# The Uniform ABC Act: A Practical Alternative to Bankruptcy

*Better predictability, portability, and transaction credibility than under most current state ABC processes*

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**Executive takeaway.** An assignment for the benefit of creditors (ABC) is a voluntary state-law process in which a distressed company transfers substantially all of its assets to an independent fiduciary (called an assignee) to preserve, market, sell, and distribute value to creditors. The Uniform Assignment for Benefit of Creditors Act (UABCA)—which became available to the states on October 20, 2025—is designed to make ABCs more predictable, more portable across states, and more useful for modern distressed transactions than many legacy ABC statutes or common-law regimes and makes ABCs available in enacted states that currently have no ABC laws or have laws too impractical to use. The UABCA functions as a transaction platform, addressing eligibility, enterprise groups, assignee powers, buyer protections, secured-creditor protections, claims administration, optional court access, interstate recognition, ancillary assignees, and assignment-agreement customization.

This article is aimed at assignees for the benefit of creditors, distressed investors, financial advisors, restructuring attorneys, investment bankers, private credit and bank lenders, private equity and venture capital sponsors, directors, LLC managers, officers, and other participants looking for a practical alternative to bankruptcy that can still deliver process credibility, title clarity, and value preservation.

## About the author

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## What is an ABC, and why should mainstream restructuring professionals care?

An ABC is a state-law analog to bankruptcy. It is a debtor-initiated process that involves the transfer of a distressed company's assets to an independent assignee chosen by the debtor (often with lender input) that liquidates those asset—piecemeal or as a going-concern—and distributes the sale proceeds to creditors. Importantly, an ABC alternative gives the board of directors or managers a decisive path out of operational and financial paralysis when chapter 11 would be too expensive, too slow, too public, or too destructive to going-concern value. While there is no automatic stay of collection actions as in bankruptcy, often the transfer of assets to a fiduciary provides the breathing room needed for an orderly sale process.

**Practical point.** A well-prepared UABCA assignment can function as a controlled sale and winddown platform. It does not provide every bankruptcy tool, but the UABCA assignment can give market participants what they often need most: speed, fiduciary control, notice, claims administration, sale authority, buyer comfort, and a path for distribution.

## Why does the UABCA matter now?

The UABCA matters because it moves ABCs closer to being a national restructuring tool rather than a local specialty. The UABCA preserves the best features of strong ABC practice while reducing the uncertainty that historically has come from thin statutes, common-law gaps, and state-by-state inconsistency.

The Uniform Law Commission approved the Act on October 20, 2025. As of the date of this article, Alabama, Arizona, Delaware, Iowa, Nebraska, and Utah have enacted versions. Delaware deserves special attention because it is the state of organization for a large share of corporate and alternative-entity structures used by strategics, quasi-strategics, private equity platforms and add-ons, and venture-backed companies. Enactment in Delaware makes the UABCA a national alternative for many troubled companies, as Delaware-organized entities may access a UABCA process even if their operations, employees, creditors, and assets are in other states. Similarly, if other popular organizational states—such as Texas and Nevada—adopt the UABCA, companies organized there would be eligible to proceed under the Act in those states.

## Why should states and territories want to enact it?

The UABCA is built to work in states and territories with very different historical ABC traditions. It supplies a statutory framework with notice rules, fiduciary standards, claims procedures, asset-disposition rules, liability provisions, and interstate-recognition provisions—without requiring routine judicial supervision. The UABCA is therefore not simply a state-court bankruptcy substitute. It is primarily a nonjudicial fiduciary process with optional court access as specified by each state for when the assignee, assignor, creditor, buyer, secured party, or other interested party needs instructions, approval, a declaration of rights, a sale order, or other relief.

## Why is the UABCA attractive to assignees?

### It expressly allows pre-assignment engagement

A professional assignee often needs pre-assignment diligence to understand the assets, budget, creditors, employees, systems, secured debt, cash constraints, and sale opportunities before accepting the assignment. Section 4(b) provides that a qualified person is not disqualified from serving as assignee merely because the person performed services for the assignor before the assignment. The comments confirm that pre-assignment work is compatible with later service as assignee if the pre-assignment work is paid for—or payment is provided for—before the assignment.

