

Chapter 26

New Jersey

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§ 26:1 Overview

- 1. What is the name of the process?** Assignment for the Benefit of Creditors.
- 2. Is the proceeding statutory or governed by case law?** The process is statutory, governed by §§ 2A:19-1 et seq. of the New Jersey Statutes (the Assignment Statute) and Rule 4:54 of the Rules Governing the Courts of the State of New Jersey (the New Jersey Court Rules).¹ Rule 4:54 provides that the practice relating to assignment for the benefit of creditors “shall conform as nearly as practicable to the procedure relating to insolvent corporations.” Likewise, the Superior Court of New Jersey has held that where the Assignment Statute is either silent or ambiguous, “it is interstitially construable in accordance with what is

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¹See N.J. Stat. Ann. § 2A:19-6.

regarded as the more modern and hence more commercially acceptable and responsive provisions of the Receivership Act [N.J. Stat. Ann. 14A:14-1 et seq.].”² In addition, the statute governing liquidation proceedings provides that “liquidation proceeding” includes all assignments for the benefit of creditors.³

3. What facts are required to establish jurisdiction for the procedure in the state? Any corporation organized under the laws of the State of New Jersey may file an assignment proceeding in the county in which the corporation’s principal office is located.⁴ A partnership may file an assignment proceeding if at least one partner resides in New Jersey.⁵

4. Is the process available only to general business corporations, or may nonprofits, insurance companies, railroads, financial institutions or other special entities liquidate using the process? The Assignment Statute provides that any corporation organized under the laws of the State of New Jersey may file an assignment proceeding. Thus it appears that the process is not limited to business corporations.⁶ However, New Jersey law provides for the liquidation of specific types of entities which are or can be alleged to be exclusive. For example, it is clear that the liquidation of an insurer must be conducted under N.J. Stat. Ann. §§ 17B:32-31 et seq.⁷

The process is also available for individuals;⁸ however, unlike a proceeding under Chapter 7, 11, or 13 of the Bankruptcy Code, an assignment for the benefit of cred-

²*Rosner v. Plaza Hotel Associates, Inc.*, 146 N.J. Super. 447, 455, 370 A.2d 41, 21 U.C.C. Rep. Serv. 321 (App. Div. 1977). See also *In re Holly Knitwear, Inc.*, 115 N.J. Super. 564, 571, 280 A.2d 504, 71-2 U.S. Tax Cas. (CCH) P 9654, 28 A.F.T.R.2d 71-5536 (County Ct., P. Div. 1971), judgment modified, 140 N.J. Super. 375, 356 A.2d 405, 76-1 U.S. Tax Cas. (CCH) P 9437, 37 A.F.T.R.2d 76-1332 (App. Div. 1976).

³See N.J. Stat. Ann. § 2A:46-1.

⁴N.J. Stat. Ann. § 2A:19-44, 45.

⁵N.J. Stat. Ann. § 2A:19-50.

⁶N.J. Stat. Ann. § 2A:19-44.

⁷See N.J. Stat. Ann. § 17B:32-34.

⁸See N.J. Stat. Ann. § 2A:19-7.