

Assignments for the Benefit of Creditors: Delaware

by Patrick A. Jackson and Ian J. Bambrick, Faegre Drinker Biddle & Reath LLP, with Practical Law Bankruptcy & Restructuring

Status: **Maintained** | Jurisdiction: **Delaware, United States**

This document is published by Practical Law and can be found at: us.practicallaw.tr.com/w-030-2647

Request a free trial and demonstration at: us.practicallaw.tr.com/about/freetrial

A Q&A guide to an assignment for the benefit of creditors (ABC) in Delaware. This Q&A addresses the process by which assignments are generally administered in Delaware, including the commencement and administration of the ABC, the duties and actions of assignees, creditor claims, and the jurisdiction of the court.

Commencing an ABC Proceeding

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

In Delaware, the ABC statutes are relatively sparse and comprise the only subchapter of Delaware's insolvency laws that is not preempted by federal bankruptcy law. The provisions cover:

- Assignee's filing of inventory (10 Del. C. § 7381).
- Court's appointment of appraisers (10 Del. C. § 7382).
- Bonding of assignee (10 Del. C. § 7383).
- Proceedings on assignee's bond (10 Del. C. § 7384).
- Assignee's accounts and exceptions to those accounts (10 Del. C. § 7385).
- Removal of assignee (10 Del. C. § 7386).
- Voidance of preferential assignments (10 Del. C. § 7387).

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

In Delaware, ABCs begin with the contractual assignment of the assignor's assets to an assignee in trust for the assignor's creditors.

Within 30 days after execution of the assignment, the assignee must file an inventory or schedule of the assigned

assets with the office of the Register of Chancery in the county where the assignor's real and personal property is located (10 Del. C. § 7381). After making that filing, the assignee must provide periodic accounts of its trusteeship to the Register of Chancery of the proper county (10 Del. C. § 7385).

While it is possible to commence an ABC proceeding without an immediate court filing, the lawful administration of an ABC requires filings with the Delaware Court of Chancery.

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

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

Documents

In Delaware, the assignment agreement is the main document in which the assignor assigns its property to the assignee in trust for the assignor's creditors. The Delaware Code does not have a prescribed form of an assignment agreement, so general principles of contract and trust law apply. However, an assignment may be deemed void if its provisions either:



Assignments for the Benefit of Creditors: Delaware

- Prefer any creditor to any other.
- Secure or pay any creditor a greater proportion of the creditor's debt or demand than must be secured or paid to other creditors.

(10 Del. C. § 7387.)

Therefore, assignment documents typically include express language making the assignment for the general benefit of all creditors, without preference, according to their respective priorities at law.

In practice, the following documents are often used to commence an ABC proceeding in the Delaware Court of Chancery:

- A verified petition for recognition of the ABC (Del. Ch. Ct. R. 3), which includes a copy of the contractual assignment. Depending on the practitioner or the judge's preference, the petition may request that the Chancery Court enter a proposed form of order recognizing and taking jurisdiction over the ABC.
- An inventory or schedule of assets of the ABC estate, together with an affidavit from the assignee attesting that the inventory list is complete and accurate to its knowledge (10 Del. C. § 7381). The Delaware Code and court rules do not require a specific form for the inventory list. However, because the court and court appointed appraisers use the inventory list value the ABC estate and to set the amount of the assignee's bond, the inventory is typically listed in balance-sheet format that:
 - identifies property by general category (for example, cash, inventory, accounts receivable, property/plant/equipment, and real property);
 - includes book values at or near the assignment agreement execution date; and
 - contains any explanatory footnotes as may be appropriate.

The assignee may file all these documents together within 30 days after executing the assignment agreement. Alternatively, the assignee may file the petition first and then follow by filing the inventory list no later than 30 days after execution of the assignment agreement.

