

Assignment for the Benefit of Creditors and State Law Preferences

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Abstract

An assignment for the benefit of creditors, also called an ABC or an assignment, is a state law insolvency proceeding used by debtors as an alternative to liquidating assets under the United States Bankruptcy Code.¹ ABCs are increasingly popular with financially distressed businesses because of real or perceived cost savings when compared to a proceeding under either Chapter 11 or Chapter 7 of the Code. An ABC is not necessarily limited to smaller companies. The high fixed costs involved in a bankruptcy proceeding may threaten to consume a company's assets in cases where there are few liquid assets, making a bankruptcy impractical. Financing for bankruptcy proceedings is not insulated from the general lack of financing. Even when credit markets loosen and sources of financing become available, an assignment will continue to be an attractive alternative to managers of troubled companies who find that Chapter 11 does not fit their circumstances.

¹ Hereinafter "Bankruptcy Code" or "Code."
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Although ABCs are similar to liquidation under Chapter 7 of the Bankruptcy Code, they can be more efficient. They are often less time consuming, subject to less oversight, less public and less expensive, though this depends on whether the state law in question calls for judicial oversight of the ABC or the proceedings fall under more common law, non-judicial rules.² ABCs are faster than bankruptcy cases because in many states, ABCs require no mandatory court oversight or involvement. If an assignment does not require court oversight, the main procedural requirement of an ABC is to properly notice creditors of the assignment.

Most states reference ABCs in their state law through UCC §9-309, which provides that an assignment is perfected when it attaches.³ This makes filing or giving other notice unnecessary for the assignee to have rights over other creditors for the assets assigned to it.⁴ Despite this reference to an ABC in the Uniform Commercial Code, as adopted by many states, many statutes, and the UCC itself, are...

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² See, e.g., Wisconsin Stat. §128.01 (providing that "the circuit courts shall have supervision of proceedings under this Chapter and may make all necessary orders and judgments therefor [sic] and all assignments for the benefit of creditors shall be subject to this Chapter.").

³ UCC §9-309.

⁴ Most states have adopted UCC §9-309, which gives the assignee the rights of a perfected secured creditor as of the date of the general assignment. This allows the assignee to preserve the debtor's estate for the benefit of all creditors as of the time of assignment and gives the assignee priority over any unsecured creditors except for perfected secured creditors and certain priority creditors.