

By Senator Bennett

21-00302-12

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1 A bill to be entitled
2 An act relating to the Uniform Fraudulent Transfer
3 Act; amending s. 726.102, F.S.; defining the term
4 "exempt organization"; amending s. 726.109, F.S.;
5 providing that a charitable contribution that was
6 accepted in good faith by an exempt organization is
7 not voidable; amending ss. 718.704 and 721.05, F.S.;
8 conforming cross-references; providing legislative
9 intent to clarify existing law; providing an effective
10 date.

11
12 WHEREAS, the Uniform Fraudulent Transfer Act may
13 potentially be construed to require an exempt organization to
14 return a charitable contribution that was accepted in good
15 faith, and

16 WHEREAS, the application of the Uniform Fraudulent Transfer
17 Act to an exempt organization has the potential to harm an
18 exempt organization that accepts, in good faith, a charitable
19 contribution for charitable purposes, and

20 WHEREAS, this act clarifies that the Legislature does not
21 intend for the Uniform Fraudulent Transfer Act to apply to
22 certain innocent charitable organizations and nonprofit
23 corporations that accept charitable contributions in good faith,
24 NOW, THEREFORE,

25
26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Section 726.102, Florida Statutes, is amended to
29 read:

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30 726.102 Definitions.—As used in ss. 726.101-726.112, the
31 term:

32 (1) "Affiliate" means:

33 (a) A person who directly or indirectly owns, controls, or
34 holds with power to vote, 20 percent or more of the outstanding
35 voting securities of the debtor, other than a person who holds
36 the securities:

37 1. As a fiduciary or agent without sole discretionary power
38 to vote the securities; or

39 2. Solely to secure a debt, if the person has not exercised
40 the power to vote.

41 (b) A corporation 20 percent or more of whose outstanding
42 voting securities are directly or indirectly owned, controlled,
43 or held with power to vote, by the debtor or a person who
44 directly or indirectly owns, controls, or holds, with power to
45 vote, 20 percent or more of the outstanding voting securities of
46 the debtor, other than a person who holds the securities:

47 1. As a fiduciary or agent without sole power to vote the
48 securities; or

49 2. Solely to secure a debt, if the person has not in fact
50 exercised the power to vote.

51 (c) A person whose business is operated by the debtor under
52 a lease or other agreement, or a person substantially all of
53 whose assets are controlled by the debtor; or

54 (d) A person who operates the debtor's business under a
55 lease or other agreement or controls substantially all of the
56 debtor's assets.

57 (2) "Asset" means property of a debtor, but the term does
58 not include:

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59 (a) Property to the extent it is encumbered by a valid
60 lien;

61 (b) Property to the extent it is generally exempt under
62 nonbankruptcy law; or

63 (c) An interest in property held in tenancy by the
64 entireties to the extent it is not subject to process by a
65 creditor holding a claim against only one tenant.

66 (3) "Claim" means a right to payment, whether or not the
67 right is reduced to judgment, liquidated, unliquidated, fixed,
68 contingent, matured, unmatured, disputed, undisputed, legal,
69 equitable, secured, or unsecured.

70 (4) "Creditor" means a person who has a claim.

71 (5) "Debt" means liability on a claim.

72 (6) "Debtor" means a person who is liable on a claim.

73 (7) "Exempt organization" means an organization that is
74 exempt from federal income taxation under s. 501(c)(3) or (4) of
75 the Internal Revenue Code.

76 (8)~~(7)~~ "Insider" includes:

77 (a) If the debtor is an individual:

78 1. A relative of the debtor or of a general partner of the
79 debtor;

80 2. A partnership in which the debtor is a general partner;

81 3. A general partner in a partnership described in
82 subparagraph 2.; or

83 4. A corporation of which the debtor is a director,
84 officer, or person in control.~~†~~

85 (b) If the debtor is a corporation:

86 1. A director of the debtor;

87 2. An officer of the debtor;

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- 88 3. A person in control of the debtor;
- 89 4. A partnership in which the debtor is a general partner;
- 90 5. A general partner in a partnership described in
- 91 subparagraph 4.; or
- 92 6. A relative of a general partner, director, officer, or
- 93 person in control of the debtor.
- 94 (c) If the debtor is a partnership:
- 95 1. A general partner in the debtor;
- 96 2. A relative of a general partner in, a general partner
- 97 of, or a person in control of the debtor;
- 98 3. Another partnership in which the debtor is a general
- 99 partner;
- 100 4. A general partner in a partnership described in
- 101 subparagraph 3.; or
- 102 5. A person in control of the debtor.
- 103 (d) An affiliate, or an insider of an affiliate as if the
- 104 affiliate were the debtor.
- 105 (e) A managing agent of the debtor.
- 106 (9)~~(8)~~ "Lien" means a charge against or an interest in
- 107 property to secure payment of a debt or performance of an
- 108 obligation, and includes a security interest created by
- 109 agreement, a judicial lien obtained by legal or equitable
- 110 process or proceedings, a common-law lien, or a statutory lien.
- 111 (10)~~(9)~~ "Person" means an individual, partnership,
- 112 corporation, association, organization, government or
- 113 governmental subdivision or agency, business trust, estate,
- 114 trust, or any other legal or commercial entity.
- 115 (11)~~(10)~~ "Property" means anything that may be the subject
- 116 of ownership.

