litigation claim, the act does not require the assignee to defend a claim if the assignee decides not to do so, as long as the decision is consistent with the assignee's fiduciary duty.

Because an assignee is an Article 9 “lien creditor,” the assignee's interest will ordinarily not be subject to unperfected Article 9 security interests and non-Article 9 unperfected liens. The

assignee's lien secures the claims of creditors entitled to distributions from the assignment estate under Section 15.

By submitting a claim against the assignment estate, a creditor agrees not to independently pursue any voidable transaction remedies the creditor may have against any transferee of the assignor or assignee.

An assignment under this act would rarely itself be considered a voidable transaction. A voidable transaction is an act that is detrimental to creditors as a group. An assignment under this act is for the benefit of creditors as a group.

Previously, a "voidable transaction" was known as a fraudulent transfer. This act uses the term "voidable transaction" for consistency with the Uniform Voidable Transactions Act and in accordance with modern usage.

Prudent investor standards, as referenced in subsection (b)(13), have been codified in the Uniform Prudent Investor Act. The assignee may look to the Uniform Prudent Investor Act or other applicable state prudent investor standards for guidance.

An assignee has standing to bring claims of the assignor, or to defend claims against the assignor for which creditors have recourse to the assignment estate, under this section because the assignee becomes the real party in interest on the claims upon the assignment being made. Claims of the assignor are assets included in the assignment estate. Although the assignee does not generally assume liability for claims against the assignor, a claim against the assignor for which the creditor has recourse to an assigned asset risks dilution of distributions to other creditors from the assignment estate.

The effective date of the assignment agreement referenced in subsections (b)(8) and (e) is addressed in Section 5(f).

Section 11. Allowed Claim

(a) An assignee shall allow a creditor's claim if:

- (1) the creditor submits a proof of claim in compliance with Section 13; and
- (2) the assignee does not dispute the claim under Section 12 before final

distribution.

(b) An assignee may:

- (1) allow a claim, pay a known liquidated claim, or accept a notice to the assignee of a claim received by the date established by the assignee under Section 9(b)(6) even if the

creditor does not submit a proof of claim; or

(2) allow and pay a claim evidenced by a late-filed proof of claim, if the assignee determines there is a reasonable basis for excusing the late filing.

(c) Any unsecured portion of an allowed claim shall be valued as of the effective date of the assignment agreement.

(d) A creditor's claim is allowed if the creditor succeeds in a dispute under Section 12(b).

(e) Subject to subsection (f), after expiration of the time for submitting a proof of claim, the assignee shall create a complete list of creditors that have submitted a proof of claim in compliance with Section 13. For each creditor's claim, the list must state:

(1) the amount of the claim, if the amount is known to the assignee; and

(2) whether the claim is secured or unsecured and, if secured, describe the collateral for the claim.

(f) If a class of creditors will receive no distribution on account of allowed claims, the assignee shall send a notice in a record to each creditor in that class that the creditor will receive no distribution instead of the list required in subsection (e).

(g) If requested by a creditor or other party with an interest in the assignment estate, the assignee shall provide the list created under subsection (e) to the person making the request to the extent permitted by privacy laws and subject to any privacy safeguards the assignee determines in the assignee's business judgment are reasonably necessary.

Comment

Sections 11, 12, and 13 address the claims allowance process. Section 11 explains when an assignee must and may allow a creditor's claim, as well as how unsecured claims are valued and how the assignee communicates to creditors with respect to allowed claims. Section 12 provides the process for the assignee to dispute, disallow, or reconsider claims. Section 13 provides the requirements for the content of a proof of claim and outlines the consequences of submitting a proof of claim to the assignee.

When the assignee creates a list of creditors under subsection (e), the assignee may need to anonymize names or take other reasonable steps to comply with privacy laws.

The list of creditors in subsection (e) does not constitute an admission by the assignee that those claims are valid or allowed. The assignee may dispute the claims on the list and need not note any dispute on the list itself. The claims listed may be unliquidated.

The assignee may comply with its obligation under subsection (g) by any reasonable means, including by posting the list on a website.

The effective date of the assignment agreement referenced in subsection (c) is addressed in Section 5(f).

Section 12. Disputed and Disallowed Claims

(a) An assignee may dispute a creditor's claim before final distribution by sending notification in a record stating the nature of the assignee's dispute to the creditor.

(b) If a dispute cannot be resolved consensually, the assignee may commence a proceeding under Section 21 to disallow the claim. The assignee must commence the proceeding before final distribution under Section 15. If the proceeding is not filed before final distribution, the assignee shall allow the claim under Section 11.

(c) An assignee shall create a dollar-for-dollar reserve for the estimated amount of the potential distribution on a disputed claim.

(d) Subject to subsection (b), an assignee shall disallow a claim for reimbursement or contribution of a person that is liable with the assignor on, or that has secured, the claim, to the extent:

(1) the claim against the assignment estate is disallowed;

(2) the claim for reimbursement or contribution is contingent as of the time of allowance or disallowance; or

(3) the person asserts a right of subrogation to the rights of a creditor.

(e) A claim for reimbursement or contribution of a person liable with the assignor on, or

that has secured, the claim that becomes fixed after the effective date of the assignment agreement shall be determined, and shall be allowed or disallowed, subject to subsection (b), as if the claim had become fixed before the effective date of the assignment agreement.

(f) An assignee may reconsider the assignee's decision to allow or disallow a claim for cause. If a reconsidered claim is allowed under Section 11, before the assignee makes additional payments or transfers to other creditors that are equal or junior in priority under Section 15 to the reconsidered claim, the creditor with the reconsidered claim shall receive a payment or transfer in an amount proportionate in value to the payments or transfers already received by the other creditors. This subsection does not modify the assignee's right under other law to recover from a creditor an excess payment or transfer made to the creditor. If a reconsidered claim is disallowed, the assignee shall comply with subsections (b) and (c).

Comment

This act takes no position on whether a dispute resolution clause in a contract between the assignor and a creditor is binding on the assignee.

The effective date of the assignment agreement referenced in subsection (e) is addressed in Section 5(f).

Although subsection (f) permits an assignee to reconsider a claim, it does not provide an independent cause of action by the creditor with the reconsidered claim against the assignee.

This act does not preclude an assignee from seeking court approval under Section 21 for the estimation of an unliquidated or contingent claim as part of the claim dispute process.

Section 13. Proof of Claim

(a) A proof of claim must:

(1) state the name, address, and other contact information reasonably necessary to communicate with the creditor;

(2) state the amount of the claim;

- (3) briefly state the nature of the claim;
- (4) identify any asset of the assignment estate securing the claim;
- (5) be signed by the creditor under penalty of perjury;
- (6) include a copy of a record, if any, on which the claim is based;
- (7) be submitted using the method established under Section 9(b)(5); and
- (8) be submitted by the date established by the assignee under Section 9(b)(6).

(b) A proof of claim submitted in compliance with this section is prima facie evidence of the validity and amount of the claim.

(c) The submission by a creditor of a proof of claim in compliance with this section constitutes the creditor's:

- (1) consent to the jurisdiction of the court under Section 21; and
- (2) assignment to the assignee of any right of the creditor to bring a voidable

transaction action relating to the creditor's claim.

Comment

This act does not preclude the use of electronic means for filing a proof of claim.

Although a secured creditor is not exempt from the requirement of submitting a proof of claim, other law may require the secured creditor to receive the value of the property secured by the creditor's security interest, regardless of whether a proof of claim is submitted. Furthermore, Section 11(b)(1) gives the assignee discretion to waive the formal proof of claim requirement for a secured creditor in exchange for that creditor's consent to the use of cash collateral and the subordination of its lien to certain administrative expenses of the assignment.

Employees are similarly not exempt from the requirement of submitting a proof of claim. However, Section 11(b)(1) gives the assignee discretion to waive the formal proof of claim requirement or accept a less formal notification of claim, and the assignee may wish to do so in some circumstances for employee claims.

Government entities are similarly not exempt from the requirement of submitting a proof of claim. However, the assignee should be aware of governmental claims that in some circumstances could subject the assignee to personal liability under federal or other state law. This act does not address whether the bar date is a sufficient defense to a late-filed claim by a

government entity.

Subsection (c)(1) provides that a creditor that submits a proof of claim consents to the jurisdiction of the court. This rule is derived from the rules stated in *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (“[B]y filing a claim against a bankruptcy estate the creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court’s equitable power.”) and subsequent bankruptcy decisions applying that rule to personal jurisdiction.

Section 14. Rights of Transferees

(a) An assignee’s disposition of an asset:

(1) transfers to a transferee for value all of the assignee’s rights in the asset;

(2) discharges the assignee’s lien and, to the extent the assignment creates a security interest in favor of the assignee, the assignee’s security interest; and

(3) discharges any subordinate security interest or other lien subordinate to the assignee’s lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the assignee fails to comply with this [act] or the requirements of a judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the asset subject to:

(1) the assignee’s rights in the assets of the assignment estate;

(2) the assignee’s lien and, if applicable, security interest; and

(3) any other security interest or other lien.

(d) Unless otherwise provided in a record, any warranty arising by operation of other law is disclaimed to the extent permitted by other law.

(e) If a subordinate security interest or other lien is discharged under this section, the assignee may file a record with the official or office responsible for maintaining an official filing,

recording, registration, or certificate-of-title system covering the asset secured by the security interest or other lien. The record must state that the security interest or other lien is discharged as a subordinate security interest or other lien in connection with a disposition under an assignment for the benefit of creditors of the assignor whose asset is subject to the security interest or other lien.

Comment

If an asset is transferred by the assignee with the consent of the lienholder free of the lien, the lien attaches to the proceeds of the transfer and retains for the proceeds the priority that the lien would have had had the lien remained on the original collateral.

