

UNIFORM FRAUDULENT CONVEYANCE ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

CONFERENCE AT CLEVELAND, OHIO

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UNIFORM FRAUDULENT CONVEYANCE ACT

Prefatory Note

Existing confusions in the law relating to conveyances in fraud of creditors make the adoption by the several states of an act which shall put an end to the confusions by concise and clear statements of legal principles pertaining to the subject, a matter of practical importance.

The confusions and uncertainties of the existing law are due primarily to three things:

First, the absence of any well recognized, definite conception of insolvency.

Second, failure to make clear the persons legally injured by a given fraudulent conveyance.

Third, the attempt to make the Statute of Elizabeth cover all conveyances which wrong creditors, even though the actual intent to defraud does not exist.

The Statute of Elizabeth condemns conveyances as fraudulent only when made with the "intent" to "hinder, delay or defraud." There are many conveyances which wrong creditors where an intent to defraud on the part of the debtor does not in fact exist. In order to avoid these conveyances, the courts have called to their assistance presumptions of law as to intent, and in equity have pushed presumption of fraud as a fact to an unwarranted extent; with the result that, while in the main the decisions under the facts do justice, the reasoning supporting them leaves much to be desired.

In the Act as drafted all possibility of a presumption of law as to intent is avoided. Certain conveyances which the courts have in practice condemned, such as a gift by an insolvent, are declared fraudulent irrespective of intent. On the other hand, while all conveyances with intent to defraud creditors (see Section 7) are declared fraudulent, it is expressly stated that the intent must be "actual intent, as distinguished from intent presumed in law."

The Act as drafted makes few changes in the law of any state. In this subject, as in many others in our law, need for definite statutory statement does not arise so much from actual conflict between the law of different jurisdictions growing out of clear cut differences in judicial decisions, as from the confusion of thought manifested in judicial opinions, which renders the law in a great degree uncertain in all jurisdictions.

The chief benefit to be derived from the adoption of a uniform act on conveyances in fraud of creditors is that, if properly enforced, it will give a known certainty to the law which it does not now possess.

A statement of the process by which the Act has been developed may be of interest. In 1915 the Conference directed its Committee on Commercial Law to prepare the draft of an act to make uniform the law relating to fraudulent conveyances. The Committee secured the services as draftsman of Wm. Draper Lewis, Professor of Law in the University of Pennsylvania, who in his work for the Committee acted for the New York Drafting Association. The first tentative draft was submitted by the Committee to the Conference in 1916, the second tentative draft in 1917, and the third in 1918, the Conference carefully going over, discussing and amending the Act section by section at each session. The completed Act represents therefore most careful work.

UNIFORM FRAUDULENT CONVEYANCE ACT

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**AN ACT CONCERNING FRAUDULENT CONVEYANCES
AND TO MAKE UNIFORM THE LAW RELATING THERETO.**

Be It Enacted

SECTION 1. [Definition of Terms.] In this act “Assets” of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

“Conveyance” includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

“Creditor” is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

“Debt” includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed of contingent.¹

SECTION 2. [Insolvency]. (1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.²

(2) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription.

SECTION 3. [Fair Consideration.] Fair consideration is given for property, or obligation,

¹ A person who has been injured by another although he has not made any claim for damages would be a creditor. *Crossley vs. Elworthy*, L. R. 12 Eq. 158.

² This interpretation of insolvency, taken in connection with Section 4, [Conveyances by Insolvent,] in effect declares that a person, although he is indebted at the time, may give away a part of his property, if in so doing he has no actual intent to defraud present or future creditors (Section 7), provided he has sufficient property left to pay his creditors. This is in accord with the present law in the great majority of states. Glenn, on Creditors’ Rights and Remedies, pp. 96, 98. Chancellor Kent in *Reade vs. Livingston*, 3 Johns. Ch. 481, held that if a donor at the time of making the gift is indebted, there is an “irrebuttable presumption” that he intended to defraud his creditors. This decision although no longer law in New York (Con. Laws, Vol. 4, Per. Prop. Law, Sec. 37, Real Prop. Laws, Sec. 265), has been followed in Ala., Ky., Mich., N.J., S.C. and Va.