Entity Governance Actions of Approval

The required corporate actions for commencing an assignment by an assignor that is a corporation or other entity depends on the relevant applicable state law governing the assignor's specific type of business. Therefore, the commencement of an ABC typically requires approval from any one or more of the following:

- The board of directors or similar body, in the case of an entity other than a corporation.
- Shareholders, members, or partners, as applicable.
- Managers, managing members, or general partners, as applicable.

In deciding what governance actions must be taken, the assignor must consider whether applicable law treats an ABC as a sale or disposition of all of the assignor's assets, which may trigger additional or more stringent governance requirements.

Filing Requirements

All filings in the Delaware Court of Chancery are made electronically using File & ServeXpress™ (see [Administrative Directive of the Chancellor of the Court of Chancery of the State of Delaware](#), Amended No. 2003-1, eFile Administrative Procedures (Del. Ch. Mar. 15, 2007)).

The assignee must pay all applicable filing and court fees required by the Chancery Court (Del. Ch. Ct. R. 3(bb)).

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

Under the Delaware Code, the assignee in an assignment for the benefit of creditors (ABC) must:

- Within 30 days of executing the assignment agreement, file an inventory or schedule of assets of the ABC estate, together with an affidavit from the assignee attesting that the inventory list is complete and accurate to its knowledge (10 Del. C. § 7381). The Delaware Code or court rules do not require a specific form for the inventory list. However, because the court and court appointed appraisers use the inventory list to value the ABC estate and set the amount of the assignee's bond, the inventory is typically listed in balance-sheet format that:
 - identifies property by general category (for example, cash, inventory, accounts receivable, property/plant/equipment, and real property);
 - includes book values at or near the assignment agreement execution date; and
 - contains any explanatory footnotes as may be appropriate.
- Post a bond in an amount and with security required by the Chancery Court (10 Del. C. § 7383). However, in

practice, the bond requirement is often either waived or modified to permit a bond without security.

- Render an account of the assignee's trusteeship on annual basis until the ABC is closed and the final account is rendered and approved. If the assignee fails to perform this duty, the Chancery Court may issue the assignee a citation, requiring the assignee to appear and exhibit under oath or affirmation the accounts of the trusts (10 Del. C. § 7385).

There are no statutory requirements to serve as assignee in Delaware. Any person can be an assignee (10 Del. C. § 7381), which includes both individuals and entities (1 Del. C. § 302(15) (defining "person" to "include corporations, companies, associations, firms, partnerships, societies and joint-stock companies, as well as individuals"))).

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

Under the Delaware Code, there are no specific statutory requirements regarding extension of time for filing the required inventory schedules or making amendments (10 Del. C. § 7381). However, an extension of time for filing the inventory is likely governed by the Chancery Court's general equitable powers and informed by Chancery Court Rule 6(b), which permits extension of deadlines "for good cause" (Del. Ch. Ct. R. 6(b)).

Selecting an Assignee

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

In Delaware, the assignor selects the assignee and there are no specific qualifications or certification standards that assignees must meet to be appointed in an assignment for the benefit of creditors (ABC). Any person can be an assignee (10 Del. C. § 7381), which includes both individuals and entities (1 Del. C. § 302(15) (defining "person" to "include corporations, companies, associations, firms, partnerships, societies, and joint-stock companies, as well as individuals"))).

In practice, it is increasingly typical (but not necessary) to set up a special-purpose Delaware limited liability company (LLC) to act as the assignee. This serves two purposes, namely:

- Providing the assignee with the benefit of limited liability.
- Ensuring a jurisdictional nexus with the State of Delaware when the assignor or its assets (or both) are located elsewhere. If the assignee is a Delaware LLC, it is a Delaware fiduciary over which the Chancery Court can clearly exercise supervisory authority in the administration of the ABC estate.

The assignee or the officer or manager of the assignee if it is an entity is often an insolvency professional or business person with:

- Experience in liquidating companies generally.
- If applicable, specialized experience:
 - In the assignor's industry; or
 - With assets of the type included in the assignor's ABC estate.

When the assignor's assets (and particularly, its cash) are encumbered, the assignor should consider obtaining the secured creditor's approval of the proposed assignee candidate.

