

MEMORANDUM

To: Uniform Law Commission

Date: May 27, 2014

From: Edwin E. Smith, *Chair, Drafting Committee*
Kenneth C. Kettering, *Reporter, Drafting Committee*

Re: Amendments to the Uniform Voidable Transactions Act
(formerly named the Uniform Fraudulent Transfer Act): 2014 Annual Meeting Draft

This memorandum accompanies the 2014 Annual Meeting Draft of amendments to the Uniform Voidable Transactions Act (the “Act”). The first reading of the amendments took place at the 2013 Annual Meeting. The amendments are being submitted for final approval at the 2014 Annual Meeting.

As originally promulgated in 1984, the Act was titled “Uniform Fraudulent Transfer Act.” In the draft considered at the 2013 Annual Meeting the Drafting Committee tabled its proposal to change the title of the Act to “Uniform Voidable Transactions Act.” The Executive Committee later approved that proposal. Hence the 2014 Annual Meeting Draft refers to the Act by the new title.

The 2014 Annual Meeting Draft contains the entire Official Text, Comments and Prefatory Note to the Act as it was originally promulgated in 1984. The amendments are shown by underscore and strikeout.

Purpose and Nature of the Act. The Act codifies a doctrine that historically has been known as the law of fraudulent conveyance. That doctrine sets the limits of a debtor’s right to deal with his property as against his creditors. A simple example of the operation of the Act would be to unwind a debtor’s eve-of-bankruptcy gifting of property to a favored relative, or to a straw man to hold for the debtor’s own benefit. Fraudulent conveyance law is not limited to such blatant attempts to shield assets from creditors, however. It also applies to transactions that thwart creditors in more subtle ways. The doctrine is of very general applicability. It applies equally to business debtors and to consumer debtors. It is of great age: the core operative language of the Act is carried forward from the English Statute of 13 Elizabeth, which was enacted in 1571. The doctrine is often employed by the debtor’s bankruptcy trustee in a later bankruptcy proceeding, but it is equally applicable if the debtor never goes bankrupt.

The Act has been enacted by 43 states, the District of Columbia, and the U.S. Virgin Islands. The Act replaced the very similar Uniform Fraudulent Conveyance Act, which was promulgated in 1918 and remains in force in two states.

Nature of the Amendments. These amendments are the first made to the Act since it was promulgated in 1984. The Drafting Committee’s mandate extended only to a small number of narrowly-defined issues. Hence the amendments are not a comprehensive revision. Nor are they responsive to a single guiding theme. The principal features of the amendments are summarized on pages 5-6 of the 2014 Annual Meeting Draft under the heading “Prefatory Note (2014 Amendments).”

Respectfully submitted.

EES
KCK