This is a major practical improvement. It allows the assignee to get ready before the transfer occurs, reducing the risk of a value-destroying gap between the board's decision and the assignee's ability to preserve assets, communicate with secured lenders, stabilize employees, maintain systems, and launch a sale process.

### The assignment agreement can be an operating charter and risk-management document

The UABCA gives the assignment agreement real drafting significance. Section 10(b) provides default powers that apply unless the assignment agreement expressly provides otherwise. Section 23 allows the parties, within limits, to vary the effect of provisions of the Act. The assignment agreement should not be treated as a short-form transfer document. It should be drafted as the assignee's operating charter, liability-management instrument, and transaction architecture.

Section 23 is central to the Act. The duties of the assignor under section 8(a) and the assignee under section 9(a) may not be disclaimed, but the parties may determine the standards by which fulfillment of those duties is measured, provided the standards are not manifestly unreasonable.

Useful standards to define in the assignment agreement may include sound business judgment, reasonable judgment, economic efficiency, cost-benefit analysis, prudent-investor principles for estate funds, commercial reasonableness, good faith, bad faith, reckless indifference, and the best interests of creditors or the assignment estate. These standards may measure decisions about preserving assets, operating or not operating the business, borrowing, settling claims, abandoning assets, selling assets, sharing information, maintaining insurance, hiring professionals, paying administrative expenses, and choosing among sale paths.

The drafting goal is not to eliminate fiduciary duties. Section 23 does not permit that. The goal is to define how compliance is measured in the real world of a distressed estate with limited cash, incomplete records, urgent decisions, and rapidly wasting value.

Section 23 provides a key limitation: A standard is invalid if it is "manifestly unreasonable," which means patently unreasonable or unreasonable as a way to measure fulfillment of a duty. Standards that result in unfair dealing or fall outside the reasonable expectations of creditors as a whole may be manifestly unreasonable. The better practice is to tie each standard to a recognizable commercial or fiduciary concept, require good-faith decision-making, and preserve a meaningful obligation to administer the estate.

## Section 17 gives important liability and reliance protections

Section 17 is one of the assignee's most important protections. Subsections 17(a) and (b) provide that the assignor is not personally liable for an act or omission of the assignee, and the assignee is not personally liable for an act or omission of the assignor. Subsection 17(d) makes unenforceable any term relieving the assignee of liability for an act or omission committed in bad faith or with reckless indifference to the purposes of the assignment or the interests of creditors.

The language of section 17 should be read together with the UABCA's definition of good faith in section 2(13): honesty in fact and the observance of reasonable commercial standards of fair dealing. In drafting, the assignment agreement may limit assignee liability and define decision standards, but it should not attempt to exculpate bad faith, reckless indifference, or conduct outside the permitted statutory boundaries.

Section 23(c) is the companion authority to Section 17(d). It authorizes the limitation of the assignee's liability and indemnification in the assignment agreement so long as such limitation does not relieve the assignee of liability for an act or omission committed in bad faith or with reckless indifference for the purposes of the assignment or the interests of the assignment estate.

Subsection 17(f) also expressly protects good-faith reliance. The assignee may rely on the assignor's records; on information supplied by the assignor's officers or employees, committees of the governing board, independent directors or managers, or other representatives; and on information, opinions, reports, or statements from experts and professionals selected with reasonable care. This should be paired with section 4(d), which permits the assignee to rely in good faith on the assignor's representation that all assets are being assigned and deems all assets assigned even if the representation is inaccurate.

Also, the assignment agreement may provide that the assignee is not assuming any obligations to perform or liability under the assignor's contracts and leases, as addressed in the comments to section 17.