The provisions in this section are intended to reference similar provisions in Section 9-617 of the Uniform Commercial Code. Accordingly, as used in this section, the term “discharge” is used in the same sense as it is used in Section 9-617 of the Uniform Commercial Code.

Section 15. Distributions

(a) In this section, “protected secured creditor” means a secured creditor whose lien:

- (1) is a perfected lien;
- (2) cannot be avoided by the assignee under Section 10(b)(12); and
- (3) is not subordinate to the assignee’s lien.

(b) Except as provided in Section 16, the assignee shall pay claims from the assignment estate allowed under Section 11 in the order of priority stated in this section.

(c) Unless otherwise agreed between the assignee and a protected secured creditor, before distributions under subsections (d), (e), (f), and (g), and in accordance with the priorities of creditors with liens under other law, the protected secured creditor shall receive the asset or the proceeds from the collection on or disposition of the asset to the extent of the value of the protected secured creditor’s interest in the asset, less the assignee’s reasonable and necessary expenses of preserving or disposing of the asset to the extent the expenses benefit the protected

secured creditor and are incurred with the protected secured creditor's consent or acquiescence. The protected secured creditor has an unsecured claim under subsection (g)(2) for the amount of the claim that remains after deducting the amount or value of an asset the protected secured creditor receives under this subsection. To the extent a claim is secured by an asset the value of which, after the deductions provided under this subsection, is greater than the amount of the claim, the protected secured creditor may receive interest on the claim and any reasonable fees, costs, or charges provided for under the agreement or other law under which the claim arose.

(d) After the distributions under subsection (c), the assignee shall pay the necessary costs of the administration of the assignment estate. The costs include:

(1) fees and reimbursements of the expenses of the assignee and any professionals engaged by the assignee;

(2) post-assignment taxes incurred by the assignee;

(3) post-assignment rent incurred by the assignee in occupying premises on which assets of the assignment estate are located or the business of the assignor is conducted;

(4) post-assignment lease payments incurred by the assignee in renting personal property used in the business of the assignor; and

(5) amounts required to be paid under the assignment agreement for expenses of winding up the assignment under Section 19.

(e) After the distributions under subsections (c) and (d), the assignee shall pay claims entitled to priority under federal law including under 31 U.S.C. Section 3713[, as amended] from the assignment estate.

(f) After the distributions under subsections (c), (d), and (e), the assignee shall pay claims from the assignment estate for wages, salaries, or commissions earned not more than [180] days

before the earlier of the effective date of the assignment agreement or the cessation of the assignor's business. Payment shall be limited to the greater of:

(1) the amount of the claim allowed as a priority claim ahead of claims of other unsecured creditors under the Bankruptcy Code, 11 U.S.C. Section 101 et seq.[, as amended]; or

(2) the amount allowed as a priority claim ahead of claims of other unsecured creditors under applicable non-bankruptcy law.

(g) After the distributions under subsections (c), (d), (e), and (f), each creditor shall receive a distribution of the assets of the assignment estate in the following order of priority:

(1) unsecured claims entitled to priority ahead of claims of other unsecured creditors under other law; and

(2) unsecured claims not entitled to priority.

(h) If the assets available for distribution to claims with equal priority under subsection (g) are insufficient to pay the total amount of the claims with that priority, each creditor with a claim with that priority shall receive a pro rata distribution of the available assets based on the proportion the amount of the creditor's claim bears to the total amount of the claims with that priority.

(i) If the claims entitled to the distribution under subsections (c), (d), (e), (f), and (g) are paid in full, the residue shall be distributed to allowed claims evidenced by a late-filed proof of claim, other than a late-filed claim allowed by the assignee under Section 11(b)(2), and, after the allowed claims evidenced by a late-filed proof of claim have been paid in full, as provided in the assignment agreement.

(j) An assignee may make interim distributions after considering future expenses and the reserves for disputed claims established under Section 12(c).

Comment

A creditor whose lien is junior to the status of the assignee as a lien creditor or bona fide purchaser under Section 10(d) or is otherwise subject to avoidance by the assignee under Section 10(b)(12) would not be a “protected secured creditor.”

The reference in subsection (c) to “reasonable and necessary expenses” refers to expenses incurred that directly benefit the protected secured creditor. If the preservation of the asset in fact conveys a direct benefit on the protected secured creditor, and if the expenses in fact are reasonable and necessary for the preservation of the collateral, the secured creditor need not explicitly consent to those expenses being incurred and paid so long as the creditor is aware of the incurrence of the expenses and does not object to the incurrence.

The act takes no position on whether unsecured creditors of a solvent estate are entitled to post-assignment interest.

The effective date of the assignment agreement referenced in subsection (f) is addressed in Section 5(f).

This act does not preclude the assignee from creating reserves for contingent claims in addition to the reserve it creates for disputed claims under Section 12(c).

Subsection (i) provides that any residue is applied as provided in the assignment agreement. Accordingly, the parties should provide for the distribution of any surplus funds in the assignment agreement itself. If the assignment agreement does not provide for the distribution of surplus funds, the assignee should apply any surplus as provided under other law.

Section 16. Claim Subordination

(a) A subordination agreement is enforceable under this [act] to the same extent the agreement is enforceable under other law.

(b) Subject to subsection (c), the following claims are subordinate to a claim or interest that is senior or equal in priority to a claim or interest represented by a security or other equity interest in the assignor or an affiliate of the assignor:

(1) a claim arising from rescission of a purchase or sale of the security or other equity interest;

(2) a claim for damages arising from the purchase or sale of the security or other equity interest; and

(3) a claim for reimbursement or contribution allowed on account of the rescission or damage claim.

(c) If the security is common stock or another common equity interest, a claim subject to subordination under subsection (b) has the same priority as common stock or another common equity interest.

Section 17. Liability

(a) An assignor is not personally liable for an act or omission by the assignee.

(b) An assignee is not personally liable for an act or omission by the assignor.

(c) A representative designated by an assignor under Section 8(b)(4) is exculpated to the same extent as a person acting on behalf of the assignor under other law had there been no assignment, except for an act or omission resulting from the representative's gross negligence or willful misconduct.

(d) A term of an assignment agreement relieving the assignee of liability is unenforceable to the extent the agreement relieves the assignee of liability for an act or omission committed in bad faith or with reckless indifference to the purposes of the assignment or the interests of the creditors of the assignment estate.

(e) Subject to subsection (f), an assignee is personally liable for breach of a fiduciary duty under Section 9(a). If the assignee is liable:

(1) the assignee is personally liable to a creditor for an individualized harm to the creditor if the harm is not shared by all creditors or a class of creditors; and

(2) the assignee is personally liable to the assignment estate for a harm shared by all creditors or a class of creditors.

(f) An assignee is not liable if, in the performance of the assignee's duties and exercise of

the assignee's powers, the assignee relies in good faith on:

(1) a record of the assignor;

(2) information, an opinion, a report, or a statement presented to the assignee by the assignor's officer or employee, a committee of the assignor's board of directors, an independent director or manager of the assignor, or another representative of the assignor; or

(3) information, an opinion, a report, or a statement presented to the assignee by another person that has been selected with reasonable care by or on behalf of the assignee as to a matter the assignee reasonably believes is within the other person's professional or expert competence.

Comment

The assignment agreement may specify details about indemnification requirements and other limitations on the assignee's liability. *See* Section 23(c).

The assignee is not liable for the claims of creditors against the assignor, even if a creditor has recourse to an assigned asset. *See* Section 10, cmt; *see* *Sherwood Partners Inc. v. EOP-Marina Business Center, L.L.C.*, 153 Cal. App. 4th 977 (2007) (finding that an assignee was not liable for attorney's fees and costs under a tenant-assignor's lease because the assignee did not assume the tenant-assignor's obligations under the lease).

Individualized harm to a creditor is harm that is specific to rights that creditor has that are separate from the rights of all creditors.

Section 18. Assignee Removal; Successor Assignee

(a) The assignor or a creditor may request [a court of competent jurisdiction in this state] [specify the court in the enacting state] to remove the assignee, if the assignor or creditor has a reasonable belief grounds for removal exist under subsection (b).

(b) After a request under subsection (a) or on the court's initiative in an action pending before the court under Section 21, the court may remove an assignee:

(1) for cause, including the assignee's fraud, dishonesty, incompetence, gross

mismanagement, or failure to comply with this [act]; or

(2) if removal of the assignee best serves the interests of the creditors.

(c) After an assignee resigns, or is removed, dies, or becomes incapacitated, a successor assignee provided for in the assignment agreement becomes the assignee, unless the successor assignee is not eligible to be an assignee under Section 4(a) or is subject to removal under subsection (b). A court shall appoint a successor assignee if:

(1) the assignment agreement does not provide for a successor assignee; or

(2) the successor assignee provided for in the assignment agreement is ineligible to be an assignee under Section 4(a) or is subject to removal under subsection (b).

(d) Subject to Section 17, an assignee that resigns, or is removed, dies, or becomes incapacitated, is discharged from the assignee's duties under this [act] when the assignee, or a representative of a deceased or incapacitated assignee:

(1) accounts for and turns over to the successor assignee all assets of the assignment estate; and

(2) submits to creditors a report summarizing the receipts and disbursements made during the service of the assignee.

(e) Subject to an applicable privilege, a court may order an attorney, accountant, or other person that has information in a record relating to the assignment estate or the assignor's financial affairs to turn over or disclose the record to the successor assignee.

Legislative Note: *This act does not specify a particular court within a state to oversee assignee removal under this section, hear and resolve matters under Section 21, or appoint an ancillary assignee under Section 22. For each of these sections, a state may wish to specify a business court, or a court with a business docket, if one is available. Otherwise, a state may specify another court in the state or use the more general language of "a court of competent jurisdiction in this state".*

Comment

This act does not displace other legal or equitable remedies available under other law. If an assignee has breached its fiduciary duties under other law, the assignee may be removed or subject to litigation for breach of fiduciary duty.

