

ASSEMBLY, No. 3384

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblyman JOHN F. MCKEON

District 27 (Essex and Morris)

SYNOPSIS

Makes various revisions to “Uniform Fraudulent Transfer Act”; renames act to “Uniform Voidable Transactions Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning voidable transactions, amending various
2 sections of the statutory law and supplementing chapter 2 of
3 Title 25 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. R.S.25:2-20 is amended to read as follows:
9 25:2-20. Short title.

10 This article **[shall be]** which was formerly known **[and may be**
11 **cited]** as the "Uniform Fraudulent Transfer Act" shall be known
12 and may be cited as the "Uniform Voidable Transactions Act," on
13 or after the effective date of P.L. , c. (pending before the
14 Legislature as this bill).

15 (cf: R.S.25:2-20)

16
17 2. R.S.25:2-21 is amended to read as follows:
18 25:2-21. Definitions: A to H.

19 As used in this article:

20 "Affiliate" means:

21 a. A person who directly or indirectly owns, controls, or holds
22 with power to vote, 20% or more of the outstanding voting
23 securities of the debtor, other than a person who holds the
24 securities**[,]**:

25 (1) As a fiduciary or agent without sole discretionary power to
26 vote the securities; or

27 (2) Solely to secure a debt, if the person has not in fact
28 exercised the power to vote;

29 b. A corporation 20% or more of whose outstanding voting
30 securities are directly or indirectly owned, controlled, or held with
31 power to vote, by the debtor or a person who directly or indirectly
32 owns, controls, or holds with power to vote, 20% or more of the
33 outstanding voting securities of the debtor, other than a person who
34 holds the securities**[,]**:

35 (1) As a fiduciary or agent without sole discretionary power to
36 vote the securities; or

37 (2) Solely to secure a debt, if the person has not in fact
38 exercised the power to vote;

39 c. A person whose business is operated by the debtor under a
40 lease or other agreement, or a person substantially all of whose
41 assets are controlled by the debtor; or

42 d. A person who operates the debtor's business under a lease or
43 other agreement or controls substantially all of the debtor's assets.

44 "Asset" means property of a debtor, but the term does not
45 include:

46 a. Property to the extent it is encumbered by a valid lien;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

- 1 b. Property to the extent it is generally exempt under
- 2 nonbankruptcy law; or
- 3 c. An interest in property held in tenancy by the entirety to
- 4 the extent it is not subject to process by a creditor holding a claim
- 5 against only one tenant.
- 6 "Claim", except as used in "claim for relief," means a right to
- 7 payment, whether or not the right is reduced to judgment,
- 8 liquidated, unliquidated, fixed, contingent, matured, unmatured,
- 9 disputed, undisputed, legal, equitable, secured, or unsecured.
- 10 "Creditor" means a person who has a claim.
- 11 "Debt" means liability on a claim.
- 12 "Debtor" means a person who is liable on a claim.
- 13 "Electronic" means relating to technology having electrical,
- 14 digital, magnetic, wireless, optical, electromagnetic, or similar
- 15 capabilities.
- 16 (cf: R.S.25:2-21)
- 17
- 18 3. R.S.25:2-22 is amended to read as follows:
- 19 25:2-22. Definitions: I to Z.
- 20 As used in this article:
- 21 "Insider" includes:
- 22 a. If the debtor is an individual **[,]:**
- 23 (1) A relative of the debtor or of a general partner of the debtor;
- 24 (2) A partnership in which the debtor is a general partner;
- 25 (3) A general partner in a partnership described in paragraph (2)
- 26 of subsection a. of this definition; or
- 27 (4) A corporation of which the debtor is a director, officer, or
- 28 person in control;
- 29 b. If the debtor is a corporation **[,]:**
- 30 (1) A director of the debtor;
- 31 (2) An officer of the debtor;
- 32 (3) A person in control of the debtor;
- 33 (4) A partnership in which the debtor is a general partner;
- 34 (5) A general partner in a partnership described in paragraph (4)
- 35 of subsection b. of this definition; or
- 36 (6) A relative of a general partner, director, officer, or person in
- 37 control of the debtor;
- 38 c. If the debtor is a partnership **[,]:**
- 39 (1) A general partner in the debtor;
- 40 (2) A relative of a general partner in, or a general partner of, or
- 41 a person in control of the debtor;
- 42 (3) Another partnership in which the debtor is a general partner;
- 43 (4) A general partner in a partnership described in paragraph (3)
- 44 of subsection c. of this definition; or
- 45 (5) A person in control of the debtor;
- 46 d. An affiliate, or an insider of an affiliate as if the affiliate
- 47 were the debtor; and
- 48 e. A managing agent of the debtor.

1 "Lien" means a charge against or an interest in property to secure
2 payment of a debt or performance of an obligation, and includes a
3 security interest created by agreement, a judicial lien obtained by
4 legal or equitable process or proceedings, a common-law lien, or a
5 statutory lien.

6 "Organization" means a person other than an individual.

7 "Person" means an individual, estate, partnership, **corporation,**
8 association, **organization,** trust, business or nonprofit entity,
9 public corporation, government or governmental subdivision **or** ,
10 agency, **business trust, estate, trust** or instrumentality , or any
11 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
14 medium or that is stored in an electronic or other medium and is
15 retrievable in perceivable form.

