Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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THE UNIFORM VOIDABLE TRANSACTIONS ACT (2014 AMENDMENTS)

(FORMERLY THE UNIFORM FRAUDULENT TRANSFER ACT)

- A Summary -

The Uniform Law Commission promulgated the Uniform Fraudulent Transfer Act in 1984. Forty-five states, the District of Columbia, and the U.S. Virgin Islands have enacted the Act as of 2015. The Act replaced a very similar uniform act created in 1918, which remains in force in two states as of 2015.

The Uniform Act: Nature of Amendments

In 2014, the Uniform Law Commission amended the Uniform Fraudulent Transfer Act for the first time since its creation in 1984. These changes address a few narrowly defined issues, and are not a comprehensive revision.

First, the title of the Act is now the "Uniform Voidable Transactions Act" (UVTA). The original title was a misleading description because fraud has never been a necessary element of a claim under the Act and the Act has always applied to the incurrence of obligations as well as to transfers of property. Thus, the name change aims to clarify the purpose and application of the Act.

The UVTA amendments also include a few new provisions. For example, the UVTA adds a choice-of-law rule for claims governed by the Act. The UVTA also includes uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the Act. The 2014 update also responds to the emergence of the "series organization" as a significant form of business organization. To deal with these series organizations, the UVTA adds a new section which provides that each "protected series" of a series organization is to be treated as a person for purposes of the Act, even if it is not treated as a person for other purposes.

The 2014 amendments to the UVTA also delete the special definition of "insolvency" for partnerships. The Act as originally written set forth a special definition of "insolvency" applicable to partnerships, which adds to the sum of the partnership's assets the net worth of each of its general partners. The amendments delete that special definition, and thus, make a partnership subject to the general definition. Under the general definition of "insolvency" in the Act, the debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

The amendments to the UVTA refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee. For instance, as originally written, Section 8(a) of the Act creates a complete defense to an action under Section 4(a)(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to Section 8(a) the further requirement that the reasonably equivalent value must be given the debtor. In addition, Section 8(b), derived from Bankruptcy Code §§ 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such a person. The amendments clarify the meaning of Section 8(b) by rewording it to follow more closely the wording of Bankruptcy Code §§ 550(a), (b) (which is substantially unchanged as of 2014). Finally, Section 8(e)(2) as originally written created a defense to an action under Section 4(a)(2) or Section 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as "strict foreclosure").

The Uniform Law Commission urges all states to adopt the 2014 amendments to the UVTA as quickly as possible to implement choice-of-law rules, create certainty, and eliminate wasteful litigation with respect to transactions that touch more than one jurisdiction.

For further information about the UVTA, please contact ULC Legislative Counsel Kaitlin Dohse at (312) 450-6615 or kdohse@uniformlaws.org.