“Cause” under subsection (b)(1) does not include compliance with the assignment agreement or with this act. “Cause” does not include an assignee making a judgment consistent with its fiduciary duties. “Cause” may include breach of fiduciary duty and fraud.

The phrase “best serves the interest of the creditors” in subsection (b)(2) is intended to be understood similarly to the concept of the best interest of the creditors under bankruptcy law.

This act does not address whether an assignee may succeed to any applicable privileges of an assignor with respect to the information referred to in subsection (e); the resolution of that issue should be determined under other law. *See* Assignment for Benefit of Creditors of Miami Perfume Junction, Inc. v. Osborne, 314 So. 3d 604 (Fla. Ct. App. 2020) (denying petition for certiorari on grounds that circuit court’s decision determining that privileges passed to assignee did not depart from the essential requirements of law).

Section 19. Winding Up

(a) On completion of an assignee’s duties, the assignee shall send a creditor whose claim is allowed under Section 11, and not satisfied in full, a final accounting sufficient to inform the creditor of all material aspects of the assignment, including:

- (1) a description of the actions taken by the assignee under the assignment;
- (2) a summary of the assets received by the assignee at the commencement of the assignment and the assets received by the assignee during the assignment;
- (3) a summary of disbursements made by the assignee during the assignment for the purpose of administering the assignment estate, including the fees charged by the assignee, and payments to professionals, for rent, and for business purchases;
- (4) a summary of collections and dispositions of assets by the assignee;
- (5) a summary of distributions made or proposed to be made by the assignee for creditor claims;
- (6) a description of additional work to be done by the assignee to complete the

administration of the assignment estate and the distributions under Section 15; and

(7) other information considered reasonably necessary by the assignee.

(b) Except as otherwise provided in the final accounting or if the assignee has not fulfilled the assignee's duties under this [act], the assignee is discharged from the assignee's duties under this [act] when the assignee sends the final accounting and distributes all the assets of the assignment estate.

(c) If the final accounting describes additional work under subsection (a)(6), the assignee shall exercise the powers appropriate to complete the work.

Comment

This act does not set a time limit for completion of the assignment, in recognition of the fact that assignments vary, and setting a deadline could work against the interest of creditors in some cases. The assignee's duty to act in a manner compatible with the best interests of the assignment estate and creditors in Section 9(a)(3) is designed to require the assignee to conclude its work in a timely fashion and to address any concerns about undue delay on the part of the assignee.

The assignee should send the final accounting in subsection (a) to all creditors with allowed claims.

Section 20. Interstate Matters

(a) Subject to subsection (b), an assignment made under the law of another state must be recognized and enforced on an issue if the result for the issue would be substantially similar to the result for the issue if the assignment had been made under this [act].

(b) If a claim for wages, salaries, or commissions or a claim of a governmental unit exists in another state, for the purpose of determining the priority of the claim under Section 15(f)(2), the assignee shall use the amount asserted or determined under the law of the other state.

(c) If an assignee determines that a creditor should receive the treatment the creditor would receive under an assignment made under the law of another state, the assignee may treat

the creditor as the creditor would be treated in the other state.

Comment

This act encourages coordinated assignments of multiple assignors in the same enterprise group, even if they are not all formed under the laws of the same state or have a principal place of business in the same state. This act promotes coordination among the states and their respective courts for the benefit of each of the assignor’s creditors; however, this act does not substantively consolidate estates. This act does not preclude joint administration, whether in a state or across states under court-to-court protocols.

The term “governmental unit” is derived from Section 101(27) of the Bankruptcy Code, and the concept of a governmental unit is intended to be understood as that term is understood under bankruptcy law.

Section 21. Court Action

(a) [A court of competent jurisdiction in this state] [specify the court in the enacting state] may hear and resolve a matter involving the administration of an assignment or the exercise of an assignee’s powers and duties, including a request for instructions or approval or to declare rights.

(b) Without limiting the rights of the assignee or a creditor or other interested person to request the court to hear or resolve a matter under subsection (a), on request of the assignee, the court may issue an order relating to the administration of the assignment or the exercise of the assignee’s powers and duties, including an order for disposition of an asset or the incurrence of an obligation.

(c) Acceptance of the assignment by the assignee constitutes the assignee’s consent to the jurisdiction of the court.

Comment

This section contemplates that an appropriate court will be available to the extent its jurisdiction is invoked by interested persons. Such a court may hear disputes and authorize declaratory actions relating to assignments. An assignee may also go to an appropriate court for instructions or to obtain a confirmatory sale order, as provided by subsection (b). Except as provided in this section, this act does not contemplate an assignment with judicial supervision. Although this act does not create a system of routine or mandatory court supervision, it does not preclude states with judicially supervised assignments from adopting other provisions of the act, whether by statute or rules of civil procedure.

If a creditor files a claim in a court other than the court specified in this section, the court where the claim was filed may consider declining to exercise its jurisdiction under the doctrine of *forum non conveniens*.

Subsection (c) provides that an assignee that accepts an assignment consents to the jurisdiction of the court. This rule is derived from the rules stated in *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (“[B]y filing a claim against a bankruptcy estate the creditor triggers the process of ‘allowance and disallowance of claims,’ thereby subjecting himself to the bankruptcy court’s equitable power.”) and subsequent bankruptcy decisions applying that rule to personal jurisdiction.

Section 22. Ancillary Assignee

(a) Subject to other law of this state governing a person from another state serving as a fiduciary in this state, [a court of competent jurisdiction in this state] [specify the court in the enacting state] may appoint a person serving as an assignee in an assignment in another state, or the person’s nominee, as an ancillary assignee relating to assigned assets located in this state or subject to the jurisdiction of a court in this state, if:

(1) the person or nominee would be eligible to serve as an assignee under Section 4; and

(2) the appointment furthers the person’s possession, custody, control, or disposition of an assigned asset under the assignment in the other state.

(b) The court may issue an order that implements an order entered in another state appointing or directing an assignee or otherwise concerning an assignment in the other state.

(c) Unless the court orders otherwise, an ancillary assignee appointed under subsection (a) has the rights, powers, and duties of an assignee appointed under this [act].

(d) A person in possession, custody, or control of an assigned asset in this state, other than a creditor holding a lien or a right of setoff or recoupment relating to the asset, shall, on notification in a record by an ancillary assignee appointed under subsection (a), turn over the asset to the ancillary assignee.

Comment

To invoke full faith and credit or comity, a relevant court may enter an order that recites and implements any portion of this act and may retain appropriate jurisdiction to enforce the order.

A court may appoint a person as an ancillary assignee under subsection (a) even if the primary assignee has not been appointed by a court.

Section 23. Provisions Variable by Agreement

(a) Except as provided in this section and Section 10(b), the provisions of this [act] may not be varied by agreement.

(b) The duties under Sections 8(a) and 9(a) may not be disclaimed by agreement. An assignor and the assignee may determine by agreement the standards measuring the fulfillment of the duties of the assignor under Section 8 and the assignee under Section 9 if the standards are not manifestly unreasonable.

(c) Except as provided in Section 17(d), the assignment agreement may limit the assignee's liability under Section 17 and may require the assignee be indemnified by the assignment estate.

(d) Except as provided under Section 7(a), whenever this [act] requires an action to be taken within a reasonable time, a time not manifestly unreasonable may be fixed by agreement.

(e) The assignment agreement may provide for duties of the assignee in addition to those in this [act].

Comment

This act permits variation of its express provisions by agreement except as stated in the act. However, any variation should be subject to the requirement of good faith under applicable state law.

Standards that are "manifestly unreasonable" include standards that are patently unreasonable, as well as standards that are an unreasonable means to measure the fulfillment of the assignor's or assignee's duties. If standards result in unfair dealing or a situation outside the

reasonable expectations of creditors of the assignment estate as a whole, the standards may be manifestly unreasonable.

Section 24. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among states that enact it.

Section 25. Relation to Electronic Signatures in Global and National Commerce Act

This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

Section 26. Transitional Provision

This [act] applies to an assignment made on or after [the effective date of this [act]].

[Section 27. Severability]

[If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

***Legislative Note:** Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

[Section 28. Repeals; Conforming Amendments]

[(a) . . .

(b) . . .]

***Legislative Note:** A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to the effect of an assignment, including the taxation of the transfer of assets. See Section 6, Legislative Note.*

Section 29. Effective Date

This [act] takes effect [...]

UNIFORM ASSIGNMENT FOR BENEFIT OF CREDITORS ACT

Summary

The Uniform Assignment for Benefit of Creditors Act (the “Act”) was promulgated by the Uniform Law Commission in 2025. The Act provides for the use of an assignment for benefit of creditors (an “ABC”) as an additional tool in the enacting state for the winding up of a distressed business in an efficient and flexible manner where an ABC is appropriate, thereby reducing transaction costs and providing for greater recoveries by creditors of the distressed business.

This paper explains the background leading to the promulgation of the Act and then summarizes many of the Act’s provisions. For a more detailed understanding of the Act, the reader is encouraged to review the Act itself and the Official Comments to the Act.

BACKGROUND

In an ABC, a financially distressed business (the “assignor”) assigns the assignor’s assets to an assignee which then, acting as a fiduciary for the assignor’s creditors, undertakes to liquidate the assignor’s assets and distribute the proceeds to the assignor’s creditors towards payment of their claims. The assignment is a state law alternative to other procedures available to the assignor for winding up its business, such as becoming a debtor in a federal bankruptcy case or the subject of a state or federal law receivership. However, in many cases, an ABC will be more flexible, quicker, and less costly than the other alternatives.

