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ASSIGNMENT FOR BENEFIT OF CREDITORS 577.05

CHAPTER 577

ASSIGNMENT FOR BENEFIT OF CREDITORS

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577.01 REQUISITES. Every assignment made by a debtor of the whole or any part of his estate, real or personal, in trust for the benefit of creditors, shall be void unless the assignee be a resident freeholder of the state, and unless the assignment be in writing, subscribed and acknowledged by the assignor, and be filed with the clerk of the district court of the county wherein the assignor, or one of the assignors if there be more than one, resides, or wherein the business in reference to which the same is made has been principally carried on.

[R. L. s. 4611] (9782)

577.02 REAL ESTATE ASSIGNMENT MUST BE RECORDED. If land, or any interest therein, be embraced in the assignment, a copy thereof, certified by such clerk, shall be filed for record with the register of deeds of the county wherein the land lies; and every such assignment not so filed shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same land, or any interest therein, whose conveyance is first duly recorded, and as against any attachment levied thereon or judgment lawfully obtained against the person in whose name the title to such land appears of record prior to the filing for record of such certified copy.

[R. L. s. 4612] (9783)

577.03 DUTY OF CLERK. The clerk shall endorse upon the assignment the day, hour, and minute of filing the same. The proceeding shall be entered in his register, and all papers filed and orders made in the matter of the assignment shall be noted therein as in the case of a civil action.

[R. L. s. 4613] (9784)

577.04 SCHEDULE OF DEBTS AND ESTATE. Within ten days of making any such assignment, the debtor shall file with such clerk a schedule, under his oath, containing:

(1) A list of the names of all his creditors, and the place of residence of each, if known to him, and, if not, a statement to that effect;

(2) A statement of the sum owing to each creditor, the nature of the debt, the cause and consideration thereof, and the place where it arose, and, if secured by judgment, mortgage, collateral, or otherwise, the nature of the security;

(3) An inventory of his estate, real and personal, in law or in equity, showing the nature and value of each item thereof, and all encumbrances thereon, to the best of his knowledge, information, and belief.

[R. L. s. 4614] (9785)

577.05 ASSIGNEE'S BOND. Before entering upon the duties of his trust, and not later than five days after the filing of such schedule, the assignee shall file with the clerk a bond to the state, to be approved by a judge of such court, in an amount at least double the value of the estate assigned, as shown by the inventory, if filed, and, if not, by affidavit of the debtor, conditioned for the faithful performance of his duties. At any time thereafter, in its discretion, the court may require the assignee to give a new or an additional bond. When the assignee fails to perform any of his duties as such, or to comply with any order of the court, upon leave of the court first obtained, any creditor may bring an action upon such bond to obtain satisfaction of his claim.

[R. L. s. 4615] (9786)

577.06 NOTICE TO CREDITORS. Upon taking possession of the estate assigned, the assignee shall forthwith give at least one week's published notice of the assignment, and he shall also forthwith mail such notice to each creditor who is named in the schedule, or of whom he may receive information.

[R. L. s. 4616] (9787)

577.07 FRAUDULENT CONVEYANCES. In all cases of general assignments for the benefit of creditors, the assignee shall represent the creditors of the assignor as against all transfers and conveyances of his property which were fraudulent as to them, and shall have all the rights of such creditors in their avoidance.

[R. L. s. 4617] (9788)

577.08 PROOF OF CLAIMS; ORDER OF PAYMENT. No claims or demands, except debts owing to the United States or to the state, or taxes or assessments against the debtor or the property assigned, shall be paid, unless proofs thereof, verified by the creditors, be presented to the assignee. After payment of the charges and expenses of making the assignment and executing the trust, he shall pay the debts of the assignor in the order following:

(1) Debts owing to the United States and to the state, and all taxes and assessments against the debtor or the property assigned, shall first be paid in full;

(2) The claims of employees sustaining injury in the course of their employment and entitled to compensation under the provisions of chapter 176, shall next be paid in full if there be sufficient wherewith to do so, and, if not, they shall be paid pro rata; provided, that claims under this clause shall not be allowed if the assignor carried workmen's compensation insurance as provided by law at the time the injury was sustained;

(3) Wages of servants, laborers, mechanics, and clerks for services performed for the debtor within three months next preceding the assignment shall next be paid in full if there be sufficient wherewith to do so, and, if not, they shall be paid pro rata; but, to entitle any creditor to payment under this clause, his proof of claim must set forth facts showing that he is entitled hereunder;

(4) All other debts shall be paid in full if there be sufficient left wherewith to do so, and, if not, they shall be paid pro rata; provided, that no debt for which the creditor holds a mortgage, pledge, or other security shall be paid until he has exhausted his security, or has surrendered it to the assignee.

[R. L. s. 4618; 1925 c. 256] (9789)

577.09 PAYMENT OF DIVIDENDS; LIST OF CREDITORS. At least 20 days before paying any dividend or distributing any of the trust estate, the assignee shall file with such clerk a verified statement containing a list of all the creditors who have presented to him proofs of claim, as hereinbefore provided, and showing the nature and amount of each such claim; and, when any creditor thereafter shall present proof of claim to the assignee, he shall file a similar statement thereof, and pay nothing thereon until the expiration of 20 days thereafter.

[R. L. s. 4619] (9790)

577.10 POWERS OF COURT; REMOVAL AND DISCHARGE. The district court shall have supervision of all proceedings under this chapter. On petition of a creditor, the court, in its discretion, may, from time to time, require the assignee to render an account, and to file a report of his proceedings and of the condition of the trust estate, and may order distribution thereof. For cause shown, it may, in its discretion, remove the assignee, and appoint another instead, who shall give bond as the court may direct; and the order of removal and appointment shall, in terms, transfer all the trust estate to the new assignee, and may be filed for record with the register of deeds of any county wherein any land affected by the assignment is situated. Upon removal of an assignee, the court may require him to deliver to the new assignee all property, books of account, and vouchers belonging to the trust estate, to execute all necessary transfers, and to render an account and report of all matters connected therewith. When the assignee has complied with all the orders of the court, and when any assignee has completed his trust, he may apply to the court for his discharge, first giving three weeks' published notice of such application; the last publication to be not more than three weeks prior to the hearing thereon. If upon the hearing the court is satisfied that the

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assignee is entitled to such discharge, it shall so order; but, if in its opinion anything remains to be done by him, it shall require the performance thereof before making such order. A discharge shall not be refused because of any failure of the assignee to comply with the forms of law, if no damage has thereby resulted to any person. The order shall have the effect of discharging the assignee and his sureties from all further responsibilities in respect to the trust. When the trust estate is taken out of the hands of the assignee by proceedings in bankruptcy in the federal court, the assignee may be discharged upon showing that he has fully accounted with the trustee in bankruptcy, and turned over to him the whole trust estate. When the trust estate is taken out of the hands of the assignee by legal proceedings in any court, or the assignment is declared void as to creditors, or for any reason the further administration of the trust is rendered impracticable, inadvisable, or nugatory, the assignee shall in like manner be discharged.

[R. L. s. 4620] (9791)