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

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

Duties and Actions of the Assignee

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

In Delaware, the only duties of an assignee for the benefit of creditors that are specifically prescribed by statute are to:

- File a verified inventory of the assets constituting the assignment estate (10 Del. C. § 7381).

- Post a bond as may be ordered by the Chancery Court (10 Del. C. § 7383).
- Provide annual reports of the assignee's trusteeship, a final report, and give notice as directed by the Chancery Court (10 Del. C. § 7385).

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

There are no common law duties imposed specifically on assignees in an assignment for the benefit of creditors (ABC) under Delaware law. However, in its capacity as trustee, the assignee has:

- Standard common law fiduciary duties to the assignor's creditors as beneficiaries of the trust.
- Any specific duties imposed by the assignment agreement.

(See 10 Del. C. §§ 7381 and § 7383.)

The Restatement (Second) of Trusts, which has been cited by the Delaware Supreme Court with approval in other contexts (see *McNeil v. McNeil*, 798 A.2d 503, 509-10 (Del. 2002)), enumerates the following common law duties for trustees, which apply to assignees in an ABC:

- To administer the trust (Restatement (Second) of Trusts § 169).
- To act with loyalty by administering the trust solely in the interest of the beneficiary (Restatement (Second) of Trusts § 170).
- Not to delegate the administration of the trust to others (Restatement (Second) of Trusts § 171).
- To keep and render accounts (Restatement (Second) of Trusts § 172).
- To furnish information to the beneficiary (Restatement (Second) of Trusts § 173).
- To exercise the care and skill of a person of ordinary prudence in the management of their own property (Restatement (Second) of Trusts § 174).
- To take reasonable steps to keep control of the trust property (Restatement (Second) of Trusts § 175).
- To use reasonable care and skill to preserve trust property (Restatement (Second) of Trusts § 176).
- To take reasonable steps to realize on claims held in trust (Restatement (Second) of Trusts § 177).

- To defend actions that may result in a loss to the trust estate (Restatement (Second) of Trusts § 178).
- To keep trust property separate from non-trust property (Restatement (Second) of Trusts § 179).
- To use reasonable care in selecting a bank and to earmark bank deposits as being made as trustee (Restatement (Second) of Trusts § 180).
- To use reasonable care and skill to make the trust property productive (Restatement (Second) of Trusts § 181).
- To deal impartially with the trust's beneficiaries (Restatement (Second) of Trusts § 183).

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

In Delaware, an assignee must post a bond with sufficient surety. The Delaware Chancery Court fixes the amount of the bond and it must be equal to at least the value of the total inventory and appraisal of the assignment estate (10 Del. C. § 7383(a)). In practice, the bond requirement is often waived. However, in an unpublished opinion construing section 10 Del. C. § 7383(a), Vice Chancellor Glasscock concluded that a bond was mandatory under the statute and the Chancery Court's only discretion is whether to require security for the bond (and if so, in what amount) (see *In re Weaver Holding Co.*, Civ. Act. No. 6199-VCG, 2011 WL 5910707 (Del. Ch. Nov. 28, 2011) (declining to waive bond requirement but allowing bond to be unsecured)).

While the bond is required by statute, there is no requirement that the bond be posted before the assignee can begin its duties. However, because the formal assignment for the benefit of creditors (ABC) proceeding may be commenced in the Delaware Chancery Court up to 30 days after the actual assignment takes place and the amount and security of the bond may not be determined by the Chancery Court for another few weeks after, the assignee typically begins administering the ABC estate before the bond is posted.

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

In Delaware, an assignee may be removed by the Delaware Chancery Court if the parties can demonstrate

cause (10 Del. C. § 7386). There is no decisional law under this statute, however, cause likely includes the assignee's failure or inability (for example, due to incapacity) to discharge its statutory or common law duties.