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117 (12)~~(11)~~ "Relative" means an individual related by
118 consanguinity within the third degree as determined by the
119 common law, a spouse, or an individual related to a spouse
120 within the third degree as so determined, and includes an
121 individual in an adoptive relationship within the third degree.

122 (13)~~(12)~~ "Transfer" means every mode, direct or indirect,
123 absolute or conditional, voluntary or involuntary, of disposing
124 of or parting with an asset or an interest in an asset, and
125 includes payment of money, release, lease, and creation of a
126 lien or other encumbrance.

127 (14)~~(13)~~ "Valid lien" means a lien that is effective
128 against the holder of a judicial lien subsequently obtained by
129 legal or equitable process or proceedings.

130 Section 2. Section 726.109, Florida Statutes, is amended to
131 read:

132 726.109 Defenses, liability, and protection of transferee.—

133 (1) A transfer or obligation is not voidable under s.
134 726.105(1) (a) against a person who took in good faith and for a
135 reasonably equivalent value or against any subsequent transferee
136 or obligee. An exempt organization is deemed to have exchanged a
137 reasonably equivalent value for a charitable contribution that
138 was accepted in good faith.

139 (2) Except as otherwise provided in this section, to the
140 extent a transfer is voidable in an action by a creditor under
141 s. 726.108(1) (a), the creditor may recover judgment for the
142 value of the asset transferred, as adjusted under subsection
143 (3), or the amount necessary to satisfy the creditor's claim,
144 whichever is less. The judgment may be entered against:

145 (a) The first transferee of the asset or the person for

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146 whose benefit the transfer was made; or

147 (b) Any subsequent transferee other than a good faith
148 transferee who took for value or from any subsequent transferee.

149 (3) If the judgment under subsection (2) is based upon the
150 value of the asset transferred, the judgment must be for an
151 amount equal to the value of the asset at the time of the
152 transfer, subject to adjustment as the equities may require.

153 (4) Notwithstanding voidability of a transfer or an
154 obligation under ss. 726.101-726.112, a good faith transferee or
155 obligee is entitled, to the extent of the value given the debtor
156 for the transfer or obligation, to:

157 (a) A lien on or a right to retain any interest in the
158 asset transferred;

159 (b) Enforcement of any obligation incurred; or

160 (c) A reduction in the amount of the liability on the
161 judgment.

162 (5) A transfer is not voidable under s. 726.105(1)(b) or s.
163 726.106 if the transfer results from:

164 (a) Termination of a lease upon default by the debtor when
165 the termination is pursuant to the lease and applicable law; or

166 (b) Enforcement of a security interest in compliance with
167 Article 9 of the Uniform Commercial Code.

168 (6) A transfer is not voidable under s. 726.106(2):

169 (a) To the extent the insider gave new value to or for the
170 benefit of the debtor after the transfer was made unless the new
171 value was secured by a valid lien;

172 (b) If made in the ordinary course of business or financial
173 affairs of the debtor and the insider; or

174 (c) If made pursuant to a good faith effort to rehabilitate

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175 the debtor and the transfer secured present value given for that
176 purpose as well as an antecedent debt of the debtor.

177 Section 3. Subsection (4) of section 718.704, Florida
178 Statutes, is amended to read:

179 718.704 Assignment and assumption of developer rights by
180 bulk assignee; bulk buyer.—

181 (4) An acquirer of condominium parcels is not a bulk
182 assignee or a bulk buyer if the transfer to such acquirer was
183 made:

184 (a) Before the effective date of this part;

185 (b) With the intent to hinder, delay, or defraud any
186 purchaser, unit owner, or the association; or

187 (c) By a person who would be considered an insider under s.
188 726.102 ~~s. 726.102(7)~~.

189 Section 4. Paragraph (e) of subsection (10) of section
190 721.05, Florida Statutes, is amended to read:

191 721.05 Definitions.—As used in this chapter, the term:

192 (10) "Developer" includes:

193 (e) A successor or concurrent developer is ~~shall be~~ exempt
194 from any liability inuring to a predecessor or concurrent
195 developer of the same timeshare plan, except as provided in s.
196 721.15(7), provided that this exemption does ~~shall~~ not apply to
197 any of the successor or concurrent developer's responsibilities,
198 duties, or liabilities with respect to the timeshare plan that
199 accrue after the date the successor or concurrent developer
200 became a successor or concurrent developer, and provided that
201 such transfer does not constitute a fraudulent transfer. In
202 addition to other ~~provisions of~~ law, a transfer by a predecessor
203 developer to a successor or concurrent developer is ~~shall be~~

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204 deemed fraudulent if the predecessor developer made the
205 transfer:

206 1. With actual intent to hinder, delay, or defraud any
207 purchaser or the division; or

208 2. To a person that would constitute an insider under s.
209 726.102 ~~s. 726.102(7)~~.

210

211 ~~The provisions of~~ This paragraph does ~~shall~~ not ~~be construed to~~
212 relieve any successor or concurrent developer from the
213 obligation to comply with the provisions of any applicable
214 timeshare instrument.

215 Section 5. The amendment to s. 726.109, Florida Statutes,
216 made by this act is intended to clarify existing law.

217 Section 6. This act shall take effect upon becoming a law.