

BUSINESS AND COMMERCE CODE

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 23. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.01. DEFINITIONS. In this chapter, unless the context requires a different definition,

(1) "assigned estate" means all the real and personal estate of an assigning debtor passing to the consenting creditors under an assignment by virtue of Section 23.02 or 23.09(b) of this code;

(2) "assignee" means an assignee for the benefit of creditors;

(3) "assigning debtor" means a person executing an assignment;

(4) "assignment" means a general assignment for the benefit of creditors made under this chapter;

(5) "consenting creditor" means a creditor who has consented to an assignment in one of the ways provided by Section 23.30 of this code; and

(6) "real and personal estate" does not include property exempt by law from execution.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.02. NATURE AND EFFECT OF ASSIGNMENT. (a) A debtor may assign his real and personal estate under this chapter to an assignee for the benefit of the debtor's creditors.

(b) An assigning debtor shall provide in the assignment for distribution of all his real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

(c) Regardless of an expression to the contrary, an assignment passes all an assigning debtor's real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

SUBCHAPTER B. THE ASSIGNMENT

Sec. 23.08. FORM AND CONTENT OF ASSIGNMENT. (a) For an assignment to be valid,

(1) the assigning debtor must make the assignment in writing; and

(2) it must be proved or acknowledged and recorded in the manner provided by law for the conveyance of real estate.

(b) The assigning debtor shall attach to his assignment an inventory containing the following information:

(1) a list naming each creditor of the assigning debtor;

(2) the resident address, if known, of each creditor;

(3) the amount owed each creditor and the type of debt;

(4) the consideration for the debt and the place where the debt arose;

(5) a description of each existing judgment or security for the payment of the debt;

(6) a schedule of all the assigning debtor's real and personal estate at the date of the assignment;

(7) a description of

(A) each encumbrance on the real and personal estate; and

(B) each voucher and security relating to the estate; and

(8) the value of the estate.

(c) The assigning debtor shall sign the inventory required by Subsection (b) of this section and swear that it is just and true.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.09. FRAUD DOES NOT DEFEAT ASSIGNMENT. (a) An assignment is not affected and a consenting creditor is not deprived of his proportionate share of the assigned estate by the fraudulent act or intent of the assigning debtor or assignee. A consenting creditor is a proper party to a suit filed to enforce a right under an assignment, or to protect an interest in an assigned

estate.

(b) Except as to an innocent purchaser for value, a transfer of property made in contemplation of an assignment with an intent to defeat, delay, defraud, or give preference to a creditor is void and the property passes under the assignment rather than by the transfer.

(c) An assignee may sue to recover property transferred with an intent described in Subsection (b) of this section, and when the property is recovered, the assignee shall apply it for the benefit of the assigning debtor's creditors along with property belonging to the assigned estate already in the assignee's possession. If an assignee neglects or refuses to sue to recover property transferred with an intent described in Subsection (b) of this section, a creditor, after securing the assignee against cost or liability, may sue in the assignee's name to recover the property.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.10. ASSIGNMENT DISCHARGES DEBTOR. If an assigning debtor makes an assignment, he is discharged from liability on the claim of a consenting creditor unless the consenting creditor does not receive at least one-third of the amount allowed on his claim against the assigned estate.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

SUBCHAPTER C. DUTIES AND RIGHTS OF ASSIGNEE

Sec. 23.16. ASSIGNEE'S QUALIFICATIONS, DUTY TO RECORD ASSIGNMENT, AND BOND. (a) An assignee shall be a resident of this state and a resident of the county in which the assigning debtor resides, or in which the assigning debtor's principal business was conducted.

(b) Immediately after the assignment instrument is executed and delivered to him, the assignee shall record it in the county of his residence and in each county in which there is real property conveyed to the assignee by the assignment.

(c) Within five days after delivery to him of the assignment instrument, the assignee shall execute a bond

(1) with a surety who must be approved by the judge of either the county or district court in the county of the assignee's residence;

(2) conditioned that he will perform faithfully his duties as assignee and distribute proportionately the net proceeds of the assigned estate to the consenting creditors entitled to it under the assignment;

(3) in an amount fixed by the county or district judge;

(4) payable to the state; and

(5) which inures to the benefit of the assigning debtor and each of the creditors.

(d) The assignee shall file the bond with the county clerk of the county in which the assigning debtor resides and then the assignee shall take possession of the assigned estate and carry out the assignment.

(e) An assignment is valid as against an assigning debtor or his creditors even though the assignee fails to execute and file a bond as required by Subsections (c) and (d) of this section.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.17. NOTICE OF ASSIGNEE'S APPOINTMENT. (a) Within 30 days after an assignment is executed, the assignee shall publish notice of his appointment as assignee in a newspaper published in the county

(1) where the assigning debtor resides or where he operated his principal business before the assignment; or

(2) nearest the assigning debtor's residence or principal business if a newspaper is not published in the county of the assigning debtor's residence or principal business.

(b) The assignee shall publish notice of his appointment as assignee once each week for three consecutive weeks.

(c) The assignee shall notify by mail each of the assigning debtor's listed creditors of his appointment as assignee.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.18. REPLACEMENT OF ASSIGNEE. (a) A county or district court of the county in which the assignee resides shall

remove or replace the assignee on application of the assigning debtor or a creditor, or on its own motion,

(1) if the court is satisfied that the assignee has not executed and filed the bond required by Sections 23.16(c) and (d) of this code;

(2) if the assignee refuses or fails to serve for any reason; or

(3) for good cause.