Laws on ABCs and the uses of ABCs vary from the state to state. In some states, an ABC is a common law procedure with little or no statutory guidance or court supervision. In other states, the procedure is statutory and court supervised. In some states, an ABC is a commonly used procedure for winding up an assignor’s business. In other states, the procedure is not or is rarely used. The only common uniform statutory thread through this maze of the various state laws and practices is the status of the assignee as a “lien creditor” under Article 9 of the uniformly enacted Uniform Commercial Code for purposes of applying Article 9, including its priority rules for security interests in personal property.

The Act is the result of a three-year process by the Uniform Law Commission with the participation as observers of numerous insolvency professionals and other interested stakeholders. The Act provides for a uniform treatment of ABCs, benefitting from how ABCs have or have not worked well in the various states where ABCs are used. The Act also provides a framework for ABCs to be implemented in a state where ABCs are not currently used or are used sparingly or to improve the laws of a state where ABCs are often used.

SUMMARY

Who may be an assignor

The Act is generally intended to address a business in financial distress. Accordingly, any organization may be an assignor as well as a business that is not an organization but rather is a sole proprietorship. If an organization is the assignor, the Act leaves to other law what internal approvals, including the approval of holders of equity interests in the assignor, are necessary for the assignor to make the ABC. The Act does not preclude a governmental unit from being an

assignor, but similarly the governmental unit would need to be authorized by state law to make the ABC.

The assets to be assigned in an ABC

The assignor must generally assign to the assignee all of the assignor's property that can be assigned under other law. Property that may not be capable of being assigned under other law may include executory contracts and governmental licenses and permits for which a required consent for assignment has not been obtained from the contract counterparty or issuer of the license or permit. In contrast to the federal Bankruptcy Code, an assignee may not assume or assign an executory contract, nor override an anti-assignment term in the contract, unless the assignee has obtained the consent of the contract counterparty.

In the case of an individual assignor, property exempt under applicable insolvency laws is excluded from the assigned assets.

When an ABC may be made in an enacting state

For an ABC to be made in an enacting state, the assignor, if an organization, must be organized in the enacting state or have its principal place of business in the enacting state. If the assignor is an individual, the individual's principal residence must be in the enacting state. The jurisdiction of organization, principal place of business, or principal residence of the assignee is irrelevant.

If an assignor meets these qualifications, a direct or indirect wholly owned subsidiary of the assignor may make an ABC in the enacting state as well. Also eligible to be an assignor is a subsidiary partly owned by the assignor and controlled by the assignor if the subsidiary has no place of business or employees and relies on the services of the assignor. A typical example would be a special purpose subsidiary of the assignor.

The qualifications required for an assignee

The assignee may be an organization or an individual, but the assignee must be disinterested. The assignee cannot be a creditor, affiliate, or insider of the assignor, and an affiliate or insider of the assignee cannot be a creditor of the assignor.

The contents of an assignment agreement

The assignment agreement, by which the ABC is made, must contain the name and address of the assignor and the assignee, transfer or provide for the transfer to the assignee of all of the assignor's property eligible for assignment, describe the assigned assets, provide for distribution of the proceeds of the liquidation of the assigned assets, describe the fees to be paid to the assignee, and include a representation by the assignor under penalty of perjury that all of the property of the assignor eligible for assignment has been assigned. An asset eligible for assignment is assigned even if it is not described in the assignment agreement so long as the assignee has relied in good faith on the assignor's representation that all eligible assets of the assignor have been assigned.

The Act does not preclude the assignment agreement from addressing the following practical issues: the assignee hiring employees of the assignor as independent contractors to assist in liquidating the assigned assets; the assignor designating at least one officer or board member to

remain with the assignor in case additional conveyance documents need to be signed by the assignor; the assignor's board purchasing a directors' and officers' liability insurance tail policy; the assignor terminating its employee pension plan; and the assignor making dissolution filings with the Secretary of State of the assignor's jurisdiction of organization.

When an ABC becomes effective

The ABC becomes effective when the assignment agreement is signed by the assignor and the assignee unless a later date for effectiveness is provided in the assignment agreement. The assignment agreement may be electronic, and it may be signed electronically.

Effect of an ABC

The ABC transfers to the assignee all of the assignor's interests in the property of the assignor eligible for assignment, subject to any existing encumbrances not capable of being avoided by the assignee as described below and subject to compliance with any title or other property transfer laws not satisfied by the assignment agreement itself. Unless the assignor is an individual, the assigned assets include property, eligible for assignment, later acquired by the assignor.

An ABC is subject to any avoidable transaction law, such as the Uniform Voidable Transactions Act.

How assets are conveyed to the assignee

The assignment agreement itself may be sufficient to convey some property to the assignee. To the extent that it does not, the assignor must comply with applicable law to convey the asset to the assignee. For example, the assignor may need to execute in favor of the assignee a deed, suitable for recording, to convey title to real property.

How creditors are notified that an ABC has been made

The assignee must notify creditors known to the assignee that the assignment has been made. The notification must be sent within a reasonable time not to exceed 30 days from the effective date of the assignment agreement. The assignee must also use reasonable means to communicate with unknown creditors including following the assignor's historical means of communicating with creditors exclusive of advertising. In addition, the assignee is authorized to file Uniform Commercial Code financing statements to indicate to third party filing office searchers that the ABC has been made.

The duties of the assignor

The assignor has a general duty to cooperate with the assignee to assist the assignee in the assignee's administration of the assignment estate, including obtaining the consent of any contract counterparty or issuer of a license or permit to transfer the contract, license or permit to the assignee. As soon as practicable following the effective date of the assignment agreement, the assignor must provide to the assignee a list of the assigned assets; the name, address, and contact information for each creditor known to the assignor; and a list of all employees of the assignor including those to be terminated in connection with the ABC. Furthermore, the assignor must

designate a representative of the assignor to be available to execute any further documents required in connection with the ABC.

The duties of the assignee

The assignee has fiduciary duties to the assignor's creditors and the assignment estate. The duties are further described in the Act as duties (a) of loyalty, including the duty to manage the ABC in good faith; (b) to use reasonable care to maximize distributions to creditors; and (c) to wind up the ABC in a manner compatible with the best interests of the assignor's creditors and the assignment estate.

Other more specific duties of the assignee include segregating funds of the assignment estate from the assignee's proprietary funds; maintaining appropriate business records; paying the administrative expenses of the assignment estate from unencumbered assets; setting a single bar date for the filing by creditors of proofs of claim and establishing a reasonable method for creditors to submit proofs of claim; providing to creditors every six months a summary of the assignment estate's assets, liabilities and expenses; and providing a final accounting to creditors. The assignee must also disclose to creditors the assignee's compensation and any change in the method for computing the assignee's compensation.

The powers of the assignee

The assignee as a general matter has the power to administer the assignment estate consistent with the assignee's fiduciary duties. Unless the assignment agreement provides otherwise, the assignee has the power to operate the assignor's business and preserve the assignment estate, incur debt and pay expenses of the administration of the ABC, assert any claim or defense relating to the assigned estate that the assignor could have asserted, continue any litigation and settle any claim, engage professionals, collect on and dispose of assets of the assignment estate, redeem collateral for any secured obligation, and abandon an assigned asset.

The assignee also has avoidance powers to set aside an unperfected security interest in personal property or fixtures or a mortgage or deed of trust on non-fixture real estate that would not be binding on a good faith purchaser of the real estate. If a creditor who filed a proof of claim could have avoided a transfer or the incurrence of an obligation by the assignor under an applicable voidable transactions law, the assignee has the exclusive power to avoid the transfer or obligation for the benefit of the assignment estate, but the assignee's recovery is limited to what the creditor would have recovered had there been no ABC.

For purposes of exercising these avoidance powers or otherwise establishing the priority of the assignee's interest in the assignment estate, the assignee is a lien creditor with a lien on the assigned assets consisting of personal property and fixtures and is a bona fide purchaser of assigned assets consisting of non-fixture real estate.

However, the assignee does not have the power to avoid preferences as would be the case for an estate representative under the Bankruptcy Code. Moreover, the assignee's power to avoid a derivative or other financial contract transaction is limited to the same extent as the avoidance power of an estate representative under the Bankruptcy Code would be limited.

The claims resolution process

Creditors must generally file proofs of claim before the bar date for their claims to be allowed. However, the assignee has the discretion to allow a claim before the bar date even in the absence of the creditor filing a proof of claim.

The Act permits the enacting state to designate the court in the state to hear any disputes concerning the ABC. Alternatively, the court could more generally be a court of competent jurisdiction in the state. This paper refers to the designated court or the more general court of competent jurisdiction as the “specified court.”

If the assignee disputes a claim and the dispute cannot be resolved consensually, then, before final distributions to creditors, the assignee must commence a judicial proceeding in the specified court to resolve the claim. Otherwise, the claim will be allowed.

Rights of transferees from the assignee

A good faith buyer or other good faith transferee from the assignee of an assigned asset obtains whatever rights the assignee had in the asset, free of the lien of the assignee and of any security interest or other lien subordinate to the lien of the assignee. The Act does not preclude the assignee or the transferee, out of an abundance of caution, from obtaining a court order from the specified court confirming the transfer, but the Act’s statutory transfer provision should make it easier for the court to enter the order.

The distribution waterfall

Proceeds of the collection on or disposition of assigned assets are distributed in accordance with the following priorities:

1. Unless otherwise agreed with a secured creditor holding an unavoidable perfected security interest in collateral consisting of assets of the assignment estate, to the secured creditor from the proceeds of the collateral;
2. To the payment of the assignee’s fees, the fees of the assignee’s professionals, and other administrative expenses of the ABC including post-assignment rent, lease and tax obligations;
3. To the payment of claims entitled to priority under federal law, including under 31 U.S.C. Section 3713;
4. To the payment of wages, salary, and commissions earned up to a fixed period, selected by the enacting state, before the ABC was made in an amount equal to the greater of the amount allowed as a priority claim under the Bankruptcy Code and the amount allowed as a priority claim under applicable non-bankruptcy law;
5. To the payment of any other unsecured claims entitled to priority;
6. To the payment of unsecured claims not entitled to priority other than late-filed claims; and

7. To the payment of late-filed claims.

If there are insufficient funds to pay in full the members of a class of creditors, the creditors in the class share recoveries ratably. The assignee is also permitted to set aside reserves for disputed claims and for winding up the estate before completing distributions and, taking into account the reserves, the assignee may make interim distributions. A claim subordination agreement enforceable under other law is enforceable under the Act.

