Assignments for the Benefit of Creditors - A Bankruptcy Alternative

Description: Start Time: 1:00 PM ET
Date: 09/05/2016

Recognize when the use of an assignment may be advantageous versus the debtor turning to a liquidation under chapter 7 of the bankruptcy code.

Receive an overview of the basics to general assignments for the benefit of creditors, a state law alternative for the liquidation of a distressed business that while long available under state laws, has had little use outside of states such as California, Illinois, Florida and Massachusetts. States such as Washington and Minnesota have enacted new statutory schemes addressing the use of ABCs (as receivership actions) and other states are considering new statutory schemes as well. The fiduciary nature and responsibilities of the assignee will be covered, as will the advantages and disadvantages to the process as compared to bankruptcy. Gain a better understanding of the nature of general assignments and how to recognize when the use of an assignment may be advantageous versus the debtor turning to a liquidation under chapter 7 of the bankruptcy code.

Learning Objectives:
- You will be able to review the basics of what is an assignment for the benefit of creditors.
- You will be able to discuss creditor alternatives to the assignment.
- You will be able to describe benefits and advantages of assignments to bankruptcy.
- You will be able to explain the recovery of preferential transfers under state law and preemption issues.

Who Should Attend:

This live webinar is designed for attorneys, presidents, vice presidents, branch managers, loan officers, loan department personnel, credit and collection managers, business owners and managers, directors, controllers and accountants.

Contents:
Basics of What Is an Assignment for the Benefit of Creditors
- Nature of the Assignment Contract
- Court Supervised vs. Statutory or Common Law Assignments
- How Is the Assignee Chosen; Who Can Serve as the Assignee
- Rights and Duties of the Assignee
- Assets Transferred
- Responsibility for Creditor Claims
- Filing of Claims by Creditors (Bar Dates, Requirement to File Claim to Share in Distributions to Creditors)

Impact of Secured Claims on Assignment
- Validating Secured Creditor Claims
- Priority of Competing Security Interests Including That of the Assignee
- Rights of Other Creditors Including Federal Government Claims and Trust Fund Claims
- Priority of Creditor Claims (State and Local Taxes, Employee Wage Claims, Customer Deposits, Etc.)

Creditor Alternatives to the Assignment
- Involuntary Bankruptcy
- Abstention Under Bankruptcy Code Section 305
- Mandatory Dismissal Under Bankruptcy Code Section 542

Other Creditor Remedies
- Choice of Creditor Representatives Under Selected State Laws

Benefits and Advantages of Assignments to Bankruptcy
- Flexibility of the Process (State Dependent)
- Speed With Which the Assignee Can Liquidate Assets
- Lack of Court Involvement (State Dependent)
- Assignee Has the Rights of a Lien Creditor Under Uniform Commercial Code

Disadvantages of Assignments
- No Court Supervision (State Dependent)
- Creditors Have No Say in Choice of Assignee
- Limited Recourse Against Assignee for Breach of Fiduciary Duty in Administering the Assignment Estate
- Inability to Limit the Impact of Ipso Facto Clauses in Contracts (as Distinguished From Bankruptcy Where Those Clauses Are Void)

Recovery of Preferential Transfers Under State Law and Preemption Issues
- State Law Recovery Statutes
- Need to Show Intent to Prefer
- Impact of Sherwood Partners v. Lycos Case and Case Law That Has Followed Limiting That Decision

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