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DIVISION 4. GENERAL PROVISIONS [3274 - 9566] (*Heading of Division 4 amended by Stats. 1988, Ch. 160, Sec. 16.*)

PART 2. SPECIAL RELATIONS OF DEBTOR AND CREDITOR [3429 - 3449] (*Part 2 enacted 1872.*)

TITLE 2. VOID AND VOIDABLE TRANSFERS AND UNDERTAKINGS [3439 - 3449] (*Heading of Title 2 amended by Stats. 2015, Ch. 44, Sec. 1.*)

CHAPTER 1. Uniform Voidable Transactions Act [3439 - 3439.14] (*Heading of Chapter 1 amended by Stats. 2015, Ch. 44, Sec. 2.*)

3439. This chapter may be cited as the Uniform Voidable Transactions Act.

(*Amended by Stats. 2015, Ch. 44, Sec. 3. (SB 161) Effective January 1, 2016.*)

3439.01. As used in this chapter the following definitions are applicable:

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

(1) Property to the extent it is encumbered by a valid lien.

(2) Property to the extent it is generally exempt under nonbankruptcy law.

(3) 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.

(b) "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.

(c) "Creditor" means a person that has a claim, and includes an assignee of a general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, of a debtor.

(d) "Debt" means liability on a claim.

(e) "Debtor" means a person that is liable on a claim.

(f) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(g) "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.

(h) "Organization" means a person other than an individual.

(i) "Person" means an individual, partnership, corporation, limited liability company, association, government or governmental subdivision, instrumentality or agency, business trust, estate, trust, business or nonprofit entity, or other legal entity.

(j) "Property" means anything that may be the subject of ownership.

(k) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(l) "Sign" means, with present intent to authenticate or adopt a record, to either (1) execute or adopt a tangible symbol, or (2) attach to or logically associate with the record an electronic symbol, sound, or process.

(m) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(n) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

(Amended by Stats. 2015, Ch. 44, Sec. 4. (SB 161) Effective January 1, 2016.)

3439.02. (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) 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. 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.

(c) 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.

(d) 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.

(Amended by Stats. 2015, Ch. 44, Sec. 5. (SB 161) Effective January 1, 2016.)

3439.03. 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, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(Repealed and added by Stats. 1986, Ch. 383, Sec. 2.)

3439.04. (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation as follows:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor.

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor either:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

(1) Whether the transfer or obligation was to an insider.

(2) Whether the debtor retained possession or control of the property transferred after the transfer.

(3) Whether the transfer or obligation was disclosed or concealed.

(4) Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(5) Whether the transfer was of substantially all the debtor's assets.

(6) Whether the debtor absconded.

(7) Whether the debtor removed or concealed assets.

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(10) Whether the transfer occurred shortly before or shortly after a substantial debt was incurred.

(11) Whether the debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(Amended by Stats. 2015, Ch. 44, Sec. 6. (SB 161) Effective January 1, 2016.)

3439.05. (a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

(Amended by Stats. 2015, Ch. 44, Sec. 7. (SB 161) Effective January 1, 2016.)

3439.06. For the purposes of this chapter:

(a) A transfer is made:

(1) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(2) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee.

(b) If applicable law permits the transfer to be perfected as provided in subdivision (a) and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

(c) If applicable law does not permit the transfer to be perfected as provided in subdivision (a), the transfer is made when it becomes effective between the debtor and the transferee.

(d) A transfer is not made until the debtor has acquired rights in the asset transferred.

(e) An obligation is incurred:

(1) If oral, when it becomes effective between the parties; or

(2) If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

(Amended by Stats. 2015, Ch. 44, Sec. 8. (SB 161) Effective January 1, 2016.)

3439.07. (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 3439.08, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedures described in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure, or as may otherwise be available under applicable law.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, the following:

(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or other property of the transferee.

(B) Appointment of a receiver to take charge of the asset transferred or other property of the transferee.

(C) Any other relief the circumstances may require.

(b) If a creditor has commenced an action on a claim against the debtor, the creditor may attach the asset transferred or other property of the transferee if the remedy of attachment is available in the action under applicable law and the property is subject to attachment in the hands of the transferee under applicable law.

(c) If a creditor has obtained a judgment on a claim against the debtor, the creditor may levy execution on the asset transferred or its proceeds.