In the rare circumstances in which funds are remaining in the assignment estate after all of the assigned assets have been liquidated and the claims of creditors have been satisfied, the funds are to be distributed as provided in the assignment agreement.

When an assignee may be liable to the assignment estate

The assignee is personally liable for a breach of the assignee's fiduciary duty unless the assignee, in taking the action or making the omission resulting in the breach, has relied in good faith on a record of the assignor, a statement by an employee or officer of the assignor or a committee of the assignor's board of directors, or a report of a professional or expert selected with reasonable care by the assignee or which the assignee reasonably believes to be within the professional's or expert's competence. The assignee is also not personally liable for the acts or omissions of the assignor.

When a new assignee may be appointed

An assignee or a creditor may request the specified court to remove the assignee. The court may do so either in response to the request or on its own volition for cause or if the specified court finds that removal is in the best interests of the creditors. Cause includes fraud, dishonesty, incompetence, gross mismanagement, or failure to comply with the Act.

In addition to being removed, an assignee may also resign, or the assignee could die or become incapacitated. If a qualified successor assignee designated in the assignment agreement does not become the successor assignee, the specified court may appoint an eligible successor assignee.

The Act also contains provisions explaining when the original assignee or the original assignee's representative is discharged from the original assignee's duties under the Act.

Procedures for winding up the assignment estate

At the conclusion of the ABC, the assignee must send to the creditors a final accounting sufficient to inform the creditors of all material aspects of the assignment. As a general matter, once the assignee has distributed all of the assets of the assignment estate and has provided the final accounting, the assignee is discharged from the assignee's duties under the Act.

The degree of court involvement

An ABC under the Act does not require court supervision. However, the assignee or any interested person may seek the intervention of the specified court to hear and resolve any matter

relating to the administration of the ABC. The assignee's acceptance of the ABC constitutes the assignee's consent to the jurisdiction of the specified court.

Interstate transactions

An enacting state must recognize and enforce an ABC made in another state on an issue if the result for the issue would be substantially the same as a result under the Act. The Act also provides for the appointment in the enacting state of an ancillary assignee by the specified court to assist the out-of-state assignee in the administration of estate assets located in the enacting state. As a result, the more states that enact the Act, the more likely it is that ABCs may cross state lines with minimal friction.

Variation by agreement

Many provisions of the Act may be varied by agreement. However, the duty of the assignee to take reasonable actions to administer the assignment estate and the assignee's fiduciary duties cannot be disclaimed by agreement. Nor can the assignee's liability be relieved on account of the assignee acting in bad faith or with reckless indifference to the purpose of the assignment or the interests of creditors. The Act does permit the assignment agreement to establish standards by which the assignee may administer the assignment estate and comply with the assignee's fiduciary duties so long as those standards are not manifestly unreasonable.

Effect on a non-participating creditor and a secured creditor

A creditor which decides not to participate in the assignment is not bound by the assignment and may pursue whatever remedies are available to the creditor under other law. However, those remedies may be limited to the extent that an unsecured creditor, or a creditor with an unperfected or otherwise avoidable security interest, seeks recourse to assets of the assignment estate given the assignee's lien over those assets under the Act.

Because a creditor with an unavoidable pre-ABC perfected security interest would not, without its consent, be bound by the ABC in seeking recourse to its collateral included in the assignment estate, it would be expected that, before the ABC is made, the creditor, especially one with a security interest over substantial assets included in the assignment estate, would agree to participate as a condition to the ABC being made. In connection with satisfying that condition, the potential assignee would often negotiate with the creditor for the creditor to subordinate its security interest to the expenses of the assignment estate under an agreed budget and to permit use of the creditor's cash collateral for such purposes.

Transition

The Act would apply to an ABC made on or after the effective date of the Act.

THE REVIEW OF
**BANKING & FINANCIAL
SERVICES**
A PERIODIC REVIEW OF SPECIAL LEGAL DEVELOPMENTS
AFFECTING LENDING AND OTHER FINANCIAL INSTITUTIONS

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MODERNIZING ABCs WITH THE UNIFORM ASSIGNMENT FOR BENEFIT OF CREDITORS ACT

This article examines the evolving landscape of Assignments for the Benefit of Creditors as a state-law alternative to federal bankruptcy proceedings. It explores the increasing appeal of ABCs for distressed businesses seeking a faster, more flexible, and less stigmatized liquidation process. In light of the Uniform Law Commission’s July 2025 approval of the Uniform Assignment for Benefit of Creditors Act (“ABC Act”), this article provides a comprehensive overview of the ABC process, compares its advantages and limitations relative to bankruptcy, and analyzes the ABC Act’s key features — including fiduciary duties, claims procedures, and limited court involvement. The authors assess the anticipated impact of the ABC Act on state practices, highlighting its potential to harmonize disparate legal frameworks, expand access for multi-state debtors, and enhance predictability for creditors. Ultimately, the article argues that the ABC Act offers a modernized, business-friendly restructuring tool that may reshape the future of non-bankruptcy liquidations across the United States.

By Emil P. Khatchaturian and Joseph S. Harper *

Assignments for the Benefit of Creditors (“ABCs”) are state-law governed alternatives to federal bankruptcy relief, designed to facilitate the orderly liquidation of a distressed business’s assets and the distribution of proceeds to creditors. Unlike bankruptcy, which is governed by federal law (title 11 of the United States Code, 11 U.S.C. sections 101-1532), ABCs are creatures of common law or state statutes, depending on the jurisdiction.

ABCs have become increasingly appealing to distressed companies seeking a quicker, less expensive, and often less public process to wind down operations and liquidate assets. While ABCs share similarities with bankruptcy — such as the involvement of a fiduciary to liquidate assets and distribute proceeds — the process is typically more flexible, with fewer formalities and less court oversight.

In July 2025, the Uniform Law Commission (“ULC”) approved the final draft of its Uniform Assignment for

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Benefit of Creditors Act (“ABC Act”).¹ This uniform legislation provides states with a framework to modernize and streamline their assignment statutes and codify aspects of common law. This article offers: (1) a brief description of the ABC process; (2) a comparison of the relative advantages and disadvantages of ABCs and federal bankruptcy proceedings; (3) an overview of the ABC Act; and (4) analysis of how the ABC Act may impact ABC practice if adopted by states.

THE ABC PROCESS

An ABC begins when a distressed company (the “Assignor”) voluntarily transfers all of its assets to an independent third party (the “Assignee”), which liquidates the assets for the benefit of creditors. The Assignee is typically selected by the Assignor, though secured lenders may influence the choice.

Initiating documents include a lender consent agreement and an assignment agreement. If the Assignor’s assets are encumbered, lender consent is often required to transfer collateral to the Assignee. The general assignment document transfers all rights, title, and interest in the assets to the Assignee, creating an assignment estate that houses all assets received from the Assignor (the “Assignment Estate”).

The administration of the Assignment Estate includes features that are similar to a bankruptcy process, with varying degrees of court oversight, including the following:

- *Assignee as Fiduciary.* The Assignee assumes fiduciary duties akin to a bankruptcy trustee, including inventorying assets, notifying creditors, conducting sales, and distributing proceeds according to priorities specified by statute or other applicable law.
- *Notice and Claims Process.* Creditors receive notice of the assignment and a deadline to submit claims. Requirements vary by state, with statutory mandates

in some (e.g., New York)² and local practices or customs in others (e.g., Illinois).³

- *Asset Sales.* The Assignee liquidates assets to maximize value. In “prepackaged ABCs,” going-concern sales may occur shortly after assignment, based on pre-negotiated sale documents, with the Assignee being involved prior to the assignment taking place. Sales can be conducted through auctions or other private or public methods.
- *Distribution of Proceeds.* Secured creditors are paid first from collateral proceeds, with remaining funds distributed pro rata to unsecured creditors.

ABCs VS. BANKRUPTCY PROCEEDINGS

ABCs offer several potential advantages over formal bankruptcy proceedings, including the following:

- *Lower Costs.* ABCs (especially non-judicial ABC processes) avoid many formalities of bankruptcy, reducing administrative expenses.
- *Speed.* ABCs can conclude more quickly than chapter 7 or chapter 11 proceedings.
- *Confidentiality.* In many states, ABCs are less public, preserving asset value and protecting reputational interests.
- *Flexibility.* Asset sales and negotiations typically occur without the need for court approval and procedures, unless required by applicable state law.
- *Reduced Stigma.* ABCs are sometimes viewed as more cooperative and business-friendly, avoiding the stigma that may attach to a bankruptcy filing.

¹ Available on the Uniform Law Commission website (the “ULC Website”) (available at <https://www.uniformlaws.org/home> (last accessed Oct. 11, 2025)).

² N.Y. Debt. & Cred. Law § 5.

³ See, e.g., *Strategic Alternatives for and Against Distressed Businesses*, Vol. 1, Jonathan Friedland, et al., § 26:4 (2025) (“Friedland”) (observing that “[f]iling a notice of the assignment with a local court is not required as there is no court oversight of the assignment process in Illinois”).

