

Bulk Sales Statutes Another Remedy for Unsecured Creditors

Creditors that extend credit to businesses without obtaining security are sometimes surprised to learn that a debtor has surreptitiously sold off the assets of its business, leaving little of value to satisfy the claims of creditors. The assets may have been sold for less than fair market value, or the principals of the business may have absconded with the proceeds of the sale.

In such circumstances, protection may be afforded the creditor by resort to applicable bulk sales statutes. Bulk sales statutes, with some variations, have been adopted by nearly every state as part of the Uniform Commercial Code. This article focuses on Kentucky's Bulk Sales Statutes. See, KRS 355.6-101, et seq. The purpose of the bulk sales statutes is to ensure that creditors are placed on notice when a business sells all or a major part of its inventory.

Kentucky's bulk sales statutes reflect this purpose by imposing fairly onerous burdens on purchasers of goods in bulk, requiring such purchasers to notify all known creditors of the debtor and to make sure that the funds used to purchase the goods are distributed to those creditors.

A purchaser wishing to comply with the bulk sales statutes must require the debtor that is selling goods in bulk to prepare a list of its creditors and a schedule of the property transferred. The debtor must swear to the accuracy of the lists. The purchaser must either file the lists with the county clerk or maintain the lists for six months and make them available for inspection by the debtor's creditors during reasonable business hours.



In addition to obtaining and maintaining the aforementioned lists, the purchaser must provide notice of the bulk sale to all of the creditors on the list prepared by the debtor. The form and manner of delivery of such notice is specifically detailed in the bulk sales statutes.

As noted previously, in addition to providing the notice to the seller's creditors, Kentucky's bulk sales statutes require the purchaser to assure that all of the creditors of the seller are paid in full. If the consideration for the sale of the goods is insufficient to pay all of the creditors in full, the distribution is to be made on a pro rata basis.

If a purchaser of goods in bulk fails to comply with the bulk sales statutes, the sale will be deemed "ineffective against any creditor of the transferor." This means that the creditor may disregard the transfer and levy on the transferred goods as though they still belonged to the debtor.

If the purchaser has already resold or otherwise disposed of the goods by the time an action is brought by a creditor, the purchaser can be held personally liable up to the fair market value of the transferred goods. In effect, the purchaser can be forced to pay for the goods twice.

There are some important limitations on the availability of the bulk sales statutes as a remedy to creditors. For example, the bulk sales statutes apply only to transfers of the debtor's materials, supplies and inventory in

bulk, and not in the ordinary course of its business.

Moreover, the statutes apply only to debtors whose principal business is the sale of merchandise from stock. The sale of all of the inventory of a barber shop, for example, would probably not constitute a "bulk sale" for purposes of Kentucky's bulk sales statutes because the principal business of a barber shop would be the personal services provided by the barbers.

In addition, a bulk sale of equipment does not fall within the purview of the bulk sales statutes, unless the transfer of equipment was made in connection with a bulk transfer of inventory. For example, if an ice cream store fell upon hard times and sold off its freezers, such a sale would probably not be deemed to be a bulk sale.

On the other hand, if the ice cream store sold off all of its ice cream inventory along with the freezers, such a sale would be a bulk sale and compliance with the bulk sales statutes would be necessary. Of course, if the debtor's inventory consists primarily of equipment, as in the case of a farm implement dealer, a sale of a major portion of the debtor's farm implement inventory would be a bulk sale and, again, compliance with the bulk sales statutes would be necessary.

If a creditor is aware of a bulk sale, it must act promptly. An action arising under the bulk sales statutes must be brought within six months of the date the bulk sale occurred. However, if the bulk sale has been concealed, a creditor may bring an action within six months after discovery of the transfer. What constitutes concealment is a question that will be decided by the courts on a case-by-case basis.

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