

CHAPTER 242.

UNIFORM FRAUDULENT CONVEYANCE ACT.

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242.01 Definitions. (1) In this chapter "assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets.

(2) "Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance.

(3) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

(4) "Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

Note: The term "assets" of a debtor, as defined in (1), is construed to mean property in the debtor's name, or property the title to which would be in him if a fraudulent conveyance were set aside. Where the debtor in consideration of love and affection for his daughter paid money to a grantor for a conveyance of land directly to the daughter, the land was not an asset of such debtor and was not subject to the terms and regulations of the uniform fraudulent conveyance act; and a judgment creditor of such debtor was not entitled to attach the land. *Dorrington v. Jacobs*, 213 W 521, 252 NW 307.

A mortgagee is a creditor and a mort-

gagor is a debtor, within the statutory definition of creditor and debt. *Marshall & Ilsley Bank v. Stepke*, 223 W 39, 279 NW 625.

Under the uniform fraudulent conveyance act the discharge of a debt of another does not constitute a "fair consideration" for a conveyance by one who is not legally responsible therefor. *Neumeyer v. Weinberger*, 236 W 534, 295 NW 775.

An action cannot be maintained to set aside a conveyance as fraudulent to creditors unless the plaintiff has been injured by the conveyance, fraud without injury not being enough. *Kopf v. Engelke*, 240 W 10, 1 NW (2d) 760, 2 NW (2d) 846.

242.02 Insolvency defined. (1) A person is insolvent when the present fair salable value of his assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured.

(2) In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription.

Note: An actual sale and conveyance of exempt property is not subject to attack by creditors as fraudulent, and it is only when a transfer is merely colorable, that is in reality not a conveyance at all, and is made

for the purpose of enabling the transferor to claim a double exemption, that the law interferes. *Kopf v. Engelke*, 240 W 10, 1 NW (2d) 760, 2 NW (2d) 846.

242.03 Fair consideration defined. Fair consideration is given for property, or obligation, (a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or (b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

Note: The fact that a debt in satisfaction of which a debtor executes a conveyance is barred by the statute of limitations does not in itself render the conveyance fraudulent although such fact is a circumstance bearing on whether the conveyance was fraudulent in fact. *Banking Commission v. Buchanan*, 227 W 544, 279 NW 71.

This section excludes from the definition of "fair consideration" such executory promises by the grantee to pay the balance of the purchase price as are not in the

form of negotiable instruments and already negotiated to holders in due course. [Contrary view in *Farmers Exchange Bank v. Oneida Mfg. Co.*, 202 W 266, overruled.] A grantee may not safely continue to make payments to his fraudulent grantor after learning that the conveyance to him was one designed to hinder, delay or defraud creditors of the grantor, since the fraudulent conveyance is subject to being set aside by creditors of the grantor. *Angers v. Sabatinelli*, 235 W 422, 293 NW 173.

242.04 Contract producing insolvency, fraudulent. Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is

fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

Note: "Fair consideration" may go either to the seller or to his creditors. An insolvent corporation's transfer of assets to a new corporation, which agreed to pay the obligations of the former equal to the value of the assets, was a fair consideration. *Farmers' Ex. Bank v. Oneida M. T. Co.*, 202 W 266, 232 NW 536.

The presumption that conveyances made by a person who was insolvent or was thereby rendered insolvent were fraudulent as to his creditors, without regard to his actual intent, arises only when the fact of insolvency is established. *Miller v. Lange*, 234 W 460, 290 NW 618.

Where a decedent executed chattel mortgages on practically all of his personal

property to his mother-in-law and two daughters to secure notes given to them for antecedent debts, and the value of the property so mortgaged was several times greater than the total indebtedness to be secured thereby, the mortgages were given without a "fair consideration" as defined in 242.03, and, since the mortgagor was thereby rendered insolvent, and there remained in his hands nothing of value to enable him to engage in his business, his real property being mortgaged to secure indebtedness greatly in excess of its value, the three mortgages in question were fraudulent under 242.04 and 242.05 without regard to his actual intent. *Estate of Rasmussen*, 238 W 334, 298 NW 172.

242.05 Other specifications of legal fraud. Every conveyance made without fair consideration when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent.

242.06 Same. Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors.

242.07 Fraud in fact. Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, is fraudulent as to both present and future creditors.

Note: A deed, by a decedent's husband to the decedent's son, of lands which the husband had received by deed from his deceased wife with the understanding that it was given for the sole purpose of having him convey the property to the son on the wife's death, was not fraudulent as to the husband's creditors, since the husband acted in the circumstances merely as an intermediary through which the title passed from the wife to the son, and the husband had not obtained any credit on the strength of his apparent ownership of the property. *Popp v. Froelich*, 223 W 168, 270 NW 38.