For assignees, these provisions are critical. They recognize that the assignee usually inherits imperfect records and urgent circumstances. The assignment agreement should therefore include express reliance language, representations from the assignor and the assignor's representative, access to books and records, electronic systems, data rooms, bank accounts, employees, officers, directors, and professionals, and indemnification from the assignment estate to the fullest extent permitted by section 23(c) and the comments to section 17.

## The assignee receives broad operating and transaction powers

Unless the assignment agreement expressly provides otherwise, section 10(b) gives the assignee broad powers, including: operating the business; preserving assets; incurring secured or unsecured debt; asserting claims and defenses; engaging professionals; selling, leasing, licensing, exchanging, collecting, or otherwise disposing of assets; settling disputes; prosecuting and defending litigation; recovering assets; abandoning burdensome or low-value property; avoiding certain transfers; and investing funds subject to prudent-investor standards.

These powers matter because distressed value often depends on continuity. The assignee may need to keep servers live, preserve licenses, pay critical vendors (as arguably authorized in section 11(a)(1)), bridge payroll,

maintain insurance, protect IP, preserve customer relationships, complete a stalking-horse or other sale process, or use professionals already familiar with the business.

### The Act anticipates transition services and former-employee support

The comments to section 4 recognize that the assignee may need transition services from the assignor and may hire former assignor employees as independent contractors. Many assigned estates cannot be administered effectively unless someone who knows the books, customer systems, payroll records, IP, operations, accounting software, or regulatory files helps the assignee after the assignment.

The assignment agreement should therefore address transition services, data-room access, system credentials, former-employee consulting arrangements, expense reimbursement, confidentiality, insurance, and ownership of work product. Those provisions should be coordinated with the assignee's standards of judgment, indemnity, professional-retention powers, and budget.

### The assignee controls avoidance actions once a creditor files a proof of claim

Subsection 10(b)(12) authorizes the assignee to avoid any transfer the assignor made or obligation the assignor incurred that an applicable law permits a creditor that submits a proof of claim to avoid. Subsection 10(c) makes that power exclusive to the assignee, with any recovery for the benefit of the assignment estate and capped by what the creditor could have obtained.

The practical benefit is estate-level control. Once a creditor with the relevant avoidance standing files a proof of claim, the assignee can pursue the avoidance claim for the estate rather than allowing individual creditors to seek courthouse remedies that may benefit one creditor at the expense of the creditor body.

### The assignee may file a UCC-1 for transparency, but the filing is not required

Section 6 permits the assignee to file a financing statement describing the assignment and the assigned assets. The comments make clear that the filing is for transparency. It is not necessary to validate the assignment, does not perfect the assignee's rights, and does not change the assignee's status as a lien creditor under UCC section 9-102(a)(52)(B) or the automatic-perfection rule for assignments for the benefit of creditors under UCC section 9-309(12), recognizing in section 14(a)(2) that the UCC itself (for accounts, chattel paper, a payment intangible, or a promissory note, as listed in UCC § 1-201(b)(35)) and/or assignment agreement may provide the assignee with a security interest in assets in addition to the UCC providing the assignee with lien creditor status.

The UCC-1 option is nevertheless useful. It can alert lenders, creditors, buyers, title insurers, factors, customers, and other market participants that the assets are under assignment. It may also provide an "official" document that the assignee may provide to its constituencies in the absence of a court docket number if a creditor or other party wants proof of the ABC. Depending on the transaction, the assignee may also make real-property, intellectual-property, vehicle-title, or other record filings for notice, transparency, chain-of-title, or transaction-delivery purposes.

### Section 18 supports resignation and succession planning

Section 18 contemplates that an assignee may resign or be removed, and that a successor assignee will take over the assignment estate if provided for in the assignment agreement—subject to eligibility and any court involvement. The statute also allows the court to appoint a successor if there is no designated successor or the designated successor cannot or should not serve.

For drafting, the assignment agreement should either name a successor assignee or provide a process for choosing one (arguably, as a standard under section 23(b)). A practical approach is to permit the assignor's representative to designate a successor from among qualified assignees—perhaps after consultation with major secured creditors or a creditor advisory group, subject to any required court approval if a court has been invoked. The agreement should require prompt transfer of records, accounts, assets, professional files, bank authority, insurance information, and pending sale materials to the successor.