16 "Relative" means an individual related by consanguinity within
17 the third degree as determined by the common law, a spouse, or an
18 individual related to a spouse within the third degree as so
19 determined, and includes an individual in an adoptive relationship
20 within the third degree.

21 "Sign" means, with present intent to authenticate or adopt a
22 record:

23 (1) To execute or adopt a tangible symbol; or

24 (2) To attach to or logically associate with the record an
25 electronic symbol, sound, or process.

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

31 "Valid lien" means a lien that is effective against the holder of a
32 judicial lien subsequently obtained by legal or equitable process or
33 proceedings.

34 (cf: R.S.25:2-22)

35
36 4. R.S.25:2-23 is amended to read as follows:

37 25:2-23. Insolvency.

38 a. A debtor is insolvent if, at a fair valuation, the sum of the
39 debtor's debts is greater than **all** the sum of the debtor's assets **,**
40 at a fair valuation.

41 b. A debtor who is generally not paying **his** the debtor's
42 debts as they become due other than as a result of a bona fide
43 dispute is presumed to be insolvent. This presumption imposes on
44 the party against which the presumption is directed the burden of
45 proving that the nonexistence of insolvency is more probable than
46 its existence.

1 c. **【A partnership is insolvent under subsection a. of this**
2 **section if the sum of the partnership's debts is greater than the**
3 **aggregate, at a fair valuation, of all of the partnership's assets and**
4 **the sum of the excess of the value of each general partner's**
5 **nonpartnership assets over the partner's nonpartnership debts.】**
6 (Deleted by amendment, P.L. , c. .)

7 d. Assets under this section do not include property that has
8 been transferred, concealed, or removed with intent to hinder, delay,
9 or defraud creditors or that has been transferred in a manner making
10 the transfer voidable under this article.

11 e. Debts under this section do not include an obligation to the
12 extent it is secured by a valid lien on property of the debtor not
13 included as an asset.
14 (cf: R.S.25:2-23)

15
16 5. R.S.25:2-24 is amended to read as follows:
17 25:2-24. Value.

18 a. Value is given for a transfer or an obligation if, in exchange
19 for the transfer or obligation, property is transferred or an
20 antecedent debt is secured or satisfied, but value does not include an
21 unperformed promise made otherwise than in the ordinary course of
22 the promisor's business to furnish support to the debtor or another
23 person.

24 b. For the purposes of paragraph (2) of subsection **【b.】 a.** of
25 R.S. 25:2-25 and R.S. 25:2-27, a person gives a reasonably
26 equivalent value if the person acquires an interest of the debtor in
27 an asset pursuant to a regularly conducted, noncollusive foreclosure
28 sale or execution of a power of sale for the acquisition or
29 disposition of the interest of the debtor upon default under a
30 mortgage, deed of trust, or security agreement.

31 c. A transfer is made for present value if the exchange between
32 the debtor and the transferee is intended by them to be
33 contemporaneous and is in fact substantially contemporaneous.
34 (cf: R.S.25:2-24)

35
36 6. R.S.25:2-25 is amended to read as follows:
37 25:2-25. **【Transfers】** Transfer **【fraudulent】** or obligation
38 voidable as to present **【and】** or future **【creditors】** creditor.

39 a. A transfer made or obligation incurred by a debtor is
40 **【fraudulent】** voidable as to a creditor, whether the creditor's claim
41 arose before or after the transfer was made or the obligation was
42 incurred, if the debtor made the transfer or incurred the obligation:

43 **【a.】** (1) With actual intent to hinder, delay, or defraud any
44 creditor of the debtor; or

45 **【b.】** (2) Without receiving a reasonably equivalent value in
46 exchange for the transfer or obligation, and the debtor:

1 **[(1)]** (a) Was engaged or was about to engage in a business or
2 a transaction for which the remaining assets of the debtor were
3 unreasonably small in relation to the business or transaction; or

4 **[(2)]** (b) Intended to incur, or believed or reasonably should
5 have believed that the debtor would incur, debts beyond the debtor's
6 ability to pay as they become due.

7 b. A creditor making a claim for relief under subsection a. of
8 this section has the burden of proving the elements of the claim for
9 relief by a preponderance of the evidence.

10 (cf: R.S.25:2-25)

11
12 7. R.S.25:2-26 is amended to read as follows:

13 25:2-26. Factors in determining **[(fraudulent)]** intent.

14 In determining actual intent under paragraph (1) of subsection a.
15 of R.S.25:2-25 consideration may be given, among other factors, to
16 whether:

- 17 a. The transfer or obligation was to an insider;
18 b. The debtor retained possession or control of the property
19 transferred after the transfer;
20 c. The transfer or obligation was disclosed or concealed;
21 d. Before the transfer was made or obligation was incurred, the
22 debtor had been sued or threatened with suit;
23 e. The transfer was of substantially all the debtor's assets;
24 f. The debtor absconded;
25 g. The debtor removed or concealed assets;
26 h. The value of the consideration received by the debtor was
27 reasonably equivalent to the value of the asset transferred or the
28 amount of the obligation incurred;
29 i. The debtor was insolvent or became insolvent shortly after
30 the transfer was made or the obligation was incurred;
31 j. The transfer occurred shortly before or shortly after a
32 substantial debt was incurred; and
33 k. The debtor transferred the essential assets of the business to
34 a lienor who transferred the assets to an insider of the debtor.