While ABCs offer many benefits, they also come with notable limitations when compared to bankruptcy proceedings:

- *No Automatic Stay.* Unlike bankruptcy proceedings, ABCs do not impose an automatic stay of creditor actions. Creditors may continue to pursue litigation, enforce judgments, or take other collection actions against the company or its assets unless separate agreements are reached.
- *Risk of Involuntary Bankruptcy.* The initiation of an ABC does not prevent creditors from filing an involuntary bankruptcy petition against the company, which could disrupt or supersede the ABC process.⁴
- *Contractual Rights Remain Intact.* ABCs do not invalidate contractual provisions that allow counterparties to terminate or modify contracts upon assignment or insolvency (commonly known as “ipso facto” clauses). Consents required under leases, licenses, and other agreements generally must be obtained, and anti-assignment provisions remain enforceable.
- *Limited Free and Clear Sales.* Unlike trustees conducting section 363 sales in bankruptcy, Assignees in ABCs cannot sell assets free and clear of liens and security interests unless the secured party is paid in full or consents to the release of its liens. This can complicate asset sales and reduce the perceived value to buyers.
- *Reduced Judicial Certainty.* Without the procedural safeguards and finality of bankruptcy court orders, parties may face uncertainty regarding the treatment of claims, liens, and contracts in an ABC process.

The ULC’s ABC Act aims to increase the availability and attractiveness of ABCs, enabling businesses and their restructuring advisors to select the restructuring tool that is most appropriate for the distressed situation.

CREATION OF THE ABC ACT AND ITS KEY FEATURES

The ULC is a non-profit association of state commissions on uniform laws from each state, the

⁴ However, under section 305(a)(1) of the United States Bankruptcy Code, a bankruptcy court “may dismiss” a bankruptcy case or “may suspend all proceedings” if “the interests of creditors and the debtor would be better served by such dismissal or suspension.” 11 U.S.C. § 305(a)(1).

District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.⁵ Its purpose is to “promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable.”⁶

In 2023, a ULC study committee issued a report recommending the formation of a committee to draft the ABC Act, observing that a uniform law on ABCs would bring greater acceptance of the use of ABCs across all states.⁷ Among other perceived benefits (discussed in greater detail below), the ULC study committee identified that a uniform law would provide clarity to the process (which is presently governed by a patchwork of statutes and common law across jurisdictions), improve access to ABCs, reduce their transaction costs, promote comity, and reduce the incentive to forum shop.⁸

The ULC drafting committee met regularly over the next two years and issued the approved ABC Act on July 21, 2025.⁹ The ABC Act preserves the historical nature of ABCs while introducing uniform procedures

⁵ See ULC Website, “About Us” page (last accessed Oct. 11, 2025).

⁶ Uniform Law Commission Constitution, Article 1, § 1.02 (available on ULC Website (last accessed Oct. 11, 2025)).

⁷ *Updated Report and Recommendation*, Study Committee on Assignments for the Benefit of Creditors, February 28, 2023, p.20 (available on ULC Website (last accessed Oct. 11, 2025)). The ULC Study committee suggested that the drafting committee “consider or develop provisions that address (1) the act’s interaction with bankruptcy law and other state and federal laws; (2) choice of law rules, including whether an ABC should be treated as a security interest; (3) court involvement in the ABC process; and (4) transparency, due process, conflict of interest, and adequate notice procedures, particularly with respect to assignees.” *Id.* at p.1.

⁸ The drafting committee determined that the Assignor’s location (e.g., state of incorporation, place of business, etc.) should form the basis for the jurisdiction of an ABC. Acknowledging forum-shopping concerns and addressing the risk of “manufacturing” an ABC jurisdiction, the drafting committee tied jurisdiction under the ABC Act to the Assignor’s location. The drafting committee specifically highlighted the criticized practice of conducting an ABC in the state where the Assignee is located, even though the Assignor lacks contacts with the state. *2024 Annual Meeting Draft and Issues Memorandum* (the “2024 Issue Memorandum”), Drafting Committee on Assignments for the Benefit of Creditors Act, June 26, 2024 (available on ULC Website (last accessed Oct. 11, 2025)). See also *In re Vernon Hills Serv. Co.*, 2024 Del. Ch. LEXIS 102.

⁹ Available on the ULC website (last accessed Oct. 11, 2025).

and safeguards. Several key features of the ABC Act include the following:

Clearly Defined Duties and Powers

The ABC Act specifies eligibility criteria for Assignees. Among other limitations, Assignees may only be persons who are not creditors, affiliates, or insiders of the Assignor; not affiliates or insiders of a creditor of the Assignor; and not holders of equity interests in the Assignor, except for non-controlling interests in a public company.¹⁰

Assignees owe fiduciary duties¹¹ to the Assignment Estate, including broad duties of loyalty, care, and winding up the Assignment Estate in a manner compatible with the best interests of the Assignment Estate and its creditors,¹² as well as specific administrative duties relating to accounting, record keeping, and claims review, among other actions.¹³ Assignees may be held personally liable for certain types of breaches,¹⁴ though liability may be limited by indemnification provisions contained in the Assignment Agreement,¹⁵ except in cases of bad faith or reckless indifference.¹⁶ The ABC Act also provides for removal of an Assignee at the request of the Assignor or a creditor pursuant to a judicial proceeding.¹⁷

An Assignee is also conferred with specific default powers, which may be modified by the express terms of an Assignment Agreement.¹⁸ These powers include, among others, the power to operate an existing business using assigned assets; incur secured or unsecured debt; engage professionals (including professionals previously engaged by the Assignor) to provide legal services;

collect on or sell, lease, license, or otherwise dispose of an asset of the Assignment Estate whether or not subject to a lien or other encumbrance; prosecute or defend litigation previously being prosecuted or defended by the Assignor; settle claims against the Assignment Estate; and avoid pre-assignment transfers.¹⁹

The ABC Act also prescribes duties to the Assignor, including “to take all reasonable actions necessary for the assignee to administer the assignment, the assigned assets, and the assignment estate.”²⁰

Clearly Defined Claims Management Procedure

The ABC Act also establishes a clear procedure to administer claims against the Assignment Estate. Creditors must submit a valid proof of claim to the Assignee to be paid from the Assignment Estate. The Assignee is to provide creditors notice of the assignment within 30 days of the effective date of the Assignment Agreement,²¹ and proofs of claim must be submitted within a specified period after such notice.²² Proofs of claim must identify the amount and nature of the claim and provide supporting documentation.²³ The Assignee then reviews claims and can object, request additional information, or disallow claims.²⁴

After the Assignee has received all claims and the required and requested information to substantiate them, the Assignee will create a list setting forth the amount of each creditor’s claim, whether it is secured or unsecured, and a description of the collateral.²⁵ This list of claims must then be made available to creditors upon request, subject to privacy laws, and reasonable privacy restrictions determined by the Assignee.²⁶ If a dispute over a disallowed claim cannot be resolved

¹⁰ ABC Act, § 4(a).

¹¹ The drafting committee agreed that the Assignee has a duty to optimize value for all of the Assignor’s creditors. At the same time, the drafting committee has sought to clarify that an Assignee’s duty to “maximize” value should not come at all costs; rather, the Assignee should undertake a cost-benefit analysis when exercising this duty. *2024 Issues Memorandum*, at p.3.

¹² ABC Act, § 9(a).

¹³ *Id.*, § 9(b).

¹⁴ *Id.*, § 17(e).

¹⁵ *Id.*, § 23(c).

¹⁶ *Id.*, § 17(d).

¹⁷ *Id.*, § 18.

¹⁸ *Id.*, § 10(b).

¹⁹ *Id.*

²⁰ *Id.*, § 8(a).

²¹ *Id.*, § 7(a).

²² Drafters of the ABC Act suggest that this period of time should be between 90 and 180 days, fixed by the state enacting this legislation in consideration of local practice, including local practice under state receivership laws. ABC Act, § 9(b)(6) and Legislative Note.

²³ ABC Act, § 13.

²⁴ *Id.*, §§ 10, 11, 12.

²⁵ *Id.*, § 11(e).

²⁶ *Id.*, § 11(g).

consensually, the Assignee may commence a judicial proceeding to disallow the claim.²⁷

Limited Court Involvement and Additional Provisions

The ABC Act preserves the typical non-judicial nature of most ABC statutes but allows court involvement in limited circumstances, such as claim disputes, Assignee removal, and declaratory actions.²⁸ The drafting committee engaged in robust discussions regarding the topic of judicial supervision and ultimately sought to conserve judicial resources, especially in states where ABC laws do not provide for judicial oversight.²⁹

The ABC Act also establishes rights of transferees (Section 14), distribution procedures (Section 15), comity principles (Section 20), and a protocol for the appointment of ancillary Assignees who are serving as Assignees in other states (Section 22). It promotes recognition and enforcement of other states' assignment laws when outcomes on any given issue would be substantially similar.³⁰

ANTICIPATED IMPACTS OF THE ABC ACT

As the individual ULC commissioners now work toward enactment of the ABC Act in their respective jurisdictions, potential benefits may include the following:

Providing Clearer Structure and Process

ABCs are presently governed by a patchwork of state statutes and common law that vary considerably from one state to the next. In some states, including Florida, New Jersey, and New York, ABCs are governed by

statutes and involve detailed court proceedings,³¹ while in other states, including Illinois, ABCs are predominantly a product of common law.³² In certain states, including Arkansas, Washington, and Wisconsin, they are functionally no different from receiverships.³³ And in still other states, such as Connecticut, ABCs lack a defined process and are functionally unavailable.³⁴ The ABC Act allows states to draw upon shared principles that seek to provide baseline protections and preserve process. Even if certain states do not expressly adopt the ABC Act, the model law is likely to provide a touchstone to practitioners that are seeking to resolve ambiguities where their jurisdictions are governed by less well-defined processes.