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

In Delaware, a request to remove an assignee under 10 Del. C. § 7386 is made by following Del. Ch. Ct. R. 7(b), which typically requires the party to make a written motion but also permits oral motions at a hearing or during trial. Written motions must typically be served on each of the parties to the proceeding (Del. Ch. Ct. R. 5(a)), however, it is unclear whether all creditors must receive service of the motion in an assignment for benefit of creditors proceeding. If there is doubt, it may be prudent to serve the motion on all creditors. A

After filing the motion to remove the assignee, the parties to the motion typically agree on a briefing schedule. If the parties to the motion cannot agree on a briefing schedule, any party may file a request with the court seeking an order fixing the schedule (Del. Ch. Ct. R. 7(b)(4)). After briefing, any party may apply for an order fixing a time for argument (Del. Ch. Ct. R. 7(b)(4)).

In Delaware, on removal of the assignee, the court may appoint a replacement assignee and compel transfer of the assignment estate to the replacement assignee.

Administration of the ABC

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

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

In Delaware, an assignee has plenary authority to administer the property of the ABC estate, subject to:

- The terms of the assignment agreement.
- The duties imposed on the assignee by the common law of trusts.
- The requirements imposed by the ABC statute.

The key processes during an ABC are:

- The identification, collection, and liquidation of the ABC estate property, including, if applicable, the prosecution of causes of action belonging to the ABC estate.
- The reconciliation of claims against the ABC estate.
- A distribution of estate property to creditors.
- The periodic and final accounting regarding the estate property.

Asset Sales

The Delaware Chancery Court does not need to approve a sale of assets or compromises of claims of or against the ABC estate. However, if a transaction is material and may impact the amount or timing of creditor recoveries, it may be prudent for an assignee to file a motion for approval from the Chancery Court on notice to all creditors. The jurisdictional and substantive legal basis for this motion is the Chancery Court's supervisory authority over the assignee as a fiduciary (10 Del. C. § 7384 (Chancery Court's authority to direct proceedings against the assignee's bond), 10 Del. C. § 7385 (Chancery Court's authority to hear and determine exceptions to accountings rendered by the assignee), and 10 Del. C. § 7386 (Chancery Court's power to remove the assignee)). Based on the statutory provisions, it not necessary for the motion to seek approval of the transaction per se, but rather approval for the assignee to enter the transaction as a valid exercise of its discretion consistent with its fiduciary duties.

Avoidance Powers

The Delaware Code does not provide assignees with any avoidance powers. There is also no caselaw considering whether an assignee has standing as a creditor to pursue causes of action under Delaware's Uniform Fraudulent Transfers Act (UFTA) (6 Del. C. §§ 1301-1312). However, in the analogous context of a decedent's estate under the UFTA's predecessor statutes, the Delaware Chancery Court recognized the right of an executor to seek recovery of alleged fraudulent conveyances by the decedent shortly before their death for purposes of paying the creditors of the estate (see *In re Estate of Ortiz*, 27 A.2d 368, 373 (Del. Ch. 1942) ("[A]n executor or administrator of a fraudulent

transferor has the power to sue to recover the property transferred, for the purpose of paying the claims of creditors defrauded, where the estate is insolvent and where the creditors have not already enforced their rights”).

Rejection or Assumption of Executory Contracts or Leases

The Delaware Code does not provide assignees with any power to assume or reject executory contracts or leases.

Creditor Claims

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

Notice

The Delaware Code does not contain any specific procedures for notifying creditors of their rights to assert claims against an assignment for the benefit of creditors (ABC) estate. The only mention of notice in Delaware’s ABCs statutes relates to notice of the assignee’s periodic and final accounts (10 Del. C. § 7385(b) (“notice [of which] shall be given to all persons in interest as directed by an appropriate order of the Court of Chancery”). The Delaware Code also does not specify any formal or procedural requirements regarding the contents of a creditor’s claim or the information and documents that it must submit in support of its claims in an ABC proceeding.