35 (cf: R.S.25:2-26)

36
37 8. R.S.25:2-27 is amended to read as follows:

38 25:2-27. **[(Transfers)]** Transfer or obligation **[(fraudulent)]**
39 voidable as to present **[(creditors)]** creditor.

40 a. A transfer made or obligation incurred by a debtor is
41 **[(fraudulent)]** voidable as to a creditor whose claim arose before the
42 transfer was made or the obligation was incurred if the debtor made
43 the transfer or incurred the obligation without receiving a
44 reasonably equivalent value in exchange for the transfer or
45 obligation and the debtor was insolvent at that time or the debtor
46 became insolvent as a result of the transfer or obligation.

1 b. A transfer made by a debtor is **【fraudulent】** voidable as to a
2 creditor whose claim arose before the transfer was made if the
3 transfer was made to an insider for an antecedent debt, the debtor
4 was insolvent at that time, and the insider had reasonable cause to
5 believe that the debtor was insolvent.

6 c. Subject to subsection b. of R.S.25:2-23, a creditor making a
7 claim for relief under subsection a. or b. of this section has the
8 burden of proving the elements of the claim for relief by a
9 preponderance of the evidence.

10 (cf: R.S.25:2-27)

11
12 9. R.S.25:2-28 is amended to read as follows:

13 25:2-28. When transfer is made or obligation incurred.

14 For the purposes of this article:

15 a. A transfer is made:

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

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

27 b. If applicable law permits the transfer to be perfected as
28 provided in subsection a. of this section and the transfer is not so
29 perfected before the commencement of an action for relief under
30 this article, the transfer is deemed made immediately before the
31 commencement of the action;

32 c. If applicable law does not permit the transfer to be perfected
33 as provided in subsection a. of this section, the transfer is made
34 when it becomes effective between the debtor and the transferee;

35 d. A transfer is not made until the debtor has acquired rights in
36 the asset transferred;

37 e. An obligation is incurred:

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

39 (2) If evidenced by a **【writing】** record, when the **【writing**
40 **executed】** record signed by the obligor is delivered to or for the
41 benefit of the obligee.

42 (cf: R.S.25:2-28)

43
44 10. R.S.25:2-29 is amended to read as follows:

45 25:2-29. Remedies of **【creditors】** creditor.

46 a. In an action for relief against a transfer or obligation under
47 this article, a creditor, subject to the limitations in R.S.25:2-30, may
48 obtain:

- 1 (1) Avoidance of the transfer or obligation to the extent
2 necessary to satisfy the creditor's claim;
- 3 (2) An attachment or other provisional remedy against the asset
4 transferred or other property of the transferee **【in accordance with**
5 the procedure prescribed by Chapter 26 of Title 2A of the New
6 Jersey Statutes and by Rule 4:60 et seq. of the Rules Governing the
7 Courts of the State of New Jersey**】** if available under applicable
8 law; and
- 9 (3) Subject to applicable principles of equity and in accordance
10 with applicable rules of civil procedure **【,】**;
- 11 (a) An injunction against further disposition by the debtor or
12 transferee, or both, of the asset transferred or of other property;
- 13 (b) Appointment of a receiver to take charge of the asset
14 transferred or of other property of the transferee; or
- 15 (c) Any other relief the circumstances may require.
- 16 b. If a creditor has obtained a judgment on a claim against the
17 debtor, the creditor, if the court so orders, may levy execution on
18 the asset transferred or its proceeds.
19 (cf: R.S.25:2-29)
20
- 21 11. R.S.25:2-30 is amended to read as follows:
22 25:2-30. Defenses, liability and protection of transferee or
23 obligee.
- 24 a. A transfer or obligation is not voidable under paragraph (1)
25 of subsection a. of R.S.25:2-25 against a person who took in good
26 faith and for a reasonably equivalent value given the debtor or
27 against any subsequent transferee or obligee.
- 28 b. To the extent a transfer is voidable in an action by a creditor
29 under paragraph (1) of subsection a. of R.S.25:2-29 the following
30 rules apply:
- 31 **【(1) Except as otherwise provided in this section 【, to the extent**
32 **a transfer is voidable in an action by a creditor under paragraph (1)**
33 **of subsection a. of R.S.25:2-29】**, the creditor may recover judgment
34 for the value of the asset transferred, as adjusted under subsection c.
35 of this section, or the amount necessary to satisfy the creditor's
36 claim, whichever is less. The judgment may be entered against:
- 37 **【(1)】 (a) The first transferee of the asset or the person for**
38 **whose benefit the transfer was made; or**
- 39 **【(2) Any subsequent transferee other than a good-faith**
40 **transferee who took for value or from any subsequent transferee】**
- 41 (b) An immediate or mediate transferee of the first transferee,
42 other than:
- 43 (i) a good-faith transferee who took for value; or
44 (ii) an immediate or mediate good-faith transferee of a person
45 described in subsubparagraph (i) of subparagraph (b) of paragraph
46 (1) of subsection b. of this section.

