

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 encumbrance.

(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.

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.

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.

The executory promise of the wife could not be equated to "fair consideration" based on the wife's claim that she discharged a large portion of her husband's debts subsequent to the commencement of the fraudulent conveyance action, it appearing that the money used was derived from the property conveyed, for the term "fair consideration" connotes "good faith," which was contravened by the evidence indicating that both husband and wife were motivated at the time of the transfers by intent to hinder, delay, and defraud the husband's creditors. *Running v. Widdes*, 52 W (2d) 254, 190 NW (2d) 169.

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.

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.

Where a woman conveyed property for no consideration and had almost no other property or income, and then applied for and received medical assistance, a complaint alleging fraud is good under either 242.06 or 242.07. Since there was no consideration, the grantee's knowledge or intent or participation is immaterial. *Waukesha County Dept. of Social Serv. v. Loper*, 53 W (2d) 713, 193 NW (2d) 679.

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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.

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.

A codefendant who was a guarantor on a note can purchase the judgment and enforce it. He succeeds to the

remedies of the judgment creditor. A general creditor seeking relief for fraudulent conveyance must reduce his claim to judgment. *Running v Widdes*, 52 W (2d) 254, 190 NW (2d) 169

Claim of conspiracy to fraudulently convey provides plaintiff with damage remedies independent of ch. 242. *Dalton v Meister*, 71 W (2d) 504, 239 NW (2d) 9.

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.

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".