

**REVISED JUDICATURE ACT OF 1961 (EXCERPT)**

**Act 236 of 1961**

**CHAPTER 52**

**ASSIGNMENTS FOR THE BENEFIT OF CREDITORS**

**600.5201 Common law assignments for the benefit of creditors; requirements for validity; bond of assignee; filing; approval; attachment or execution on assigned property; acknowledgment; inventory.**

Sec. 5201. (1) All assignments commonly called common law assignments for the benefit of creditors are void unless the same are without preferences as between such creditors and are of all the property of the assignor not exempt from execution, and the instrument of assignment (or a duplicate thereof), a list of creditors of the assignor, and a bond for the faithful performance of the trust by the assignee are filed in the office of the clerk of the circuit court where said assignor resides, or if he is not a resident of the state, then of the county where the assigned property is principally located, within 10 days after the making thereof.

(2) No such assignment is effectual to convey the title to the property to the assignee until such bond is filed with and approved by said clerk.

(3) No attachment or execution levied upon any assigned property of such assignor after such assignment and before the expiration of the time provided herein for filing such bond, is valid, and does not create any lien upon such property.

(4) Such assignment shall be acknowledged before some officer authorized to take acknowledgments. Such inventory shall be a detailed statement as near as may be of the general description, value and location of all the property and rights assigned, and in cases of persons engaged in business, specifying the original cost of any goods, wares, merchandise, fixtures and furniture. Such list of creditors shall, as far as the assignor can state the same, contain the name and post office address of each creditor, the amount due as near as may be over and above all defenses, the actual consideration for the debt, when contracted, and all securities and the value thereof held by each creditor. Such inventory and list of creditors shall be sworn by the assignor to be full, true and correct to the best of his knowledge, information and belief.

(5) Such bond shall be to the assignor for the joint and several use and benefit of himself and each, any and all of the creditors of such assignor in a penal sum at least double the value of the assigned property as shown by such inventory, and conditioned for the prompt and faithful administration of the trust by the assignee and shall be signed by the assignee and sufficient surety or sureties, who shall, under oath endorsed on said bond, testify that they are worth in the aggregate over and above all exemptions, incumbrances and debts, the penal sum of said bond.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.5205 Property conveyed; general powers of assignee.**

Sec. 5205. Such assignment shall be deemed to convey to the assignee all property of the assignor not exempt from execution, and all rights legal or equitable of said assignor. The assignee shall also be trustee of the estate of the debtor for the benefit of his creditors and may recover all property or rights or equities in property which might be recovered by any creditor. When more than 1 assignee is appointed, the debts and property of the assignor may be collected and received by 1 of them and when there are more than 2 assignees, every power and authority of the whole may be exercised by any 2 of them. The survivor or survivors of any assignees shall have all their powers and rights and all property in the hands of any assignee at the time of his death, removal or incapacity, shall be delivered to the remaining assignee or assignees if there be any, or to the successor of the one so dying, removed or incapacitated, who may demand and sue for the same.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.5211 Specific powers of assignee.**

Sec. 5211. Among other things the assignee has the power to:

(1) Sue in his own name as such assignee and recover all the estate, debts and things in action belonging to or due to such assignor in the manner and with like effect as he might or could have done if an assignment had not been made, but no suit seeking equitable relief shall be brought by the assignee involving less than \$500.00 without the consent of the court.

(2) Take into his hands all the estate of such assignor whether delivered to him or afterwards discovered, and all books, vouchers and papers relating to the same;

(3) From time to time sell the assets at public auction or at private sale, as herein provided;

- (4) Redeem all mortgages and conditional contracts or other incumbrances and pledges of personal property; or sell such property subject to such incumbrances, contracts or pledges;
- (5) Settle all matters and accounts between such assignor and his debtors and creditors and examine, on oath to be administered by him, any person touching such matters and accounts;
- (6) Compound with any person indebted to such assignor, under order of said court or judge;
- (7) Prosecute or defend suits pending in favor of or against the assignor.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.5215 Appraisal of property; sale; notice.**

Sec. 5215. As soon as practicable after receiving said assignment, the assignees shall cause an appraisal of such property to be made by 2 disinterested competent persons under oath, and filed with the clerk of the court. Within 10 days after completion of the appraisal, the assignee shall apply to the circuit court or the judge thereof for the exercise of its equitable power to direct the disposition of the assets. Such application shall be by petition, showing what, in the opinion of the assignee, is the most advantageous method of effecting such disposition. Notice of such application of not less than 10 days shall be given by mail to all creditors known to the assignee, and proof thereof filed with the clerk prior to such hearing. The assigned property and assets shall be sold at public or at private sale, in 1 parcel or separately, as said court or judge may direct. At least 14 days' notice of the time and place of any public sale shall be given by publishing the same in a newspaper printed and circulated in the county where the sale shall be made, if there be one, and if not then in such paper as the court shall direct, once in each week for at least 2 successive weeks prior to said sale and by mailing a copy of the same to all creditors. All sales of personal property shall be for cash, but on sales of real property credit may be given for not exceeding 1 year and for not more than 3/4 of the purchase money, which shall be secured by mortgage on the property sold.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.5221 Proof of claims; notice; filing; list of creditors.**

