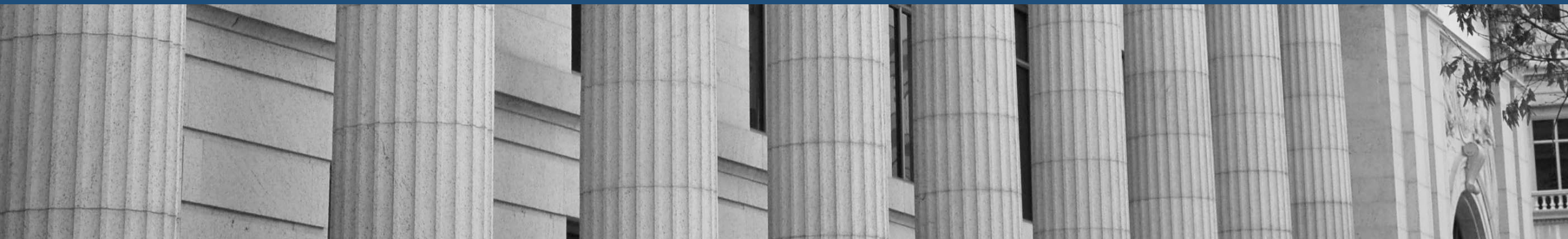


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Overview of ABCs, Receiverships, and Out of Court Dissolutions in Delaware





Assignment for the Benefit of Creditors

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ABCs – Delaware Adopts Uniform ABC Act (June 2026) (*10 Del C. §§ 7301-7324*)

- An Assignment for the Benefit of Creditors (ABC) is commenced by adoption or resolution of company's board of directors or managers. Shareholder approval is also required.
- Assignors must be organizations or individuals with specific connections to DE. Banks and Insurers cannot be assignors. There must be an assignment agreement.
  - Upon execution, the assignee acquires all of the assignor's rights, title, and interests in the assets.
  - The Assignee holds a lien on the assignment estate and, for the purpose of exercising its powers, is treated as a lien creditor regarding personal property or fixtures, a bona fide purchaser for real property interests in DE, and a bona fide purchaser under another states law for real property located outside of DE.
  - Assignee must act as a fiduciary to the estate and serve the creditor's interests (loyalty, good faith, maximize value to creditors).
- The assignee must file a petition in the Court of Chancery within 14 days of execution of the assignment agreement.
  - Ongoing Court involvement is not mandatory and the assignee is not required to file an inventory, obtain a bond, or appoint appraisers.
  - Court approval is not required on key issues.
- Assignee has authority to operate business, manage assets and debts, hire professionals, manage claims, sell, lease, license, or abandon assets, settle matters, invest funds and address litigation.
- Assignee can transfer assets for value and any liens or subordinate interests may be discharged.
- Estate assets are distributed in order, secured claims with valid liens are paid first, followed by administrative expense, taxes and fees. Claims with federal priority are paid according to the Bankruptcy Code.
- Assignee then provides a final report to the Court and may then be released from its obligations.

ABCs – In Practice

- Not uncommon for ABC petition to be immediately followed by sale agreement worked out prior to the ABC.
- Completion of ABC can be in as little as 6-7 weeks.
- Sale can be made subject to Court approval (with the potential for creditor objections) although many parties opt not to seek court approval on a sale.
- Less publicity and often less costly than bankruptcy proceeding.
- Depending on creditor pool, some threat of involuntary bankruptcy filing before completion of ABC.
- Impractical for public corporations because shareholder approval is required.
- No automatic stay, however, the Assignor's lien can often block attachments and dispose of superfluous lawsuits.
- *Ipso facto* contractual clauses are not invalid in an ABC as they are in bankruptcy.



Receiverships

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Receiverships (*6 Del C. § 291-299, 6 Del. C. § 18-805*)

- Appointment of a receiver is by petition of a creditor or stockholder to the Court of Chancery.
- Pursuant to the Order appointing the receiver, receivers have the ability to take control of assets, estate, effect, business and affairs, to pursue collection of debts, claims and property, prosecute and defend in the name of the business, appoint agents and hire professionals.
- Typically, the Court must approve asset sales and distributions to creditors. Receivers must also file periodic reports.
- The Court of Chancery has its own set of Rules (148-168) pertaining to receiverships, however, those Rules may be waived in the applicable Order appointing the receiver.
- No automatic stay.

Receiverships (RP Wind Down, LLC Case Study)

- Receiver appointed on October 25, 2025 to RP Wind Down, LLC (f/k/a rPlanet Earth Los Angeles, LLC) and RP Wind Down Los Angeles Holdings, LLC (f/k/a RP Wind Down Holdings, LLC) following petition by shareholder.
- Motion authorizing the sale of substantially all of the Companies' assets and a Motion to expedite the sale hearing were filed February 17, 2026. A sale hearing was held March 13, 2026, and an Order authorizing the sale was entered on March 17, 2026. The sale closed on April 22, 2026.
- The Sale Order included:
  - Settlement with, and payment to, a first priority secured creditor;
  - Assets were sold "free and clear" to the buyer, with liens attaching to the proceeds of the sale;
  - Buyer is free from successor liability; and
  - The approval of an early access agreement whereby the buyer was permitted early access to the Companies' facility and agreed to cover all expenses associated with that access.
- Distribution plan to follow.



Out of Court Dissolutions

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Out of Court Dissolutions

- **Corporations (DGCL (tit. 8) 275, 278, 280, 281)**
- Dissolution is commenced by adoption or resolution of company's board of directors or managers and approval by a majority of the stockholders.
- Certificate of Dissolution filed with DE Secretary of State.
- Corporation technically continues for 3 years following dissolution date. A dissolving corporation must provide security to make provisions for unknown or contingent claims.
- Short Form vs Long Form
  - Short Form is typically used when company has no creditors or creditors can be settled easily. Risk is on directors because there is no presumption that their actions were "reasonable".
  - Long Form requires notice to creditors and publication. Includes a presumption that directors acted reasonably in settling remaining obligations.
- **LLCs (DLLCA §§ 18-801, 18-803, 18-804)**
- The LLC Agreement controls the requirements for dissolution; otherwise holders of more than 2/3 of the interests in the profits of the LLC must vote to approve dissolution.
- No notice to creditors is technically required.
- Certificate of Cancellation is filed after wind down is complete.
- The LLC must make provisions, similar to corporations, for unknown and contingent claims.

Dissolutions – In Practice

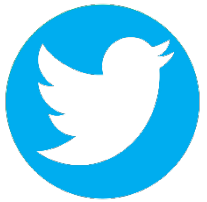
- Board of directors and/or management retain control.
- There is no third-party engagement, and therefore it can be cost-effective.
- Usually no Court involvement.
- No automatic stay.
- No “free & clear” sales.

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