Providing Greater Access

ABCs are often unavailable to debtors with assets located in multiple states, due to inconsistencies in ABC laws in different jurisdictions. To the extent states adopt the ABC Act, an increasing uniformity in ABC law and process across jurisdictions would make ABCs more accessible to multi-state debtors and more predictable for creditors. It would also reduce transaction costs by limiting resource-intensive choice-of-law disputes. Further, in states with significant barriers to the use of ABCs, either because they lack defined ABC processes (e.g., Connecticut)³⁵ or because their processes are governed by outdated statutes (e.g., Alabama),³⁶ adoption of the ABC Act would remove those barriers

²⁷ *Id.*, § 12(b). A legislative note provided in the ABC Act suggests that “a state may wish to specify a business court, or a court with a business docket, if one is *available* . . . or use the more general language of ‘a court of competent jurisdiction in this state.’” *Id.*, § 18, Legislative Note.

²⁸ *Id.*, § 21.

²⁹ 2024 *Issues Memorandum*, at p.5 (“In a Legislative Note following Section 18, the draft also currently provides that states with existing judicial procedures may wish to incorporate those procedures into the act; however, committee members have expressed concerns with this idea, on the grounds that it may ultimately undermine the act’s simplicity and workability if states import too many additional requirements.”).

³⁰ *Id.*, § 20(a).

³¹ See, e.g., Fla. Stat. §§ 727.101, *et seq.*; N.J. Stat. §§ 2A:19-1, *et seq.*; N.Y. Debt. & Cred. Law §§ 2, *et seq.* (McKinney).

³² See, e.g., *In re Stainless Sales Corp.*, 583 B.R. 717, 722 (Bankr. N.D. Ill. 2018) (“In Illinois, an assignment for the benefit of creditors is a voluntary insolvency proceeding that functions similarly to bankruptcy, however, it is a product of state common law and is an alternative to bankruptcy.”).

³³ See, e.g., Ark. Code §§ 16-117-401, *et seq.* (receivership statute subchapter on ABCs); Wash. Rev. Code §§ 7.60.025, *et seq.* (statute providing for ABCs as a special type of receivership); Wis. Stat. §§ 128.001, *et seq.* (statute governing both ABCs and receiverships, with the principal difference being that an ABC is debtor-initiated and a receivership is creditor-initiated (*compare* § 128.02 with § 128.08)).

³⁴ *Friedland*, § 45:1.

³⁵ *Id.*

³⁶ *Id.*, § 20:1 (observing that the Alabama statutes on ABCs “date back to 1886 and . . . because this statute’s antiquated procedures have not been modernized and because there is a general lack of familiarity with the process, ABCs in Alabama have not been widely employed for many years”).

and could drive higher use of ABCs as an efficient and appealing non-bankruptcy alternative.

Providing Better Coordination with Other Laws

The ABC Act distinguishes ABCs from receiverships, ensuring both procedures — each with its own advantages and disadvantages as a restructuring tool — remain available to distressed companies as alternatives to bankruptcy and reducing the incentive to forum shop in an effort to seek out one restructuring tool rather than the other.³⁷ The ABC Act may also foster comity between jurisdictions, because creditors will be treated the same in all states that have adopted the ABC Act.

CONCLUSION

ABCs are valuable alternatives to bankruptcy for distressed companies, offering a streamlined, flexible, and efficient alternative to bankruptcy for distressed

companies. The adoption of the ABC Act by states may enhance the appeal and effectiveness of ABCs, offering a streamlined, flexible, and efficient option for liquidation and creditor recovery. This uniformity would particularly benefit repeat players such as banks, asset-based lenders, and venture capital and private equity firms — especially those in the middle market space — offering higher certainty and predictability to creditors and counterparties compared to the existing hodgepodge of state law ABC processes.

The ABC Act’s modernized procedures and limited court involvement ensure that the process remains business-friendly and less stigmatic than bankruptcy. As states move towards adopting the ABC Act, stakeholders, including restructuring advisors and legal practitioners, should familiarize themselves with the new framework to better navigate the evolving landscape of distressed asset liquidation and maximize the benefits of ABCs as viable alternatives to bankruptcy proceedings. ■

³⁷ *2024 Issues Memorandum*, at p.3 (observing that “[a]s a debtor-commenced process, an ABC can sometimes exhibit differences from a receivership, which can be more of a creditor-led process” and noting that “in a receivership, the creditor generally recommends the receiver, who is appointed by the court, whereas in an ABC, the debtor, often with the assent of its secured creditor, often chooses the assignee”). The drafting committee was mindful that “in recent years several states have effectively blurred the line between ABCs and receiverships” and believed that “[a] uniform ABC act would clarify the line between ABCs and receiverships (as well as other remedies) . . . and may encourage states to clarify the line between ABCs and receiverships to recognize the distinct benefits and drawbacks to both procedures.” *Id.* at p.11.

**Report of the Permanent Editorial Board
for the
Uniform Commercial Code**

**The Provisions of UCC Article 9 Relating to
Assignments for Benefit of Creditors**

Draft for Public Comment

December 22, 2025

**Comments on this draft must be submitted by no later than
February 20, 2026.**

Comments may be submitted by email to UCCComments@ali.org

**This draft has been approved for publication by the PEB
subject to revisions based on comments received.
The PEB reserves the right to withdraw this proposed Report.**

PREFACE TO PEB COMMENTARY

The Permanent Editorial Board for the Uniform Commercial Code (PEB) acts under the authority of the American Law Institute and the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). The PEB has resolved to issue supplemental commentary on the Uniform Commercial Code (UCC) from time to time. The supplemental commentary of the PEB generally will be known as a *PEB Commentary*, to distinguish it from the Official Comments to the UCC. A *PEB Commentary* may be denominated a commentary, a report, or otherwise as determined by the PEB.

The Resolution states that:

The underlying purposes and policies of the *PEB Commentary* are those specified in Section 1-103(a). A *PEB Commentary* should come within one or more of the following specific purposes, which should be made apparent at the beginning of the Commentary: (1) to resolve an ambiguity in the UCC by restating more clearly what the PEB considers to be the legal rule; (2) to state a preferred resolution of an issue on which judicial opinion or scholarly writing diverges; (3) to elaborate on the application of the UCC where the statute and/or the Official Comment leaves doubt as to the inclusion or exclusion of, or application to, particular circumstances or transactions; (4) consistent with Section 1-103(a)(2), to apply the principles of the UCC to new or changed circumstances; (5) to clarify or elaborate upon the operation of the UCC as it relates to other statutes (such as the Bankruptcy Code and federal and state consumer protection statutes) and general principles of law and equity pursuant to Section 1-103(b); or (6) to otherwise improve the operation of the UCC.

For more information about the Permanent Editorial Board for the Uniform Commercial Code, visit www.ali.org or www.uniformlaws.org.

PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE

REPORT ON THE PROVISIONS OF UCC ARTICLE 9 RELATING TO ASSIGNMENTS FOR BENEFIT OF CREDITORS

The Permanent Editorial Board for the Uniform Commercial Code (the “UCC”) is issuing this report on the provisions of UCC Article 9 relating to an assignment for benefit of creditors (an “ABC”). This report is timely given the recent promulgation by the Uniform Law Commission of the Uniform Assignment for Benefit of Creditors Act (the “Uniform ABC Act”). This report may also be useful for issues discussed in this report relating to ABCs governed by other state law statutes or conducted under common law principles.

After providing some general background, this report discusses (a) the assignee’s status under UCC Article 9 as a “lien creditor” with respect to the assigned assets; (b) where applicable, the assignee’s status under UCC Article 9 as a secured party; (c) when the assignee is a secured party, the assignee’s enforcement of its security interest; and (d) the assignee’s approval of another secured party’s enforcement of a security interest in assigned assets.

Background

An ABC is a voluntary procedure, governed by state law, for a business to be wound up. It is an alternative to other procedures for winding up a business, such as bankruptcy, receivership, or entity law dissolution.

In an ABC, an assignor (the business winding up) voluntarily assigns its assets to an assignee who in exchange undertakes, as a fiduciary for the assignee’s creditors, to liquidate the assets and to distribute the proceeds to the creditors. The assets transferred often include assets in which a creditor of the assignor has a security interest. As a result, the assignment is typically made with the approval of the assignor’s secured creditors, who otherwise would be entitled to exercise their state-law remedies against their collateral. Creditors who do not wish to participate in the assignment may pursue their federal- and state-law remedies against their obligors or their collateral transferred notwithstanding the participation of other creditors in the assignment.¹

Assignee as a Lien Creditor

An assignee in an ABC has the status under UCC Article 9 of a “lien creditor” whether or not, under applicable state law, the assignee has a lien on the former assets of the assignor for purposes other than UCC Article 9.² The assignee’s status under Article 9 refers to the rights in the assigned assets the assignee obtains as a result of the assignment. Notwithstanding UCC Article 9 labeling the assignee as a “lien creditor,” UCC Article 9 itself does not create a lien for the assignee. Rather, any lien in favor of the assignee would be created under other law.³ Thus, the

¹ See generally the Uniform ABC Act, Preface; Berman and Saunders, *General Assignments for the Benefit of Creditors: The ABCs of ABCs*, American Bankruptcy Institute (2025) (hereinafter, “Berman and Saunders”).

² See UCC § 9-102(a)(52) (defining a “lien creditor” to include an assignee for the benefit of creditors); *accord*, Uniform ABC Act § 10(d)(1). Although Article 9 does not specify whether an assignee’s status as a lien creditor extends to real property, because Article 9 applies to security interests only in personal property and fixtures, UCC § 9-109(a), the assignee’s status as a lien creditor *under Article 9* is not relevant to real property other than fixtures.

³ For example, the Uniform ABC Act provides for the assignee to have, for purposes beyond UCC Article 9, the status of a lien creditor on assigned assets consisting of personal property and fixtures and of a bona fide purchaser on

result of the UCC Article 9 definition of “lien creditor” is to give the assignee the benefit of UCC Article 9 provisions that establish rights of lien creditors in UCC Article 9 regardless of whether the assignee has such rights under other law.