In a Delaware receivership, however, which may be viewed as analogous to an ABC, within 15 days of the receiver filing the creditor list (unless otherwise ordered by the Delaware Chancery Court), the Register in Chancery must:

- Mail notice to all known creditors of a bar date to file claims against the debtor, which date must be at least 60 days from the mailed notice.
- Publish notice in a newspaper or other publications for a time ordered by the Delaware Chancery Court (Del. Ch. Ct. R. 153).

Proof of Claim

The Delaware Code does not contain any formal or procedural requirements for creditors’ claims in an ABC

proceeding. However, creditors’ claims in a Delaware receivership proceeding are subject to certain formal and procedural requirements, which may be applied in an ABC, either by analogy or by order of the Delaware Chancery Court. In a receivership, a creditor’s proof of claim must:

- Be in writing, signed by the creditor under oath.
- Include a statement listing:
 - the claim amount due at the time the receiver was appointed;
 - the consideration for the claim;
 - any payments received on account of the claim; and
 - an affirmation regarding any security held for the claim.
- Fully itemize all book accounts.
- If claiming interest, include a statement of:
 - the period of time covering the interest; and
 - the interest rate.
- If the claim is based on an obligation of record, include a certified abstract of the record.
- If the claim is based on written evidence of indebtedness, include the operative document or an affidavit attesting to the document’s loss or destruction.
- If the claim has a priority or a lien on the debtor’s property, include a statement explaining the basis for the priority or the lien.

(Del. Ch. Ct. R. 154.)

Because the receivership claim procedures are extensive and designed to satisfy due process requirements, an assignee should consider replicating these procedures in an ABC by:

- Filing a list of creditors with the Chancery Court. This list is typically attached as an exhibit to the general assignment agreement filed with the initial petition.
- Requesting that the Chancery Court establish a deadline for asserting claims against the ABC estate. The deadline should be at least 60 days after the assignee serves notice of the bar date.
- Requesting approval of the form and manner of notice of the bar date. The assignee also often requests approval of a proof of claim form to be used by creditors.

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

In Delaware, there are no specific procedures for determining allowance and disallowance of claims against an assignment for the benefit of creditors estate and there are no specific statutes delineating the power or authority of the Delaware Chancery Court over the claim allowance process. In practice, the assignee typically negotiates with creditors with the understanding that the Delaware Chancery Court provides a forum for resolution of disputes, if necessary.

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

Delaware does not have a statutory priority scheme for the payment of creditors' claims in an assignment for the benefit of creditors (ABC) proceeding. However, ABC proceedings are subject to the federal priority statute (31 U.S.C. § 3713), which requires that claims of the US Government be paid before "any part of a debt of the [assignor] or estate". The assignee can be subject to liability for any payments made in violation of this statute.

Compensation of Assignee and Professionals

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

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

Delaware does not have a statutory or rule-based threshold compensation fee for an assignee. Assignees are instead generally compensated according to the terms contained in the assignment agreement.

The assignee's compensation must be disclosed in the periodic and final accountings filed by the assignee.

Creditors can file objections to the accountings, leaving the assignee's fees subject to the creditors' rights to seek judicial review (see Question 18).

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

The Delaware Code does not provide that an assignor may retain professionals.

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

Delaware does not have statutory or rule-based procedures or standards for retention or compensation of an assignee's professionals. Retention and compensation of an assignee's professionals is typically governed by the terms of the assignment agreement. In practice, assignment agreements typically include express language authorizing the assignee to retain professionals and compensate them using assets of the assignment for the benefit of creditors estate. All compensation must be disclosed in the periodic and final accountings filed by the assignee. Creditors can file objections to the accountings, leaving the assignee's fees subject to the creditors' rights to see judicial review (see Question 16).

Closing the ABC

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

To close a Delaware ABC case, the assignee must:

- File a final accounting.
- Provide notice of the file accounting to all creditors and an opportunity for creditors to file objections

(10 Del. C. § 7385(b).)

After the Delaware Chancery Court approves the final accounting, including any modifications made because of creditor objections, the ABC is deemed closed. The Delaware Code does not prescribe a form of order for closing the ABC case.

