

**Effective 5/9/2017**

## **Part 1 General Provisions**

### **25-6-101 Title.**

- (1) This chapter is known as the "Uniform Voidable Transactions Act."
- (2) This part is known as "General Provisions."

Renumbered and Amended by Chapter 204, 2017 General Session

### **25-6-102 Definitions.**

As used in this chapter:

- (1) "Affiliate" means:
  - (a) a person that directly or indirectly owns, controls, or holds with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
    - (i) as a fiduciary or agent without sole discretionary power to vote the securities; or
    - (ii) solely to secure a debt, if the person has not exercised the power to vote;
  - (b) a corporation 20% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
    - (i) as a fiduciary or agent without sole discretionary power to vote the securities; or
    - (ii) solely to secure a debt, if the person has not exercised the power to vote;
  - (c) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
  - (d) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
- (2) "Asset" means property of a debtor, but does not include:
  - (a) property to the extent it is encumbered by a valid lien;
  - (b) property to the extent it is generally exempt under nonbankruptcy law; or
  - (c) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) "Creditor" means a person that has a claim.
- (5) "Debt" means liability on a claim.
- (6) "Debtor" means a person that is liable on a claim.
- (7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (8) "Insider" includes:
  - (a) if the debtor is an individual:
    - (i) a relative of the debtor or of a general partner of the debtor;
    - (ii) a partnership in which the debtor is a general partner;
    - (iii) a general partner in a partnership described in Subsection (8)(a)(ii);
    - (iv) a corporation of which the debtor is a director, officer, or person in control; or
    - (v) a limited liability company of which the debtor is a member or manager;

- (b) if the debtor is a corporation:
  - (i) a director of the debtor;
  - (ii) an officer of the debtor;
  - (iii) a person in control of the debtor;
  - (iv) a partnership in which the debtor is a general partner;
  - (v) a general partner in a partnership described in Subsection (8)(b)(iv);
  - (vi) a limited liability company of which the debtor is a member or manager; or
  - (vii) a relative of a general partner, director, officer, or person in control of the debtor;
- (c) if the debtor is a partnership:
  - (i) a general partner in the debtor;
  - (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;
  - (iii) another partnership in which the debtor is a general partner;
  - (iv) a general partner in a partnership described in Subsection (8)(c)(iii);
  - (v) a limited liability company of which the debtor is a member or manager; or
  - (vi) a person in control of the debtor;
- (d) if the debtor is a limited liability company:
  - (i) a member or manager of the debtor;
  - (ii) another limited liability company in which the debtor is a member or manager;
  - (iii) a partnership in which the debtor is a general partner;
  - (iv) a general partner in a partnership described in Subsection (8)(d)(iii);
  - (v) a person in control of the debtor; or
  - (vi) a relative of a general partner, member, manager, or person in control of the debtor;
- (e) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- (f) a managing agent of the debtor.
- (9) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (10) "Organization" means a person other than an individual.
- (11) "Person" means an individual, estate, partnership, limited liability company, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal or commercial entity.
- (12) "Property" means anything that may be the subject of ownership.
- (13) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium that is retrievable in perceivable form.
- (14) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
- (15) "Sign" means, with present intent to authenticate or adopt a record:
  - (a) to execute or adopt a tangible symbol; or
  - (b) to attach to or logically associate with the record an electronic symbol, sound, or process.
- (16) "Transfer" means every mode, direct or indirect, absolute or conditional, or voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.
- (17) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Renumbered and Amended by Chapter 204, 2017 General Session

**25-6-103 Insolvency.**

- (1) A debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater than all of the debtor's assets.
- (2)
  - (a) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent.
  - (b) The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.
- (3) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.
- (4) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Renumbered and Amended by Chapter 204, 2017 General Session

**25-6-104 Value -- Transfer.**

- (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied. However, value does not include an unperformed promise made other than in the ordinary course of the promisor's business to furnish support to the debtor or another person.
- (2) Under Subsection 25-6-202(1)(b) and Section 25-6-203, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.
- (3) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is substantially contemporaneous.

Renumbered and Amended by Chapter 204, 2017 General Session