(d) A creditor who is an assignee of a general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, may exercise any and all of the rights and remedies specified in this section if they are available to any one or more creditors of the assignor who are beneficiaries of the assignment, and, in that event (1) only to the extent the rights or remedies are so available and (2) only for the benefit of those creditors whose rights are asserted by the assignee.

(Amended by Stats. 2015, Ch. 44, Sec. 9. (SB 161) Effective January 1, 2016.)

3439.08. (a) A transfer or obligation is not voidable under paragraph (1) of subdivision (a) of Section 3439.04, against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under paragraph (1) of subdivision (a) of Section 3439.07, the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subdivision (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the following:

(A) The first transferee of the asset or the person for whose benefit the transfer was made.

(B) An immediate or mediate transferee of the first transferee, other than either of the following:

(i) A good faith transferee that took for value.

(ii) An immediate or mediate good faith transferee of a person described in clause (i).

(2) Recovery pursuant to paragraph (1) of subdivision (a), or subdivision (b), or subdivision (c) of Section 3439.07 of or from the asset transferred or its proceeds, or other property of the transferee, as applicable, by levy or otherwise, is available only against a person described in subparagraph (A) or (B) of paragraph (1).

(c) If the judgment under subdivision (b) is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to the following:

(1) A lien on or a right to retain an interest in the asset transferred.

(2) Enforcement of an obligation incurred.

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05 if the transfer results from either of the following:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.

(2) Enforcement of a lien in a noncollusive manner and in compliance with applicable law, including Division 9 (commencing with Section 9101) of the Commercial Code, other than a retention of collateral under Sections 9620 and 9621 of the Commercial Code and other than a voluntary transfer of the collateral by the debtor to the lienor in satisfaction of all or part of the secured obligation.

(f) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subdivision (a), (d), or (e) has the burden of proving the applicability of that subdivision.

(2) Except as otherwise provided in paragraph (3) or (4), the creditor has the burden of proving each applicable element of subdivision (b) or (c).

(3) The transferee has the burden of proving the applicability to the transferee of subparagraph (B) of paragraph (1) of subdivision (b).

(4) A party that seeks adjustment under subdivision (c) has the burden of proving the adjustment.

(g) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

(Amended by Stats. 2015, Ch. 44, Sec. 10. (SB 161) Effective January 1, 2016.)

3439.09. A cause of action with respect to a transfer or obligation under this chapter is extinguished unless action is brought pursuant to subdivision (a) of Section 3439.07 or levy made as provided in subdivision (b) or (c) of Section 3439.07:

(a) Under paragraph (1) of subdivision (a) of Section 3439.04, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant.

(b) Under paragraph (2) of subdivision (a) of Section 3439.04 or Section 3439.05, not later than four years after the transfer was made or the obligation was incurred.

(c) Notwithstanding any other provision of law, a cause of action under this chapter with respect to a transfer or obligation is extinguished if no action is brought or levy made within seven years after the transfer was made or the obligation was incurred.

(Amended by Stats. 2015, Ch. 44, Sec. 11. (SB 161) Effective January 1, 2016.)

3439.10. (a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim in the nature of a claim under this chapter is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(Added by Stats. 2015, Ch. 44, Sec. 13. (SB 161) Effective January 1, 2016.)

3439.12. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

(Added by renumbering Section 3439.10 by Stats. 2015, Ch. 44, Sec. 12. (SB 161) Effective January 1, 2016.)

3439.13. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(Added by renumbering Section 3439.11 by Stats. 2015, Ch. 44, Sec. 14. (SB 161) Effective January 1, 2016.)

3439.14. (a) The changes to this chapter made by the act adding this subdivision apply only to a right of action that accrued, transfer made, or obligation incurred, on or after the effective date of that act.

(b) This chapter, and the other changes in the law made by Chapter 383 of the Statutes of 1986, apply only to transfers made or obligations incurred before the effective date of the act that added subdivision (a) and on or after January 1, 1987. As to transfers made or obligations incurred prior to January 1, 1987, the law in effect at the time the transfer was made or the obligation was incurred shall apply.

(c) Section 3439.06 shall determine the date that a transfer was made or obligation incurred.

(d) The provisions of this chapter, insofar as they are substantially the same as the provisions of this chapter in effect on December 31, 2015, shall be construed as restatements and continuations, and not as new enactments.

(Added by renumbering Section 3439.12 by Stats. 2015, Ch. 44, Sec. 15. (SB 161) Effective January 1, 2016.)