## Why is the UABCA attractive to assignors and sponsors?

### It is often a better fit than bankruptcy for middle-market companies

Many distressed companies are too complex for a bare workout but too asset-light (e.g., mainly IP) or cash-constrained for chapter 11. The UABCA gives those companies a formal fiduciary process initiated by the assignor with an assignee of its choosing, without the full cost, delay, and public burden of bankruptcy. That is particularly useful for sponsor-backed and venture-backed businesses where the objective is to maximize residual value through speed, process integrity, and transaction certainty rather than to fund a prolonged in-court restructuring.

### It can preserve going-concern and acqui-hire value

A fast, prepared ABC can preserve workforce, IP, customer continuity, software systems, licenses, customer data, source code, trade secrets, and data-room readiness. The UABCA helps because it permits pre-assignment diligence, allows the assignee to operate the business, allows secured or unsecured borrowing, permits professional engagement, and anticipates transition services and former-employee support.

Those features are especially important in technology, services, healthcare-adjacent, and other businesses where value disappears quickly if key personnel leave, systems go dark, support stops, or customer relationships deteriorate. An ABC does not guarantee a going-concern sale, but the UABCA improves the odds that going-concern value survives long enough to be marketed and transferred.

### It is built for enterprise groups

As discussed above, the Act's scope and interstate provisions make it easier to coordinate multiple affiliated assignors and assets located across states without pretending that all value can be captured in a single local proceeding. That is particularly relevant for private-equity platforms, add-on structures, venture-backed companies, and holding-company/subsidiary systems where the distressed business is legally fragmented but operationally integrated.

## Why buyers should want their purchase to be under the UABCA

### The UABCA improves title clarity and process defensibility

The Act gives the assignee defined statutory power to sell, lease, license, exchange, collect, or otherwise dispose of assets. Section 14 provides important buyer-protection mechanics. A disposition by the assignee transfers to the transferee the assignor's rights in the asset, the assignee's rights in the asset, and any assignee lien or security interest. Also the assignment generally clears the asset of any unperfected and subordinate liens and security interests.

Subsection 14(b) is especially buyer-friendly. A good-faith transferee takes free of the rights, liens, and security interests described in section 14 even if the assignee fails to comply with the Act or with requirements of a judicial proceeding. That is not a substitute for careful diligence, secured-party consent where needed, or a sale order when appropriate, but it gives buyers a statutory platform for transaction certainty.

The court-action provision in section 21 also matters for buyers. If transaction sensitivity, lender diligence, title insurance, financing, regulatory approval, or board comfort requires it, the assignee or another interested party can seek instructions, approval, declarations of rights, auction procedures, a disposition order, or other relief. A confirmatory sale order can make the process more attractive to buyers and their counsel, even if a state court will not provide that the sale is free and clear of claims, liens and encumbrances, other than the liens and security interests specified in section 14(a)(2) and (3).

### The Act is well suited to speed-driven M&A

Strategics and quasi-strategics often care about speed to close, workforce continuity, IP transfer, customer transition, and clean transfer mechanics. Private equity platforms and add-ons often care about fast integration and limited process drag. VC-backed acqui-hire buyers care about team retention and IP continuity. The UABCA's combination of pre-assignment diligence, optional business operation, assignee borrowing, statutory sale authority, and buyer-protection rules maps well onto those priorities.

In the sale documents, buyers should still address consent rights, excluded liabilities, assumed liabilities, title representations, lien releases, lienholder cooperation, intellectual-property delivery, employee transition, transition services, data privacy, records transfer, escrow mechanics, and the extent to which warranties are disclaimed. Subsection 14(d) provides that, unless otherwise provided in a record, any warranty arising by operation of other law is disclaimed to the extent permitted by other law. Other provisions of the UABCA may be referenced as well, including subsections 14(a)(2) and (3) regarding the discharge of liens and security interest as of the assignment, as specified therein.

