

CHAPTER 681

ASSIGNMENT FOR BENEFIT OF CREDITORS

Referred to in §523H.7, 537A.10, 602.8102(122)

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681.1 Must be without preferences.

No general assignment of property by an insolvent person, firm, or corporation, or in contemplation of insolvency, for the benefit of creditors, shall be valid unless it be made for the benefit of all the creditors in proportion to the amount of their respective claims; and in every such assignment the assent of the creditors shall be presumed.

[C51, §977, 978; R60, §1826, 1827; C73, §2115, 2116; C97, §3071; C24, 27, 31, 35, 39, §12720; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 681.1]

681.2 How made.

Every such assignment shall be by an instrument in writing, setting forth the name of the assignor, the assignor's residence and business, the name of the assignee and the assignee's residence and business, and, in a general way, the property assigned and its location, and the purpose of the assignment.

[C97, §3072; C24, 27, 31, 35, 39, §12721; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.2]

681.3 Execution — record and index.

It shall be signed and acknowledged in the manner prescribed for the execution and acknowledgment of deeds, and recorded in the office of the recorder of the county where the assignor resides, and in any other county in the state in which the assignor has real property to be assigned thereby, in the records of deeds, and indexed in the proper index books.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12722; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.3]

681.4 Inventory — list of creditors.

The assignor shall annex to such instrument an inventory, under oath, of the assignor's estate, real and personal, according to the best of the assignor's knowledge, and a list of the assignor's creditors and the amount of their respective demands, but such inventory shall not be conclusive as to the amount of the debtor's estate.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12723; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.4]

681.5 Effect of assignment.

Such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment, not exempt from execution.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12724; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.5]

681.6 Filing with clerk.

As soon as such assignment is recorded, it shall be filed, with the inventory and list of creditors, in the office of the clerk of the district court, as shall all subsequent papers connected with such proceedings.

[R60, §1828; C73, §2117; C97, §3072; C24, 27, 31, 35, 39, §12725; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.6]

681.7 Inventory and appraisalment — bond.

The assignee shall forthwith file with the clerk of the district court where such assignor resides a true and full inventory and valuation of said estate under oath, so far as the same has come to the assignee's knowledge, and shall then enter into bonds to said clerk, for the use of the creditors, in double the amount of the inventory and valuation, with one or more sureties to be approved by said clerk, for the faithful performance of said trust, and the assignee may thereupon proceed to perform any duty necessary to carry into effect the purpose of said assignment.

[R60, §1830; C73, §2118; C97, §3073; C24, 27, 31, 35, 39, §12726; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.7]

681.8 Notice of assignment — notice to creditors.

The assignee shall forthwith give notice of such assignment by publication in some newspaper in the county, which shall be continued, once each week, at least six weeks, and forthwith send a notice by mail to each creditor of whom the assignee shall be informed, directed to the creditor's usual place of residence, requiring such creditor to file in the office of the clerk of the district court within three months thereafter the creditor's claims under oath.

[R60, §1829; C73, §2119; C97, §3074; S13, §3074; C24, 27, 31, 35, 39, §12727; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.8]

Referred to in §681.9

681.9 Claims filed.

The claims of all creditors, clearly and distinctly stated and sworn to by the claimant, or by some person acquainted with the facts, shall be filed in the office of the clerk of the district court within three months from the date of the first publication provided for in section 681.8, unless the court extends such time for all or some of such claimants, which it may do in its discretion where peculiar circumstances seem to justify such extension, but in no case shall such time be extended beyond nine months.

[C97, §3075; C24, 27, 31, 35, 39, §12728; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.9]

681.10 Report required.

At the expiration of three months from the time of first publishing notice, the assignee shall report and file with the clerk of the court a true and full list, under oath, of all such creditors of the assignor as shall have claimed to be such, with a statement of their claims, an affidavit of publication of notice, and a list of the creditors, with their places of residence, to whom notice has been sent by mail, and the date of mailing the same.