As a result of the assignee’s UCC Article 9 status as a lien creditor, the assignment made in the ABC generally will be senior to an unperfected or later perfected security interest in the assigned assets but junior to a security interest in the assigned assets perfected before the assignment is effective.⁴

The assignee’s status as a lien creditor makes it more likely that the ABC will be successful. If an unsecured creditor of the assignor does not participate in the ABC, the creditor may be less inclined to pursue collection actions against the assignor. The creditor would not, on account of the assignee’s status as a lien creditor under UCC Article 9, be able to acquire a claim against the assignor or its former assets that is superior to the interest of the assignee in the assigned assets by, for example, the creditor seeking to obtain a post-assignment security interest in the assets of the assignor.⁵

Assignee as a Secured Party

It would not be unusual for the assets assigned in an ABC to include accounts, chattel paper, payment intangibles, or promissory notes. Because the assignment is a voluntary transfer of the assignor’s assets in consideration for the assignee’s undertaking to liquidate the assets and pay the proceeds of the liquidation to the assignor’s creditors, the assignment is a “sale” of those assets. A sale of accounts, chattel paper, payment intangibles, or promissory notes creates a security interest under UCC Article 9.⁶ The assignee, then, in addition to having the status of a lien creditor under UCC Article 9, would be a secured party with a security interest in those assets under UCC Article 9.⁷ To the extent that the ABC creates a security interest under UCC Article 9, the security interest is automatically perfected.⁸

None of the exclusions in UCC §§ 9-109(c) and (d) from the scope of UCC Article 9 apply to the assignment of accounts, chattel paper, payment intangibles, or promissory notes as part of an ABC. In particular, a claim that the assignment is excluded under UCC § 9-109(d)(4) as an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is “part of the

assigned assets consisting of non-fixture real estate. *See* Uniform ABC Act § 10(d). However, it is not necessary for other law to create a lien in favor of the assignee for the assignee to attain lien creditor status under Article 9.

⁴ UCC § 9-317(a)(2)(A). However, the rights of an assignee would be junior to a secured party’s security interest if, before the assignment become effective, one of the conditions specified in UCC § 9-203(b)(3) was met and a financing statement covering the collateral had been filed. UCC § 9-317(a)(2)(B). The right of an assignee would also be junior to a perfected security interest to the extent that the security interest secures advances made within 45 days after the ABC becomes effective, without knowledge of the assignment, or pursuant to a commitment made without knowledge of it. UCC § 9-323(b). Section 5(f) of the Uniform ABC Act states when an ABC becomes effective.

⁵ This report does not address whether the interest of the assignee in the assigned assets has priority over a subsequently created lien of a lien creditor. However, historically this would be the case. *See Reed v. McIntyre*. 98 U.S. 507, 512 (1878) (“the appellant would not have acquired priority over other creditors by the sheriff’s levy, for the obvious reasons that the right of property in the goods seized under the execution had previously passed” to the assignee under the ABC).

⁶ UCC § 9-109(a)(3). The term “security interest” in this context means the ownership interest in the sold rights to payment. UCC § 1-201(b)(35) (second sentence).

⁷ UCC § 9-102(a)(73)(D).

⁸ UCC § 9-309(12).

sale of the business out of which they arose” or under UCC § 9-109(d)(5) as an assignment is “for the purpose of collection only” should fail for both textual and policy reason.

It would be anomalous, as a textual matter, for an assignment of accounts, chattel paper, payment intangibles, or promissory notes as part of an ABC to be excluded from the scope of UCC Article 9 under the noted provisions when UCC Article 9 expressly provides in UCC § 9-309(12) for any security interest in assigned assets resulting from an ABC to be automatically perfected and for likewise, as also provided in UCC § 9-309(12), for any subsequent transfer of the assigned assets by the assignee to be automatically perfected. Such an exclusion would make irrelevant the provisions in UCC § 9-309(12) for automatic perfection of a security interest in the assigned assets and of any subsequent transfer by the assignee of the assigned assets.

Moreover, these transactions – the sale of an entire business usually as a going concern or an assignment of payment rights to a collection agency – are excluded for policy reasons from the scope of UCC Article 9 because they do not raise relevant commercial finance issues addressed in UCC Article 9.⁹ In contrast to these exclusions, any priority competition between an assignee under an ABC and a secured party with a security interest in accounts, chattel paper, payment intangibles, or promissory notes assigned under the ABC would raise priority issues addressed in UCC Article 9. It makes perfect sense for these concerns to be addressed within the scope of UCC Article 9’s detailed priority rules and not under other law.

The drafting history of UCC Article 9 provides additional evidence supporting the conclusion that the exclusion of assignments “for the purpose of collection only” does not apply to an assignment as part of an ABC. Homer Kripke, the principal drafter of the 1972 amendments to Article 9,¹⁰ explicitly so stated that:

MR. HAYDOCK: Homer, is an assignment for the benefit of creditors an assignment of an account for collection (see Sec. 9.302 (1)(e)) or is it something different? I see that we have removed that kind of transaction from the filing requirements.

PROF. KRIPKE: I would think that the assignee has a legal title and it's not merely a collection assignment for convenience. It would not fall within the other language, so we made an express exception here.¹¹

The “express exception” made by the 1972 drafters was, of course, the automatic perfection rule of § 9-302(1)(g) (1972) [currently § 9-309(12) (2023)].¹²

⁹ UCC § 9-109, cmt. 12.

¹⁰ For Kripke’s role as principal drafter of the 1972 amendments, see Homer Kripke, *Reflections of a Drafter*, 43 OHIO ST. L.J. 577, 582 & n.19 (1982). For the 1972 amendments Kripke’s title was “Associate Reporter” and the nominal “Reporter” was Robert Braucher, but as Kripke said, Braucher “was also at that time Reporter for the RESTATEMENT (SECOND) OF CONTRACTS, and it was recognized from the beginning that he could not carry the laboring oar on both projects, and that I would do so on the UCC project, under his supervision.” The other panelist in the quoted passage, Robert Haydock, Jr., was also on the drafting committee for the 1972 amendments (formally titled the “Article 9 Review Committee”).

¹¹ Robert Haydock, Jr. et al., *A Second Look at the Amendments to Article 9 of the Uniform Commercial Code*, 29 BUS. LAW. 973, 998 (1974). The remarks, as reported in the article, were made in a program of the American Bar Association Business Law Section’s Committee on the Uniform Commercial Code in Washington, D.C., on August 8, 1973.

¹² In the above-quoted passage the citation to “Sec. 9.302(1)(e)” may have been an error in the transcript of the program. Section 9-302(1)(e) (1962) [currently § 9-309(2) (2023)] has nothing to do with an assignment for collection;

Professor Kripke did not, in the above-quoted passage, mention the exclusion from Article 9 of an assignment of receivables “as part of a sale of the business out of which they arose” per § 9-104(f) (1962) [currently § 9-109(d)(4) (2023)]. But it is highly unlikely that the speakers would have considered that exclusion to apply to an assignment of receivables in an ABC, for that exclusion was in the same provision — § 9-104(f) (1962) — as the exclusion of an assignment of receivables for collection only.

Enforcement of the Assignee’s Security Interest Consisting of an Ownership Interest

To the extent that an ABC involves assignment to the assignee of accounts, chattel paper, payment intangibles, or promissory notes, the assignee's ownership interest in such an item is a "security interest" as defined in UCC Article 9, as previously noted. The assignee, as a secured party with an ownership interest, is not bound by the otherwise applicable provisions of Part 6 of Article 9 unless the assignee has recourse back to the assignor if the assigned assets are not collectible.¹³ In a typical ABC, the assignee does not have such recourse. As a result, any collection on or disposition of accounts, chattel paper, payment intangibles, or promissory notes would not be subject to the secured party’s otherwise applicable duty to collect on or dispose of collateral in a commercially reasonable matter or any other duties of a secured party under Part 6 of UCC Article 9. Nevertheless, the assignee would, under other law relating to the ABC, presumably remain bound in its collection and disposition efforts by the assignee’s fiduciary duties.¹⁴

Enforcement of a Security Interest by Another Secured Party

A secured party with a pre-assignment perfected security interest, superior to the lien status or security interest of the assignee, may elect to enforce its security interest by collecting on or disposing of collateral consisting of all or a portion of the assigned assets. If the assignee approves of the secured party’s method of collection or disposition, the method is *per se* commercially reasonable under UCC Article 9.¹⁵ The rationale for this *per se* rule is that the assignee’s approval is governed by other law protecting the interests of the assignor’s creditors. In particular, the approval must presumably be consistent with the assignee’s fiduciary duties to the assignment estate and its creditors.¹⁶

it provides for automatic perfection of an assignment of certain receivables if less than a “significant part” of the assignor’s total outstanding receivables of that type are assigned. It is clear that the parties were speaking of an assignment for collection, which is excluded from Article 9 by § 9-104(f) (1962) [currently § 9-109(d)(5) (2023)].

¹³ UCC § 9-601(g); *see* UCC § 9-607(c).

¹⁴ *See* Uniform ABC Act § 9(a); Berman and Saunders, p. 4, 25. For collections by the assignee as a junior secured party, *see* UCC § 9-331, cmt. 5.

¹⁵ UCC § 9-627(c)(4).

¹⁶ *See* Uniform ABC Act § 9(a); Berman and Saunders, p. 4, 25. However, if there were no equity in the assigned assets for the assignment estate, it would be anomalous for the assignee’s approval of the method of collection or disposition by a senior secured party to bind a junior secured party to which the senior secured party owes a duty to collect on or dispose of collateral in a commercially reasonable manner.