(b) On removal, resignation, or death of the assignee, the court shall appoint in writing a new assignee in term time or vacation.

(c) As soon as the new assignee executes and files a bond as required by Sections 23.16(c) and (d) of this code, he shall take possession of the assigned estate and carry out the assignment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.19. ASSIGNEE'S DUTY TO DISTRIBUTE ASSIGNED ESTATE. Each time an assignee has enough money to pay 10 percent of the assigning debtor's debts, he shall distribute the money among the creditors entitled to receive it in proportion to their claims allowed under Section 23.31(b) of this code.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.20. DISCOUNT OF CLAIM NOT DUE AND ALLOWANCE OF SECURED CLAIM. (a) The assignee may allow a claim which is not due at its present value by discounting it at the legal rate.

(b) If a creditor holds collateral to secure his claim worth less than his claim, the assignee may estimate the value of the collateral and allow the creditor as a claim against the assigned estate only the difference between the value of the collateral and the amount of the claim.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.21. ASSIGNEE'S ENTITLEMENT TO COMPENSATION. An assignee is entitled to reasonable compensation for his services and reimbursement for his necessary expenses, including an attorney's fee, all of which shall be fixed by the county or

district court who approved his bond. The compensation, expenses, and attorney's fee fixed by the county or district court shall be paid out of the assigned estate.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.22. EXAMINATION OF DEBTOR OR OTHER PERSON. (a) The court in which a proceeding involving an assigned estate has been filed may, after reasonable notice to each person concerned, compel any person to answer questions under oath on

(1) application of a creditor of the assigning debtor;
or

(2) its own motion.

(b) The court may compel attendance and an answer to any question concerning the assigned estate by writ or order as in other cases. Questions asked and answers given during the examination shall be in writing, the person examined shall swear to and sign his answers before the clerk, and the questions and answers shall be filed with the clerk for use by anyone interested in the proceeding.

(c) The court shall charge the cost of the examination against the applicant or the assigned estate, as the court deems proper.

(d) The assigning debtor may not be prosecuted or punished for an answer given by him during the examination.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.23. ASSIGNEE'S FINAL REPORT AND DISCHARGE. (a) An assignee wishing to be discharged from his appointment shall prepare and file for record with the county clerk of the county in which his assignment is recorded a sworn report describing

(1) all property which came into his possession under the assignment; and

(2) how and to whom he distributed the property.

(b) The assignee shall also deposit in the registry of the court who approved his bond money belonging to the assigned estate still in his possession at the time he files his report under Subsection (a) of this section. The court shall distribute the money under this chapter to the consenting creditors and assignee

and, in the case of surplus, to the nonconsenting creditors and assigning debtor.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.24. TIME LIMIT ON BRINGING ACTION AGAINST ASSIGNEE.

An action against an assignee based on his conduct in carrying out the assignment, as shown in his report filed under Section 23.23(a) of this code, must be brought within 12 months after the report is filed or the action is barred.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

SUBCHAPTER D. DUTIES AND RIGHTS OF CREDITORS

Sec. 23.30. CREDITOR'S CONSENT TO ASSIGNMENT. (a) A

creditor must inform the assignee in writing of his consent to the assignment within four months after the assignee gives the notice required by Section 23.17 of this code.

(b) If a creditor is not given actual notice of an assignment, but subsequently learns of the assignment, he may consent to the assignment at any time before the first distribution of the assigned estate is begun.

(c) Receipt by a creditor of payment for part of his claim from the assignee is conclusive evidence of the creditor's consent to the assignment.

(d) If a creditor does not consent to an assignment, he is not entitled to receive any of the assigned estate under the assignment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.31. CREDITOR'S PROOF AND ASSIGNEE'S ALLOWANCE OF CLAIM. (a) Within six months after the first publication of notice

of appointment required by Section 23.17 of this code, a consenting creditor must file with the assignee a statement, sworn to by the creditor, his agent, or attorney,

(1) describing the nature and amount of the creditor's claim against the assigning debtor; and

(2) stating that

(A) the claim is true;
(B) the debt is just; and
(C) all proper credits or offsets have been allowed against the claim.

(b) The assignee shall allow a claim filed under Subsection (a) of this section against the assigned estate unless he has good reason to believe the claim is not just and true.

(c) If a creditor does not file a statement in the time required by Subsection (a) of this section, he is not entitled to receive any of the assigned estate.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.32. CREDITOR'S SUIT ON DISPUTED CLAIM. (a) The assignee shall give any creditor a copy of any statement of claim filed under Section 23.31(a) of this code if the creditor requests a copy.

(b) Within eight months after the first publication of notice required by Section 23.17 of this code, an assigning debtor or creditor may sue to

(1) set aside an allowance made on a claim by the assignee; and

(2) restrain payment of the claim by the assignee.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.33. NONCONSENTING CREDITOR'S RIGHT TO SURPLUS. If a creditor does not consent to an assignment, he may garnishee the assignee for the excess of the assigned estate remaining in the assignee's possession after the assignee has paid

(1) each consenting creditor the amount of his claim allowed under Section 23.31(b) of this code; and

(2) the expense of carrying out the assignment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.