DRAFTING COMMITTEE
AMENDMENTS TO THE UNIFORM FRAUDULENT TRANSFER ACT

Agenda

April 19-20, 2013
Washington, D.C.

Edwin E. Smith, Chair
Kenneth C. Kettering, Reporter

Materials distributed before this meeting:
A. Draft amendments to the UFTA (“Draft”)

Materials previously distributed referred to herein:
E. Memorandum dated November 7, 2012 from Matthew J. Cursio to Edwin Smith, Proposed Updates to the Uniform Fraudulent Transfer Act – Burdens of Proof and Reasonably Equivalent Value under Section 8(a) (“Cursio memorandum”)

1. Introductory remarks from the Chair (Smith).
2. Choice of law. (Draft § 10; definitions at § 1(9)(“organization”), § 1(13)(“State”); related comments at § 1 cmt. 9, § 1 cmt. 13).
   Materials: Study Committee First Report; Study Committee Second Report, pp. 1-2, 16-17; Kettering Article
3. Burdens of proof and presumptions.
   (Draft §§ 4(c), 5(c), 8(g); related comments at § 4 cmts. 11, 12, § 5 cmt. 4, § 8 cmt. 7).
   Materials: Study Committee First Report, p. 4; Kettering Article, pp. 325-27; Cursio memorandum, pp. 1-11
4. Partnership insolvency. (Draft § 2(c); related comment at § 2 cmt. 3).
5. Series organizations. (Draft § 1(10) (“person”); related comment at § 1 cmt. 10).
6. Clarification of UFTA § 8(a). (Draft § 8 cmt. 1).
   Materials: Study Committee Second Report, pp. 7-12; Cursio memorandum pp. 11-14
7. Other changes to the statutory text.
   A. Correcting “avoidable” to “fraudulent”. (Draft §§ 2(d), 8(a), 8(d), 8(e), 8(f)).
   B. 1984 technical corrections. (Draft, Reporter’s Introductory Note).

8. Other changes to the comments.
   A. Section 4, Comment 2 (applicability of § 4 to future/identifiable creditors)
   B. Section 4, Comment 9 (potential applicability of § 4 to transactions intended to reduce liquidity, including conversion of a corporation to an LLC or partnership)
   C. Section 4, Comment 10 (independence of the UFTA and other laws, including corporation laws restricting distributions)
   D. Section 7, Comment 7 (meaning of “avoidance”; avoidance of fraudulent obligations)
   E. Section 8, Comment 5 (Section 8(e)(2) safe harbor for Article 9 remedies applies to strict foreclosure and collection of receivables, as well as to foreclosure sale)
   F. Section 9, Comment 1 (implications of phrasing limitation period to abolish the right and not merely the remedy)
   G. Minor changes, including the following:
      1. Section 3, Comment 1
      2. Section 3, Comment 5 (addition of cite to BFP v. Resolution Trust Corp.)
   H. Prefatory Note (2014); Prefatory Note (1984)

9. Other issues.

10. Agenda for next meeting.

11. Adjournment (by 5:00 pm (Eastern time), Saturday April 20, 2013)