## Why should lenders and other creditors view the UABCA favorably?

### It integrates with Article 9 of the UCC

One of the Act's most important strengths is its Article 9 interface. UCC section 9-102(a)(52)(B) recognizes an assignee for the benefit of creditors as a lien creditor from the time of assignment. UCC section 9-309(12)

provides automatic perfection for an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee. UCC section 9-627(c)(4) provides that a disposition may be commercially reasonable if approved by an assignee for the benefit of creditors.

The UABCA comments expressly align the Act with those provisions. As discussed above, the optional UCC-1 filing is useful for transparency, but the filing is not what gives the assignee lien-creditor status or validates the assignment.

### Secured-creditor consent is not legally required to make the assignment, but it may be practically essential

The comments to section 5 state that creditor consent is not required for the assignment. That is important because the assignor's ability to commence the ABC should not depend on creditor consent. But the same comments recognize the practical secured-creditor problem: If the assignee needs to use a secured party's cash collateral, prevent a foreclosure, sell assets subject to liens, maintain operations, or fund a sale process, secured-party cooperation may be necessary as a business matter.

Section 15 protects secured creditors by giving a protected secured creditor first claim to the asset or its proceeds, subject to reasonable and necessary expenses of preserving, disposing of, and collecting the asset to the extent those expenses benefited the secured creditor and were incurred with its consent or acquiescence. That should make the UABCA more acceptable to secured lenders than a disorderly shutdown while preserving a path to liquidate or sell assets for the benefit of the estate.

For any cash-collateral-dependent ABC, the pre-assignment budget should be negotiated with secured lenders before closing the assignment. The assignment agreement, budget, secured-party consent, sale process letter, and any court filing should align on use of cash, collateral preservation, lender reporting, sale milestones, carve-outs, expenses, and lien-release mechanics.

### It gives unsecured creditors a more intelligible process

The Act includes fiduciary duties, notice provisions, claims and priority rules, liability standards, optional court access, a semiannual summary of the assets, liabilities and expenses, as well as a final accounting. For unsecured creditors, that is a substantial improvement over sparse common-law structures that depend heavily on local custom and repeat-player knowledge.

Section 11(b)(1) also permits the assignee to allow a claim, pay a known liquidated claim, or accept notice of a claim received by the bar date even if the creditor has not submitted a proof of claim. This can be efficient where the estate records clearly show a liquidated, noncontingent claim and the assignee can pay it consistent with priority rules, estate economics, and the standards established in the assignment agreement.

## What does the UABCA do for going-concern value?

The Act does not guarantee a going-concern sale. What it does is improve the odds that going-concern value survives long enough to be marketed and sold. The critical features are straightforward: The assignee can be

engaged before the assignment, the assignee can operate the business, the assignee can incur secured or unsecured debt, the assignee can engage professionals, the assignee can use transition services, and the Act supports coordinated administration for enterprise groups.

Taken together, those features are unusually well suited to cases where value depends on speed, continuity, employees, software, customer accounts, bundled operating assets, or intellectual property. They also help the assignee explain the process to buyers, lenders, creditors, employees, and boards in terms that resemble mainstream restructuring practice.

The key is preparation. The best UABCA cases should be planned in advance of the assignment date. Before taking title to the assignment estate, the assignee should understand the asset package, cash position, secured-creditor issues, employee and contractor needs, critical vendors, transition-service requirements, sale timeline, insurance coverage, and claims process.

## Bottom line

The UABCA is best seen as a modernization project for state-law distress practice. It gives states a current, commercially literate ABC statute. It gives assignees a clearer framework. It gives assignors and sponsors a credible off-ramp from value-destructive disorder. It gives buyers a more usable acquisition process. It gives secured lenders and other creditors a more intelligible liquidation platform. And because the Act is expressly built for interstate and enterprise-group realities, it is positioned to matter far beyond the handful of states that historically developed strong ABC practice on their own.