(a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.³

SECTION 4. [Conveyances by Insolvent.] Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.⁴

SECTION 5. [Conveyances by Persons in Business.] Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.⁵

SECTION 6. [Conveyances by a Person about to Incur Debts.] Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he

³ The cases relating to the subject of this section usually deal with the amount of the consideration as indicating whether there is a fraudulent intent on the part of the grantor or collusion on the part of the grantee. It is submitted that the real question in such cases is, the good faith of the grantee, and whether the consideration given by him is a reasonable equivalent for the property received.

⁴ This section does not change the practical result of recorded cases, except in a few jurisdictions in the matter indicated in the note to Section 2, *supra*.

In dealing with the subject of the section our courts have usually treated a voluntary conveyance by an insolvent as indicating an “irrebuttable presumption of fraudulent intent.” As stated in the Prefatory Note, this awkward method of treating the subject arose from the wording of the 13th of Elizabeth. That statute renders void those conveyances only which are made with the “intent” to “hinder, delay, and defraud” creditors. To avoid a gift made by an insolvent where no actual intent to defraud existed, it was necessary to “presume as a matter of law” an intent to defraud.

⁵ A conveyance made with intent to be secure against the hazards of business would not be fraudulent under this section, unless the remaining property in the grantor’s hands is an unreasonably small capital in view of the nature of the business or transaction. *Winchester vs. Charter*, 12 Allen, 606, 611, *accord*. On the other hand, actual intent to defraud is not necessary if the facts set forth in the section exist.

The section does not seriously change the result of the recorded cases, although for the reasons stated in the Prefatory Note and in the note to Section 4, *supra*, the usual statement is that there must be an intent to defraud, and that this “intent” can be presumed from the nature of the business. See, for example, *Hagerman vs. Buchanan*, 45 N. J. Eq. 92.

will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

SECTION 7. [Conveyance Made with Intent to Defraud.] Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.⁶

SECTION 8. [Conveyance of Partnership Property.] Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred.

(a) To a partner, whether with or without a promise by him to pay partnership debts, or

(b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.⁷

SECTION 9. [Rights of Creditors Whose Claims Have Matured.] (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser,

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed.⁸

⁶ This section is practically identical with the 13th of Elizabeth. As the other sections of this act deal with conveyances which are fraudulent as to creditors irrespective of intent, this section is expressly so drawn as to relate to conveyances with intent to defraud. In this manner the Act will do away with legal presumptions of fraud which have been a main cause of existing uncertainty and confusion. See Prefatory Note.

⁷ The existing case law on the subject of this section is in such confusion that it is impossible to state whether the section as drafted represents the weight of authority. See notes to Franklin Sugar Co. vs. Henderson, 86 Md. 452 (1897) in Pepper and Lewis's Cases on Associations, p. 761; also 28 Har. Law Rev., pp. 774, 5 and notes. The primary cause of the confusion is a difference of opinion as to whether knowledge of insolvency is necessary.

See Section 2, supra, for statement of facts which must exist to make a partnership insolvent.

⁸ In England, if a conveyance is fraudulent as to any creditor, it can be treated as void or set aside by any other creditor, even though the conveyance was not fraudulent as to him. Freeman vs. Pope, L.R. 5. Ch.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment.

SECTION 10. [Rights of Creditors Whose Claims Have Not Matured.] Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,

- (a) Restrain the defendant from disposing of his property,
- (b) Appoint a receiver to take charge of the property,
- (c) Set aside the conveyance or annul the obligation, or
- (d) Make any order which the circumstances of the case may require.

SECTION 11. [Cases not Provided for in Act.] In any case not provided for in this Act the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern.

SECTION 12. [Construction of Act.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 13. [Name of Act.] This act may be cited as the Uniform Fraudulent Conveyance Act.

SECTION 14. [Inconsistent Legislation Repealed.] Sections

are hereby repealed, and all acts or parts of acts inconsistent with this Act are hereby repealed.

App. 528; *Ideal Bedding Co. vs. Holland*, 76 L. J. Ch. Div. 441. There are American cases in support of this proposition.

The paragraph as drawn, however, expresses the dominant American rule, which is that only those creditors as to whom the conveyance is fraudulent, can proceed to set the conveyance aside.