A conveyance for the purpose of defrauding creditors is void as against the creditors, yet it is valid as between the parties and conveys good title to the grantee as against the grantor. A fraudulent grantee is under a moral duty to reconvey, and the reconveyance in the execution of this duty should be favorably regarded in equity as a conscientious effort to reinstate the original status;

and creditors of the fraudulent grantee have no grounds of complaint because they have no right to ask him to hold property to which he has no moral right. *Marshall v. Marshall*, 230 W 504, 284 NW 541.

One seeking to set aside conveyances because made with intent to hinder, delay and defraud creditors had the burden to prove such intent by clear, satisfactory and convincing evidence. Findings that conveyances of shares of stock by a husband to his wife, made at different times several years prior to the commencement of an action to set aside the conveyances and made at a time when he was a man of substantial wealth with a large income, were made with intent on his part to hinder, delay and defraud his creditors, are held contrary to the great weight of the evidence. *Miller v. Lange*, 234 W 460, 290 NW 618.

242.08 Fraud in law. Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is made or obligation is incurred, (a) To a partner, whether with or without a promise by him to pay partnership debts, or (b) To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners.

242.09 Remedies of creditors. (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser, (a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or (b) Disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment.

Note: Where property legally liable to execution has been fraudulently conveyed by the debtor, an action to set aside the conveyance as an obstruction to the creditor's lien is within the scope of the uniform fraudulent conveyance act, and the intervention of equity is not required for the purpose of setting aside the conveyance but is merely invoked in an action to quiet title for the

purpose of removing the cloud created by the outstanding fraudulent conveyance. *Dorrington v. Jacobs*, 213 W 521, 252 NW 307.

The wife's knowledge of her bankrupt husband's intent to defraud creditors in making the conveyance to her and her acting in collusion with him to effectuate such fraudulent intent, as found by the trial court in the action by the trustee in bankruptcy

to set aside the conveyance, preclude her from recovering whatever consideration was paid by her or holding the property as security therefor. *Beat v. Mickelson*, 221 W 176, 266 NW 244.

A daughter to whom parents conveyed land without consideration with intent to defraud creditors, but who did not participate in the parents' actual intent to defraud, was entitled only to a lien for the money advanced by her to pay off the mortgage on one of the parcels conveyed. *Marshall & Ilesley Bank v. Stepke*, 228 W 39, 279 NW 625.

Applied to a situation where a grantee innocently makes part payments on the purchase price prior to learning of the fraudulent purpose of the conveyance, (2) permits the innocent grantee in such case to have a lien on the premises as security for these payments. A grantee guilty of no actual fraud is entitled, as a condition upon relief to any creditor of the grantor seeking to set aside the conveyance, to a lien for sums expended by the grantee in the maintenance of the property or for the pur-

pose of preventing tax liens even after he has learned of the fraudulent purpose of the transaction but before any action by creditors to set aside the conveyance. *Angers v. Sabatinelli*, 235 W 422, 293 NW 173.

Where a husband's conveyance to his wife was valid and binding as between them, and effected a severance and destruction of their joint tenancy in the property with its right of survivorship between them, neither the joint tenancy nor the right of survivorship was reestablished or restored by virtue of a subsequent adjudication that the conveyance was fraudulent and void as to the husband's creditors so as to entitle them to have it set aside to the extent necessary to satisfy their claims. Under 242.09 it was optional with the judgment creditor either to have the fraudulent conveyance set aside to the extent necessary to satisfy his claim, or, if he chose to disregard the conveyance, to attach or levy execution on the debtor grantor's interest in the conveyed property. *Campbell v. Drozdowicz*, 243 W 354, 10 NW (2d) 158.

242.10 Same. Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may, (a) Restrain the defendant from disposing of his property, (b) Appoint a receiver to take charge of the property, (c) Set aside the conveyance or annul the obligation, or (d) Make any order which the circumstances of the case may require.

Note: In an action against a corporation, and an assignee under an assignment for the benefit of its creditors, and others, by a purchaser of land who claimed to have been deprived of acquiring good title, by reason of fraud in such assignment, a cross complaint of a defendant creditor against other defendants, relying on the same facts as the plaintiff, and asking that certain mortgages and the obligations secured thereby be declared void, was consistent with an action to set aside alleged fraud-

ulent conveyances and obligations, although also asking for relief sounding in conspiracy, so that the trial court properly proceeded with the trial on the theory of an action under the Uniform Fraudulent Conveyance Act, authorized by 242.10. *Angers v. Sabatinelli*, 246 W 374, 17 NW (2d) 232.

An agreement between real estate brokers to divide a commission need not be in writing and signed by the party to be charged. *Niemann v. Severson*, 246 W 636, 18 NW (2d) 336.

242.11 What rules of law apply to the chapter. In any case not provided for in this chapter the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern.

242.12 Interpretation of chapter. This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

242.13 Chapter, how cited. This chapter may be cited as the "Uniform Fraudulent Conveyance Act."