[R60, §1831; C73, §2120; C97, §3076; C24, 27, 31, 35, 39, §12729; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.10]

681.11 Claims contested.

Any person interested may appear within three months after such report is filed and contest the claim or demand of any creditor by written exceptions thereto filed with the clerk, who

shall forthwith cause notice thereof to be given to the creditor, which shall be served as in case of an original notice.

The action shall be accorded reasonable priority for assignment to assure its prompt disposition. The court may order a trial by jury but if it does not, it shall hear the proofs and allegations of the parties in the case and render such judgment thereon as shall be just.

[R60, §1832; C73, §2121; C97, §3077; C24, 27, 31, 35, 39, §12730; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.11]

681.12 Priority of taxes — nonnecessity to file claim.

In all assignments of property for the benefit of creditors, assessments thereof, or taxes levied thereon, whether under the laws of the state or ordinances of municipal corporations, shall be entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with the assignee.

[C97, §3078; C24, 27, 31, 35, 39, §12731; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.12]

Referred to in §681.14

681.13 Labor claims preferred.

If the claim of any creditor is for personal services rendered the assignor within ninety days next preceding the execution of the assignment, it shall be paid in full.

[C97, §3079; C24, 27, 31, 35, 39, §12732; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.13]

Referred to in §681.14

[P] Labor or wage claims preferred, §626.69, 633.425, 680.7

681.14 Dividends — compensation.

Subject to the provisions contained in sections 681.12 and 681.13, if no exception be made to the claim of any creditor, or if the same has been adjudicated, the court shall order the assignee to make, from time to time, fair and equal dividends among the creditors of the assets in the assignee's hands in proportion to their claims, and as soon as may be to render a final account of said trust to said court, which may allow such compensation to said assignee in the final settlement as may be considered just and right.

[C73, §2122; C97, §3079; C24, 27, 31, 35, 39, §12733; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.14]

681.15 Absent creditor.

If, upon making the final dividend to the creditors, the assignee shall be unable, after reasonable efforts, to ascertain the place of residence of any creditor, or any person who is authorized to receive the dividend due the person, the assignee shall report the same to the court, with evidence showing diligent attempts to find such creditor or person authorized to receive the dividend, whereupon the court may, in its discretion, order the distribution of the unclaimed dividend among the other creditors.

[C97, §3079; C24, 27, 31, 35, 39, §12734; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.15]

681.16 Power of court.

The assignee shall be at all times subject to the order and supervision of the court, and from time to time may be compelled by citation or attachment to file reports of the assignee's proceedings and of the situation and condition of the trust, and to proceed in the execution of the duties required by this chapter.

[R60, §1834, 1842; C73, §2123; C97, §3080; C24, 27, 31, 35, 39, §12735; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.16]

681.17 Disposal of property — time limit.

The assignee shall dispose of all personal property and divide the proceeds of the same among creditors as they may be entitled thereto within six months from the date of the assignment, and shall dispose of real estate within one year from such date, and make full

settlement by that time, unless the court, for good reason shown, shall extend the time within which such disposition or settlement shall be made.

[C97, §3080; C24, 27, 31, 35, 39, §12736; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.17]

681.18 Neglect to file inventory or list.

No assignment shall be declared fraudulent or void for want of any list or inventory, as provided in this chapter.

[R60, §1835; C73, §2124; C97, §3081; C24, 27, 31, 35, 39, §12737; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.18]

681.19 Examination of debtor.

The court may, upon application of the assignee or any creditor, compel the appearance in person of the debtor before such court or forthwith to answer under oath such matters as may be inquired of the debtor, and such debtor may be fully examined under oath as to the amount and situation of the debtor's estate, and the names of the creditors and amounts due to each, with their places of residence, and may be compelled to deliver to the assignee any property or estate embraced in the assignment.