1 (2) Recovery pursuant to paragraph (1) of subsection a. of
2 R.S.25:2-29 or subsection b. of R.S.25:2-29 of or from the asset
3 transferred or its proceeds, by levy or otherwise, is available only
4 against a person described in subparagraph (a) or (b) of paragraph
5 (1) of subsection b. of this section.

6 c. If the judgment under subsection b. of this section is based
7 upon the value of the asset transferred, the judgment shall be for an
8 amount equal to the value of the asset at the time of the transfer,
9 subject to adjustment as the equities may require.

10 d. Notwithstanding voidability of a transfer or an obligation
11 under this article, a good-faith transferee or obligee is entitled, to
12 the extent of the value given the debtor for the transfer or
13 obligation, to:

14 (1) A lien on or a right to retain **any** an interest in the asset
15 transferred;

16 (2) Enforcement of **any** an obligation incurred; or

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

18 e. A transfer is not voidable under paragraph (2) of subsection
19 **b.** a. of R.S. 25:2-25 or R.S.25:2-27 if the transfer results
20 from:

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

23 (2) Enforcement of a security interest in compliance with
24 Article 9 of the Uniform Commercial Code **],** N.J.S. 12A:9-101 et
25 seq.], other than acceptance of collateral in full or partial
26 satisfaction of the obligation it secures.

27 f. A transfer is not voidable under subsection b. of R.S. 25:2-
28 27:

29 (1) To the extent the insider gave new value to or for the benefit
30 of the debtor after the transfer was made **unless** , except to the
31 extent the new value was secured by a valid lien;

32 (2) If made in the ordinary course of business or financial affairs
33 of the debtor and the insider; or

34 (3) If made pursuant to a good-faith effort to rehabilitate the
35 debtor and the transfer secured present value given for that purpose
36 as well as an antecedent debt of the debtor.

37 g. The following rules shall determine the burden of proving
38 matters referred to in this section:

39 (1) A party that seeks to invoke subsections a., d., e., or f. has
40 the burden of proving the applicability of that subsection.

41 (2) Except as otherwise provided in paragraphs (3) and (4) of
42 this subsection, the creditor has the burden of proving each
43 applicable element of subsection b. or c.

44 (3) The transferee has the burden of proving the applicability to
45 the transferee of subsubparagraphs (i) or (ii) of subparagraph (b) of
46 paragraph (1) of subsection b.

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

3 h. The standard of proof required to establish matters referred
4 to in this section is preponderance of the evidence.

5 (cf: R.S.25:2-30
6

7 12. R.S.25:2-31 is amended to read as follows:

8 25:2-31. Extinguishment of **【cause of action】** claim for relief.

9 A **【cause of action】** claim for relief with respect to a
10 **【fraudulent】** transfer or obligation under this article is extinguished
11 unless action is brought:

12 a. Under paragraph (1) of subsection a. of R.S.25:2-25,
13 **【within】** not later than four years after the transfer was made or the
14 obligation was incurred or, if later, **【within】** not later than one year
15 after the transfer or obligation was discovered by the claimant;

16 b. Under **【subsection b.】** paragraph (2) of subsection a. of
17 R.S.25:2-25 or subsection a. of R.S.25:2-27, **【within】** not later than
18 four years after the transfer was made or the obligation was
19 incurred; or

20 c. Under paragraph (2) of subsection **【b.】** a. of R.S.25:2-27,
21 **【within】** not later than one year after the transfer was made **【or the**
22 **obligation is incurred】**.

23 (cf: P.L.2002, c.100)
24

25 13. (New section) Governing law.

26 a. In this section, the following rules determine a debtor's
27 location:

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

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

32 (3) A debtor that is an organization and has more than one place
33 of business shall be deemed to be located at its chief executive
34 office.

35 b. A claim in the nature of a claim under the "Uniform
36 Voidable Transactions Act," R.S.25:2-20 et seq., shall be governed
37 by the local law of the jurisdiction in which the debtor is located
38 when the transfer is made or the obligation is incurred.
39

40 14. R.S.25:2-32 is amended to read as follows:

41 25:2-32. Supplementary provisions.

42 Unless displaced by the provisions of **【this article】** the "Uniform
43 Voidable Transactions Act," R.S.25:2-20 et seq., the principles of
44 law and equity, including the law merchant and the law relating to
45 principal and agent, estoppel, laches, fraud, misrepresentation,
46 duress, coercion, mistake, insolvency, or other validating or

1 invalidating cause, supplement its provisions.
2 (cf: R.S.25:2-32)

3
4 15. R.S.25:2-33 is amended to read as follows:
5 25:2-33. Uniformity of application and construction.
6 **【This article】** The “Uniform Voidable Transactions Act,”
7 R.S.25:2-20 et seq., shall be applied and construed to effectuate its
8 general purpose to make uniform the law with respect to the subject
9 of this article among states enacting it.
10 (cf: R.S.25:2-33)

11
12 16. (New section) Relation to “Electronic Signatures in Global
13 and National Commerce Act.”
14 This article modifies, limits, and supersedes the “Electronic
15 Signatures in Global and National Commerce Act,” 15 U.S.C.
16 s.7001 et seq., but does not modify, limit, or supersede section
17 101(c) of that act, 15 U.S.C. s.7001(c), or authorize electronic
18 delivery of any of the notices described in section 103(b) of that act,
19 15 U.S.C. s.7003(b).