Sec. 5221. Within 10 days after receiving such trust, the assignee shall give notice to all creditors personally or by mail (accompanied by blank proof of claim) requiring them to prove their claims within 90 days thereafter by a proof of claim to be filed with the assignee, or in default thereof, that the assignee will proceed to distribute the estate as soon as practicable without reference to claims not proved when dividends are paid. It shall not be obligatory upon the assignee to receive proofs of claim after the expiration of said 90 day period except upon order of the court, and the court shall not allow any claim by any creditor so notified to be received after the expiration of 1 year from the date on which the assignment is filed. Within 10 days after the expiration of said 90 day period the assignee shall serve personally or by mail upon each of the creditors a complete list of all creditors who have filed proof of claim giving in each instance the name, post office address and amount claimed. After the expiration of 20 days from the time when said notice is given, the assignee shall file all proofs of claim with the clerk of the court accompanied by any notices of contest which he may decide to make.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.5225 Proof of claims; contents; verification.**

Sec. 5225. Each proof of claim must be sworn to and must state the actual amount unpaid and owing, the actual consideration thereof, when the same was contracted, when the same has become or will become due, whether any or what securities are held therefor, whether any and what payments have been made thereon, that the sum claimed is justly owing from the assignor to the claimant, and that the claimant has not, nor has any other person for his use, received any security or satisfaction whatever other than that set forth in such proof. When the claim is founded upon an account an itemized statement thereof shall be given and when the claim is founded upon any note or similar instrument, a copy thereof shall be attached and the production of the original may be required by the assignee.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.5231 Contest of claims; procedure, costs; filing fee.**

Sec. 5231. The assignee may contest any claim. Any creditor desirous of having a claim contested may by writing request the assignee to do so and the service of any such request shall operate to stay the payment of any dividend upon such claim until the further order of the court; or any creditor may petition the court for an order requiring the assignee to contest any claim. The contest of any claim shall be instituted by serving, personally or by mail, a notice upon the claimant stating that such claim will be contested and for what reasons. Upon said proof of claim and proof of such service being filed with the clerk of said court, he shall

enter such contest as cause in the name of such creditor against such assignor. The circuit court of such county shall proceed with the trial of said cause in the same manner as in other suits at law and shall have power to cause further pleadings to be filed and to allow new or amended ones as may be deemed necessary. The costs or any part thereof may be awarded to either party as the court may deem just and right under the circumstances. Whenever costs are awarded to the creditor, they shall be taxed and shall be paid by the assignee out of the assets if he has sufficient for that purpose. On the filing of the assignment referred to in section 5201, the assignor shall pay to the clerk of the court filing fee of \$5.00. For all subsequent proceedings, fees shall be due and payable in accordance with the provisions of the statute relating generally to trials in circuit court.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1963, Act 240, Eff. Sept. 6, 1963.

#### **600.5235 Set-off of mutual debts and credits.**

Sec. 5235. In all cases of mutual debts or mutual credits between the estate of an assignor and a creditor, the account shall be stated and 1 debt shall be set off against the other and the balance only shall be allowed or paid. A set-off or counter claim shall not be allowed in favor of any debtor of the assignor which is not provable against his estate, or which was purchased by or transferred to such debtor after the filing of the assignment or prior to the filing thereof with a view to such use and with knowledge or notice that such assignor was insolvent.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

#### **600.5241 Circuit courts; jurisdiction; supervisory powers; specific powers; examination; assignor and others; assignee; orders; circuit court commissioner.**

Sec. 5241. Circuit courts have original jurisdiction to hear and determine matters concerning assignments, commonly called common law assignments for the benefit of creditors, according to the following provisions.

(1) The circuit court of the county where the assignor resides, or if the assignor is not a resident of the state then the circuit court of the county where the assigned property is principally located, has supervisory power over all matters, questions, and disputes arising under all those assignments commonly called common law assignments for the benefit of creditors, except as otherwise provided.

(2) Upon the application of the assignee or of any other interested person the proper circuit court may make all necessary and proper orders for:

- (a) the management and disposition of the assigned property;
- (b) the allowance of claims;
- (c) the re-examination of claims;
- (d) the distribution of the assets and avails;
- (e) the recovery of all property claimed by third persons;
- (f) the prevention of any fraudulent transfer or change in the property or effects of the assignor or the allowance or payment of any unjust or fraudulent claims;
- (g) the furnishing from time to time of new bonds or sureties who shall qualify under the court rules, and
- (h) the removal of any assignee for cause and the appointment of a successor to any assignee who dies, resigns, or is removed.