[R60, §1835; C73, §2124; C97, §3081; C24, 27, 31, 35, 39, §12738; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.19]

681.20 Additional inventory and security.

The assignee shall, from time to time, file with the clerk of the court an inventory and valuation of any additional property which may come into the assignee's hands under said assignment after the filing of the first inventory, and the clerk may thereupon require the assignee to give additional security.

[R60, §1836; C73, §2125; C97, §3082; C24, 27, 31, 35, 39, §12739; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.20]

681.21 Claims not due.

Any creditor may claim debts to become due, as well as debts due, but on debts not due a reasonable rebate shall be made when the same are not drawing interest.

[R60, §1837; C73, §2126; C97, §3083; C24, 27, 31, 35, 39, §12740; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.21]

681.22 Claims filed after three months.

All creditors who shall not file their claims within three months from the publication of notice, as aforesaid, shall not participate in the dividends until after the payment in full of all claims presented within said term, and allowed by the court, unless the court has extended the time for filing such claims, except as provided by this chapter.

[R60, §1837; C73, §2126; C97, §3083; C24, 27, 31, 35, 39, §12741; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.22]

681.23 Sale of property generally.

The assignee may dispose of and sell all the estate assigned, real and personal, which the debtor had at the time of the assignment, may sue for and recover in the assignee's name everything belonging or appertaining to said estate, and generally do whatever the debtor might have done in the premises.

[R60, §1838; C73, §2127; C97, §3084; C24, 27, 31, 35, 39, §12742; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.23]

681.24 Sale of real estate.

No sale of real estate belonging to said trust shall be made without notice, published as in case of sales of real estate on execution, unless the court shall otherwise order.

[R60, §1838; C73, §2127; C97, §3084; C24, 27, 31, 35, 39, §12743; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.24]

[P] Sale of real estate, §626.74 et seq.

681.25 Approval of sales.

No such sales shall be valid until approved by such court.

[C97, §3084; C24, 27, 31, 35, 39, §12744; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.25]

681.26 Mandatory removal of assignee.

Upon a written application of two-thirds of the creditors in number, and two-thirds in amount, the court shall remove the assignee and appoint in the assignee's stead a person approved by the creditors in the same number and amount.

[C97, §3085; C24, 27, 31, 35, 39, §12745; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.26]

681.27 Permissive removal of assignee.

If an assignee shall reside out of the state, or become mentally ill or otherwise incapable of discharging the trust, the court may, upon ten days' notice to the assignee or the assignee's attorney remove the assignee and appoint another in the assignee's stead.

[C97, §3085; C24, 27, 31, 35, 39, §12746; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.27]

96 Acts, ch 1129, §113

681.28 Accounting and delivery.

The person so removed shall immediately turn over to the clerk of the district court, or any person appointed by the court, all moneys and property of the estate in the person's hands.

[C97, §3085; C24, 27, 31, 35, 39, §12747; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.28]

681.29 Death of assignee — failure to act.

If an assignee dies before the closing of the assignee's trust, or in case any assignee shall fail or neglect for the period of twenty days after the making of any assignment to file an inventory and valuation, and give bond as required by this chapter, the district court of the county where such assignment may be recorded, on the application of any person interested, shall appoint some person to execute the trust, who shall, on giving bond with sureties as required of an assignee, have all of the powers of the assignee first appointed, and be subject to all the duties hereby imposed.

[R60, §1839; C73, §2128; C97, §3086; C24, 27, 31, 35, 39, §12748; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.29]

681.30 Additional security — misconduct.

In case any bond or surety is found to be insufficient, or, on complaint before the court, it shall be made to appear that any assignee is guilty of wasting or misapplying the trust estate, such court may require additional security, may remove the assignee and appoint another in the assignee's place, and such person so appointed, on giving bond, shall execute such duties, and may demand and sue for all estate in the hands of the person removed, and recover the amount and value of all moneys and property or estate wasted and misapplied, from such person and the person's sureties.

[R60, §1839; C73, §2128; C97, §3086; C24, 27, 31, 35, 39, §12749; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §681.30]

681.31 Repealed by 67 Acts, ch 400, § 216.