20
21 17. Section 13 of P.L.1998, c.1 (C.2A:17-56.62) is amended to
22 read as follows:
23 13. In any case in which the department knows of a transfer by a
24 child support judgment debtor pursuant to the "Uniform
25 **【Fraudulent Transfer】** Voidable Transactions Act," R.S.25:2-20 et
26 seq., with respect to which a prima facie case is established, the
27 department shall seek to void the transfer or obtain a settlement in
28 the best interest of the child support creditor.
29 (cf: P.L.1998, c.1, s.13)

30
31 18. Section 8 of P.L.1979, c.484 (C.3A:25-46) is amended to
32 read as follows:
33 8. The right of a person to disclaim property or any interest
34 therein is barred if the property or interest is seized under judicial
35 process issued against the person before the expiration of the
36 period in which he is permitted to disclaim; or if before the
37 expiration of the period in which he is permitted to disclaim, the
38 person (1) accepts or exercises control as beneficial owner over all
39 or any part of such property or interest; or (2) voluntarily transfers
40 or encumbers or contracts to transfer or encumber all or any part of
41 such property or interest; or (3) disclaims or attempts to disclaim
42 all or any part of such property or interest in fraud of his creditors
43 as set forth in the **【Uniform Fraudulent Conveyance Law (R.S.**
44 25:2-7 et seq.)】 "Uniform Voidable Transactions Act," R.S.25:2-20
45 et seq.; or (4) executes a written waiver of the right to disclaim.
46 (cf: P.L.1979, c.484, s.8)

47
48 19. N.J.S.3B:9-9 is amended to read as follows:

- 1 3B:9-9. Bar of right to disclaim.
- 2 a. The right of an individual to disclaim property or any
- 3 interest therein is barred by:
- 4 (1) an assignment, conveyance, encumbrance, pledge or transfer
- 5 of the property or interest or a contract therefor; or
- 6 (2) a written waiver of the right to disclaim; or
- 7 (3) an acceptance of the property or interest or a benefit under it
- 8 after actual knowledge that a property right has been conferred; or
- 9 (4) a sale of the property or interest that was seized under
- 10 judicial process before the disclaimer is made; or
- 11 (5) the expiration of the permitted applicable perpetuities
- 12 period; or
- 13 (6) a fraud on the individual's creditors as set forth in the
- 14 "Uniform **【Fraudulent Transfer】** Voidable Transactions Act"
- 15 (R.S.25:2-20 et seq.).
- 16 b. The disclaimant shall not be barred from disclaiming all or
- 17 any part of the balance of the property where the disclaimant has
- 18 received a portion of the property and there still remains an interest
- 19 which the disclaimant is yet to receive.
- 20 c. A bar to the right to disclaim a present interest in joint
- 21 property does not bar the right to disclaim a future interest in that
- 22 property.
- 23 d. The right to disclaim may be barred to the extent provided
- 24 by other applicable statutory law.
- 25 (cf: P.L.2005, c.160, s.11)
- 26
- 27 20. Section 1 of P.L.2001, c.231 (C.14A:12-13.1) is amended to
- 28 read as follows:
- 29 1. (1) A creditor as defined in subsection (3) of
- 30 N.J.S.14A:12-12 or subsection (b) of N.J.S.14A:14-1, and all those
- 31 claiming through or under the creditor, shall be forever barred from
- 32 suing a shareholder on any claim, or otherwise realizing upon or
- 33 enforcing any claim against a shareholder, unless that claim was
- 34 filed against the shareholder, pursuant to N.J.S.14A:12-13 or
- 35 N.J.S.14A:14-15, or otherwise, within five years after the
- 36 corporation was dissolved.
- 37 (2) This section shall not: (a) apply to claims against
- 38 shareholders which are in litigation on the effective date of this
- 39 section; (b) operate to extend any otherwise applicable statute of
- 40 limitations; or (c) affect any rights of creditors under the "Uniform
- 41 **【Fraudulent Transfer】** Voidable Transactions Act," R.S.25:2-20 et
- 42 seq.
- 43 (cf: P.L.2001, c.231, s.1)
- 44
- 45 21. Section 52 of P.L.2012, c.50 (C.42:2C-52) is amended to
- 46 read as follows:
- 47 52. Claims Against Member or Transferee Barred Unless Filed
- 48 Within Five Years After Limited Liability Company Dissolved.

1 a. A claimant, and all those claiming through or under the
2 claimant, shall be forever barred from suing a member or transferee
3 on any claim, or otherwise realizing upon or enforcing any claim
4 against a member or transferee, unless an action is commenced
5 against the member or transferee, pursuant to paragraph (2) of
6 subsection d. of section 51 of this act, or otherwise, within five
7 years after the limited liability company was dissolved.