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

In Delaware, there is no formal process within the ABC statute for dissolving the assignor company after the ABC concludes. Dissolution of the assignor company proceeds under otherwise applicable corporate, partnership, or alternative entity law.

Jurisdiction and Power of the Court

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

In Delaware, the assignment for the benefit of creditors (ABC) statutes provide that the Delaware Chancery Court has the power to:

- Appoint appraisers for the ABC estate (10 Del. C. § 7382).
- Direct that an interested party may proceed on the assignee's bond if it is necessary and proper to protect the party (10 Del. C. § 7384).
- Issue a citation to an assignee that fails to perform its duty to render an account of the ABC estate (10 Del. C. § 7385(a)).
- Establish deadlines for parties to file objection to the assignee's accounting, direct the manner of noticing the parties of the accounting, and hear and determine any filed objections (10 Del. C. § 7385(b)).
- Remove the assignee for cause shown and compel an assignment of the ABC estate to the successor assignee (10 Del. C. § 7386).

Other actions taken by the Delaware Chancery Court related to an ABC proceeding are under the court's general equitable powers.

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

In Delaware, the clerk of the Delaware Chancery Court, known as the Register in Chancery, receives filings and maintains the official case docket in an ABC proceeding. The Register in Chancery does not otherwise have any responsibilities in an ABC.

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

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

Bankruptcy Considerations

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

An involuntary bankruptcy case may generally be filed by one or more creditors holding at least \$16,750 in non-contingent claims that are not subject to a bona fide dispute if the petitioning creditors either:

- File their petition within 120 days after the debtor's assignment of assets to the assignee.
- Can show that the debtor is generally not paying its debts as they come due

(§ 303(b)(1), (2), Bankruptcy Code; see [Practice Note, The Involuntary Bankruptcy Process](#)).

If creditors file an involuntary bankruptcy petition during the ABC, the assignee may not "make any disbursement from, or take any action in the administration of" property of the assignment estate, "except such action as is necessary to preserve such property" (§ 543(a), Bankruptcy Code). If the petition is granted and an order for relief is entered by the bankruptcy court, the assignee typically must turn over all property of the assignment estate to the bankruptcy trustee and render an accounting

Assignments for the Benefit of Creditors: Delaware

of the same (§ 543(b)(1), (2), Bankruptcy Code). However, after notice and a hearing, the bankruptcy court:

- May excuse the assignee's compliance if the interests of creditors are better served by permitting the assignee to continue in possession, custody, or control of the property of the ABC estate (§ 543(d)(1), Bankruptcy Code).
- Must excuse the assignee's compliance if the assignee took possession of the ABC estate more than 120 days before the involuntary bankruptcy petition was filed, unless compliance is necessary to prevent fraud or injustice (§ 543(d)(2), Bankruptcy Code).

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

Delaware law does not provide an assignee any specific power to challenge an involuntary bankruptcy proceeding against the assignor. However, in all cases, an assignee may oppose the involuntary bankruptcy case or request that the bankruptcy court abstain from the proceeding, often on the basis that the assignment for the benefit of creditors proceeding has advanced to a point where the change in forum or fiduciary does not serve the best interests of creditors (see § 305(a)(1), Bankruptcy Code).

Instead of dismissing the case, the assignee can seek relief from the turnover provisions of section 543 of the

Bankruptcy Code to permit the assignee to continue in the possession, custody, or control of property of the ABC estate, if:

- The assignee's continued management of the property is in the best interests of creditors.
- The bankruptcy petition was filed more than 120 days after the assignee took possession of the ABC estate

(See § 543(d)(1), (2), Bankruptcy Code.)

Other Topics

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

In Delaware, cannabis is not legal and an assignee may not operate an illegal business. Therefore, there are no statutes or case law in Delaware on this topic.

About Practical Law

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call 1-800-733-2889 or e-mail referenceattorneys@tr.com.