

**DRAFTING COMMITTEE
AMENDMENTS TO THE UNIFORM FRAUDULENT TRANSFER ACT**

Agenda

September 27-28, 2013*
Minneapolis, Minnesota

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

Materials distributed before this meeting:

- A. Amendments to Uniform Fraudulent Transfer Act, Annual Meeting Draft (May 31, 2013) (“Draft”)
- B. Memorandum dated August 20, 2013 from Edwin E. Smith and Kenneth C. Kettering to Drafting Committee, Advisors and Observers, *Developments at and after the Annual Meeting* (“Developments Memo”)
- C. Memorandum dated July 23, 2013 (revised August 8, 2013) from Ken Kettering to Ed Smith and Dan Kleinberger, *As used in the Uniform Fraudulent Transfer Act, should the definition of “insider” be revised in light of new and emerging forms of business organization?* (“Insider Memo”)
- D. Uniform Fraudulent Transfer Act, “Insider” and Related Definitions (“Affiliate,” “Relative”), Blacklined to Show Significant Differences from Bankruptcy Code (July 23, 2013, revised August 8, 2013) (“Insider Blackline”)
- E. *In re Longview Aluminum, L.L.C.*, 657 F.3d 507 (7th Cir. 2011).
- F. Transcript of proceedings of the annual meeting of the Uniform Law Conference, July 10, 2013 (pertaining to the reading of the Annual Meeting Draft).

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- 1. Introductory remarks from the Chair (Smith).
 - 2. Choice of law. (Draft § 10 and Reporter’s Note).
 - 3. UFTA § 8(a) defense to actual fraud claim; applicability of UFTA § 8(b) defense to claims other than for money damages. (Draft § 8(a) and Reporter’s Note to § 8).
 - 4. Partnership insolvency. (Draft § 2(c) (deleted provision). Related comment: Prefatory Note (2014)).
 - 5. Series organizations. (Draft § 1(11) (“person”); § 1(15) (“series organization”). Related comment: § 1 cmt. 15).
 - 6. Consistent use of “voidable” to denote a transfer or obligation for which the act provides a remedy.
 - Draft: “Fraudulent:” changed to “voidable”: §§ 4(a), 5(a), 5(b), 9, captions of §§ 4, 5.
 - “Voidable” retained without change: §§ 2(d), 8(a), 8(d), 8(e), 8(f).
 - Related comments: Prefatory Note (2014); § 4, cmt. 9 ¶1.

7. Title of the Act. (Draft § 13 and Reporter’s Introductory Note).
Materials: Developments Memo ¶4.
8. Medium neutrality. (Draft § 6(5), definitions of “electronic” (§ 1(7)), “record” (§ 1(13)), and “sign” (§ 1(16))).
9. Definition of “Insider”. (Draft § 1(8) and Comment 8).
Materials: Developments Memo ¶1 & Annex A; Insider Memo; Insider Blackline; *In re Longview Associates*.
10. Carve-out of strict foreclosure from § 8(e) defense for Article 9 remedies. (Draft § 8(e)(2) and Comment 5).
Materials: Developments Memo ¶2 & Annex B.
11. Liberal construction and other comments regarding remedies.
Materials: Developments Memo ¶3.
12. Transition. (Draft: Legislative Note following § 14)
13. Changes to the statutory text not further revised in the current Draft.
 - A. 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).
14. Other significant revisions to the comments. (Items prefaced with a double asterisk were not materially further revised in the current Draft.)
 - A. Prefatory Note (2014).
 - B. **Section 4, Comment 2 (applicability of § 4 to future/unidentified creditors).
 - C. Section 4, Comment 9 (“hinder, delay or defraud”; potential applicability to transactions intended to reduce liquidity).
 - D. Section 4, Comment 10 (nonexclusivity of the UFTA; independence of the UFTA and other laws, including corporation laws restricting distributions).
 - E. Section 7, Comment 7 (meaning of “avoidance”; avoidance of fraudulent obligations).
 - F. Section 8, Comment 8 (applicability of the § 8 defenses if the Act is invoked in bankruptcy).
 - G. **Section 9, Comment 1 (implications of the phrasing of the limitation period to abolish the right and not merely the remedy).
 - H. Section 9, Comment 3 (meaning and implications of the discovery rule).
15. Other issues.

16. Agenda for next meeting.
17. Adjournment (by 5:00 pm (Central time), Saturday September 27, 2013).

* *Note:* The Drafting Committee on Series of Unincorporated Business Entities will be meeting in Minneapolis on the same dates as the UFTA Drafting Committee. Members of both Committees are scheduled to meet on Thursday, September 26, 2013 from 2:00 pm to 5:00 pm to discuss overlapping issues between the two committees and UCC Article 9 issues pertaining to series organizations. All members, advisors and observers of the UFTA Drafting Committee are welcome to attend. A report on that meeting will be made at the meeting of the UFTA Drafting Committee.