8 b. This section shall not:

9 (1) apply to claims against members or transferees which are in
10 litigation on the effective date of this section;

11 (2) operate to extend any otherwise applicable statute of
12 limitations; or

13 (3) affect any rights of creditors under the "Uniform
14 **【Fraudulent Transfer】** Voidable Transactions Act," R.S.25:2-20 et
15 seq.

16 (cf: P.L.2012, c.50, s.52)

17

18 22. Section 5 of P.L.2003, c.120 (C.52:27BBB-70) is amended
19 to read as follows:

20 5. a. Authority to Enter into Sale Agreements. A qualified
21 municipality may sell to the corporation, and the corporation may
22 purchase, for cash or other consideration and in one or more
23 installments, all or a portion of the tax liens pursuant to the terms of
24 one or more sale agreements. Any sale agreement shall provide,
25 among other matters, the purchase price payable by the corporation
26 to a qualified municipality for the tax liens, which amount may be
27 more or less than the face amount of the tax liens purchased by the
28 corporation, and may include the residual interests, if any. The sale
29 agreement may require a qualified municipality to repurchase a tax
30 lien, or to substitute another tax lien of equivalent value, under
31 conditions to be specified in the sale agreement. The sale
32 agreement may provide that a qualified municipality shall be
33 obligated to sell to the corporation subsequent tax liens
34 encumbering the property encumbered by the tax liens originally
35 sold and remaining unpaid on such terms as the corporation deems
36 desirable. Any sale shall be conducted pursuant to one or more sale
37 agreements that may contain such terms and conditions deemed
38 appropriate by a qualified municipality to carry out and effectuate
39 the purposes of this section, including, without limitation,
40 covenants binding the qualified municipality in favor of the
41 corporation and its assignees, including, without limitation, the
42 owners of its securities and benefitted parties; a provision
43 authorizing inclusion of the State's pledge and agreement, as set
44 forth in section 10 of this act, in any agreement with owners of the
45 securities or any benefitted parties; and covenants with respect to
46 the application and use of the proceeds of the sale of the qualified
47 municipality's tax liens to preserve the tax exemption of the interest
48 on any securities, if issued as tax exempt. A qualified municipality

1 in any sale agreement may agree to, and the corporation may
2 provide for, the assignment of the corporation's right, title and
3 interest under the sale agreement for the benefit and security of the
4 owners of securities and benefitted parties. The residual interest
5 shall be uncertificated.

6 Notwithstanding that the corporation is hereby constituted an
7 instrumentality of the State, all of the residual interests arising upon
8 the transfer of a qualified municipality's tax liens to the corporation
9 shall be the property of and vest in such qualified municipality and
10 all of the economic avails and benefits of such residual interests,
11 including, but not limited to, the income attributable to and accruing
12 with respect to such interests from time to time, shall accrue to and
13 inure to the benefit of such qualified municipality.

14 b. True Sale. Any sale of tax liens to the corporation pursuant
15 to a sale agreement shall constitute a true sale and absolute transfer
16 of the property so transferred and not a pledge or a grant of a
17 security interest for any borrowing. The characterization of a sale
18 as an absolute transfer by the participants shall not be negated or
19 adversely affected by the fact that only a portion of a qualified
20 municipality's tax liens is transferred, nor by the acquisition or
21 retention by a qualified municipality of a residual interest, nor by
22 the characterization of the corporation or its obligations for
23 purposes of accounting, taxation or securities regulation, nor by any
24 actual pledge, assignment or grant of a security interest in the tax
25 liens and any proceeds of the tax liens, nor by any other factor
26 whatsoever.

27 c. Qualified Municipality to Notify Collector. On and after the
28 effective date of each sale of tax liens, a qualified municipality shall
29 have no right, title or interest in or to the tax liens sold, and the tax
30 liens so sold shall be property of the corporation and not of the
31 qualified municipality, and shall be owned and held by the
32 corporation and not the qualified municipality. On or before the
33 effective date of any sale, the qualified municipality shall notify the
34 collector that the tax liens have been sold to the corporation and
35 irrevocably instruct the collector that, subsequent to the effective
36 date of the sale, it shall pay over to the corporation or its designee
37 within two days of its receipt any payments made on the transferred
38 tax liens for the benefit of the owners of the securities and
39 benefitted parties.

40 d. No Right to Cancel, Reduce or Compromise. Notwithstanding any other law to the contrary, a qualified
41 municipality shall not have any right to cancel, reduce or
42 compromise any taxes, penalties or interest secured by a tax lien
43 sold pursuant to this act or extend the time for payment thereof. A
44 qualified municipality may not waive any penalties and interest on a
45 tax lien that has been sold pursuant to this act.

46 e. Sale by Assignment. A qualified municipality's sale of tax
47 liens to the corporation shall be made by assignment. The
48

1 certificates of sale may be assigned separately or in bulk with other
2 such certificates. Upon such assignment, the qualified municipality
3 shall promptly deliver such certificates to the corporation or its
4 designee.