(3) On the application of the assignee or any creditor the judge of this court may require the assignor or any other person to appear before him on reasonable notice and submit to examination under oath upon all matters relating to:

- (a) the disposal of the property of the assignor;
- (b) the assignor's trade and dealings with others and his accounts concerning his trade and dealings with others;
- (c) all debts due or claimed from the assignor;
- (d) any and all other matters concerning the assignor's property and estate or the concealment and embezzlement of his property and estate, and
- (e) the due settlement of the estate according to law. At the request of any party to the proceedings the examination may be reduced to writing and filed with the clerk of the county.

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(4) At any time before the final settlement of the accounts of the assignee the judge of the proper circuit court may require the attendance of and examine the assignee as to all matters appertaining to the estate of the assignor or the administration of the trust, and upon the examination he may make any order which he deems proper in regard to costs.

(5) No power conferred upon the judge by the above subsections (1) through (4) shall be exercised by a

circuit court commissioner except under a special reference made by the court.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.5245 Assignee; accounts; reports; completion of duties; extension of time; notice.**

Sec. 5245. The assignee shall keep a regular account of all money received by him, to which account every creditor or other interested person shall be at liberty at all reasonable times to have access. Within 3 months after receiving such trust, the assignee shall file a report in said clerk's office of the condition of said estate, containing a statement of all property whatsoever received by him and the disposition made thereof, and of all moneys received, disbursed and on hand, and shall quarterly thereafter make like report covering all matters since the preceding report. It shall be the duty of the assignee to close his trust if practicable within 1 year from the date the assignment is filed, but such court or judge shall have power upon cause shown to extend the time allowed for that purpose, for such further periods as may be reasonably necessary, but in case of application for any such extension, notice thereof by mail or otherwise as said court or judge may direct shall be given to the creditors who shall have the right to appear and be heard with reference thereto.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.5251 Payment of claims; order; method; time.**

Sec. 5251. (1) Funds available for distribution shall be applied to the payment of the following items and in the following order:

- (a) All taxes legally due and owing by the assignor to the United States, state, county or municipality;
- (b) The cost of administration;
- (c) All labor debts entitled to preference under the laws of this state;
- (d) All other debts which under the laws of the United States or of this state are entitled to priority;
- (e) All other claims preferred and allowed;
- (f) Any remaining surplus to be paid to the assignor, his representatives or assigns.

(2) In case the funds shall be insufficient to pay any class in full, then the same shall be distributed pro rata among such class. No dividend on general claims shall be paid until 20 days after the second notice required by section 5221 has been given and proof of service thereof filed with the clerk. If at the time any dividend is made, any suit or claim be pending in which a demand against such assignor may be established, the assignee shall retain in his hands the proportion which would belong to such demand if established, and the necessary costs and expenses of such suit or proceeding to be applied according to the event thereof or to be distributed in a subsequent dividend. Any creditor, who shall have neglected to make proof of his claim before any dividend but who shall make proof before a subsequent dividend, shall receive the sum or sums he would have been entitled to on any former dividend or dividends before any further distribution be made to other creditors. It shall be the duty of the assignee to endeavor to make payment of all dividends to the persons entitled thereto. If any dividend that shall have been declared shall remain unpaid to the person entitled thereto until the estate is otherwise ready to be closed, the assignee shall consider it relinquished and shall distribute it among the other creditors unless otherwise ordered by the court.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.5255 Compensation of assignee; application; notice to creditors.**

Sec. 5255. The assignee shall receive for his services, such compensation as may be allowed by the court. In the event of an estate being administered by more than 1 assignee or by successive assignees, the court shall apportion the compensation between them according to the services actually rendered so that there shall not be paid to the assignees for the administering of any estate a greater amount than 1 assignee would be entitled to. The court may in its discretion withhold all compensation from any assignee who has been removed for cause. Ten days' notice by mail shall be given to the creditors of all applications for the allowance to the assignee of compensation and expenses, stating the amount of compensation and the items of expenses for which allowance is asked.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.

**600.5261 Civil action for enforcement of trust; grounds; appointment of receiver or assignee; summary examination; powers, duties, and compensation of receiver.**

Sec. 5261. In case there is any fraud in the matter of the assignment, or if the assignee fails to file it, or to qualify or to comply with any of the provisions of this chapter, or to promptly and faithfully execute the trust, any person interested therein may bring a civil action in the proper county for the enforcement of the trust. The court in its discretion may appoint a receiver or assignee therein and may order the summary examination of any party or witness at any stage of the cause or other proceedings under this chapter, relative to the

matters of the trust, and enforce attendance and the giving of testimony. A receiver shall have the same rights, powers, duties, and compensation and be subject to all the obligations and liabilities of an assignee.

**History:** 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 297, Eff. Apr. 1, 1975.

**600.5265 Nature of proceedings.**

Sec. 5265. Proceedings under this chapter, except the contest of claims under section 5231, are equitable in nature.

**History:** 1961, Act 236, Eff. Jan. 1, 1963.