5 f. Recording. Any and all further or additional assignments of
6 the tax sale certificates shall promptly be recorded in the office of
7 the county clerk or the register of deeds and mortgages, as the case
8 may be, of the county where the real property is located, and a
9 photocopy of the recorded assignment shall be served upon the
10 collector by certified mail, return receipt requested. When
11 assignments have not been recorded and served upon the collector,
12 the collector shall be held harmless for the payment of any
13 redemption amounts to the holder of the certificate of sale as
14 appears on the records of the collector. All assignments must be
15 submitted to the office of the county clerk or register of deeds and
16 mortgages for recording within 90 days of the sale by assignment.

17 g. Presumptive Evidence. The certificate of sale shall be
18 presumptive evidence in all courts in all proceedings by and against
19 the corporation of the truth of the statements therein, of the title of
20 the corporation in the transferred tax liens, and the regularity and
21 validity of all proceedings had in reference to the sale. After six
22 months from the recording of the certificate of sale, no evidence
23 shall be admitted in any court to rebut the presumption that the lien
24 purported to be transferred by the certificate of sale is a valid and
25 enforceable lien, unless the corporation shall have procured it by
26 fraud, or had previous knowledge that it was fraudulently made or
27 procured.

28 h. Destruction or Loss of a Certificate. In case of the
29 destruction or loss of a certificate of sale issued by a qualified
30 municipality, the corporation shall present an affidavit of destroyed
31 or lost certificate to the collector, and the collector shall then issue
32 and execute a new certificate of sale in place of the one destroyed
33 or lost. There shall appear on the new certificate a statement that it
34 is a duplicate of the original certificate of sale that was destroyed or
35 lost, the date of the original certificate, the date of the tax sale of
36 the original certificate, the date the original certificate was issued
37 and the name and title of the officer who issued the original
38 certificate.

39 i. Duplicate Certificate and Time Limit to Redeem. The time
40 limit within which the right to redeem from any tax sale in which a
41 duplicate certificate has been issued shall be the same as though the
42 original certificate had not been destroyed or lost.

43 j. Amount Required for Redemption. Any person having a
44 legal and beneficial interest in the property affected by a certificate
45 of sale acquired by the corporation may satisfy the outstanding lien
46 on the property at any time upon payment to the collector of all
47 sums due with respect to such certificate and for subsequent taxes,
48 municipal liens and charges, and interest and costs thereon, together

1 with interest on the amounts so paid at the rate or rates chargeable
2 by the qualified municipality.

3 k. Cancellation of Certificate Upon Redemption. Upon
4 satisfaction of a tax lien, the redeeming party shall be entitled to
5 have, upon demand, the certificate of sale, duly receipted for
6 cancellation, or a certificate of redemption thereof, duly executed,
7 stating that said certificate of sale may be canceled of record in the
8 manner prescribed by law.

9 l. Duties Upon Redemption. The collector, on receiving
10 payment as set forth in subsection j. of this section from a
11 redeeming party, shall confirm with the corporation that such
12 payment constitutes a payment in full. Upon such confirmation, the
13 collector shall execute and deliver to the redeeming party a
14 certificate of redemption which may be recorded with the county
15 clerk or register of deeds and mortgages, as appropriate. The
16 county clerk or register of deeds and mortgages, as appropriate,
17 shall, on request, note on the record of the original certificate of
18 sale a reference to the record of the certificate of redemption, and
19 shall be entitled to the same fees as provided for the cancellation of
20 a mortgage, or, at the option of the redeeming party, the collector
21 shall request the corporation to deliver to it the certificate of sale
22 and in turn, the collector shall deliver to the redeeming party the
23 certificate of sale receipted for cancellation by endorsement in the
24 same manner required by the law of the State to satisfy or cancel a
25 mortgage, whereupon the record of the certificate of sale shall be
26 canceled by the county clerk or register of deeds and mortgages in
27 the same manner and for the same fees as in the case of a mortgage.

28 m. Installment Agreements. If the corporation holds a
29 certificate of sale, it shall be entitled in its own name or in the name
30 of its duly authorized representative to enter into installment
31 agreements with the related taxpayers as if it were a municipality
32 acting pursuant to Title 54 of the Revised Statutes and on such
33 terms as the corporation deems desirable; provided, however, that
34 the payment of the total sum due the corporation on any one parcel
35 shall be made in substantially equal monthly installments, over a
36 period not exceeding five years.

37 n. Filing of Installment Agreements. The installment
38 agreement must be in writing and filed with the collector where the
39 property is located. Upon due execution of the installment
40 agreement the corporation shall forward a true copy of the
41 agreement to the collector's office.

42 o. Foreclosure. When the corporation is the purchaser or
43 assignee of a certificate of sale, the corporation, or its assignee or
44 transferee, may, in its own name or in the name of its duly
45 authorized representative, at any time after the expiration of the
46 term of six months from the issuance of the certificate of sale,
47 institute a procedure to foreclose the right of redemption. The
48 corporation shall be entitled to foreclose the tax lien or liens

1 evidenced thereby in the manner provided by the law for the
2 foreclosure of tax liens as if it were a municipality. In connection
3 with the enforcement of a tax lien, all statutory references to a
4 municipality acting pursuant to the provisions of Title 54 of the
5 Revised Statutes shall be deemed to refer to the corporation, and all
6 references to actions to be taken by an officer of the municipality
7 shall be deemed to refer to an appropriate officer or duly authorized
8 representative of the corporation.

9 p. Jurisdiction of Court. The Superior Court, in a procedure to
10 foreclose the right of redemption, may give full and complete relief
11 under this act, in accordance with other statutory authority of the
12 court, to bar the right of redemption and to foreclose all prior or
13 subsequent alienations and descents of the lands and encumbrances
14 thereon, except subsequent municipal liens, and to adjudge an
15 absolute and indefeasible estate of inheritance in fee simple, to be
16 vested in the purchaser or assignee. The judgment shall be final
17 upon the defendants, their heirs, devisees and personal
18 representatives, and any of their heirs, devisees, executors,
19 administrators, grantees, assigns or successors in right, title or
20 interest and no application shall be entertained to reopen the
21 judgment after the date thereof, and then only upon the grounds of
22 lack of jurisdiction or fraud in the conduct of the suit. The
23 judgment and recording thereof shall not be deemed a sale, transfer,
24 or conveyance of title or interest to the subject property under the
25 provisions of the "Uniform **【Fraudulent Transfer】** Voidable
26 Transactions Act," R.S.25:2-20 et seq.

27 In the event that any federal statute or regulation requires a
28 judicial sale of the property in order to debar and foreclose a
29 mortgage interest or any other lien held by the United States or any
30 agency or instrumentality thereof, then the tax lien may be
31 foreclosed in the same manner as a mortgage, and the final
32 judgment shall provide for the issuance of a writ of execution to the
33 sheriff of the county wherein the property is situated and the
34 holding of a judicial sale as in the manner of the foreclosure of a
35 mortgage.

36 q. Conflict. In connection with the foreclosure of the right of
37 redemption, in the event of any conflict between this act and any
38 other law relating to the foreclosure of the right of redemption, this
39 act shall be given precedence over the other law or laws.

40 r. Recovery of Fees and Expenses. To the extent permitted by
41 law, in connection with the foreclosure of tax liens, the corporation
42 or its designee shall have the right to recover attorneys' fees and
43 disbursements incurred relating to the foreclosure at the time such
44 fees and disbursements are incurred, together with the expenses of
45 the sale.

46 s. Evidence of Payments of Subsequent Tax Liens at
47 Foreclosure. Notwithstanding R.S.54:5-99, in connection with the
48 foreclosure of tax liens, the corporation or its designee shall

1 produce evidence that all subsequent tax liens on the related land
2 have been paid in full at the time a foreclosure judgment shall be
3 entered. The evidence shall not be required to be produced at the
4 commencement of a foreclosure procedure.

5 (cf: P.L.2003, c.120, s.5)

6
7 23. R.S.54:5-87 is amended to read as follows:

8 54:5-87. The Superior Court, in an action to foreclose the right
9 of redemption, may give full and complete relief under this chapter,
10 in accordance with other statutory authority of the court, to bar the
11 right of redemption and to foreclose all prior or subsequent
12 alienations and descents of the lands and encumbrances thereon,
13 except subsequent municipal liens, and to adjudge an absolute and
14 infeasible estate of inheritance in fee simple, to be vested in the
15 purchaser. The judgment shall be final upon the defendants, their
16 heirs, devisees and personal representatives, and their or any of
17 their heirs, devisees, executors, administrators, grantees, assigns or
18 successors in right, title or interest and no application shall be
19 entertained to reopen the judgment after three months from the date
20 thereof, and then only upon the grounds of lack of jurisdiction or
21 fraud in the conduct of the suit. Such judgment and recording
22 thereof shall not be deemed a sale, transfer, or conveyance of title
23 or interest to the subject property under the provisions of the
24 "Uniform **【Fraudulent Transfer】** Voidable Transactions Act,"
25 R.S.25:2-20 et seq.

26 In the event that any federal statute or regulation requires a
27 judicial sale of the property in order to debar and foreclose a
28 mortgage interest or any other lien held by the United States or any
29 agency or instrumentality thereof, then the tax lien may be
30 foreclosed in the same manner as a mortgage, and the final
31 judgment shall provide for the issuance of a writ of execution to the
32 sheriff of the county wherein the property is situated and the
33 holding of a judicial sale as in the manner of the foreclosure of a
34 mortgage.

35 (cf: P.L.1995, c.326, s.1)

36
37 24. R.S.54:5-104 is amended to read as follows:

38 54:5-104. When in a judgment in an action to foreclose the
39 right of redemption, the lands are described in a manner other than
40 that contained in the certificate of tax sale, the judgment shall bar
41 the defendant's right of redemption in and to all the lands described
42 in the judgment, and that property only. Such judgment and
43 recording thereof shall not be deemed a sale, transfer, or
44 conveyance of title or interest to the subject property under the
45 provisions of the "Uniform **【Fraudulent Transfer】** Voidable
46 Transactions Act," R.S.25:2-20 et seq.

47 (cf: P.L.1994, c.32, s.14)

1 25. Section 4 of P.L.1948, c.96 (C.54:5-104.32) is amended to
2 read as follows:

3 4. Any municipality or abandoned property certificate holder
4 may proceed, In Rem, pursuant to the provisions of the In Rem Tax
5 Foreclosure Act (1948), P.L.1948, c.96 (C.54:5-104.29 et seq.),
6 similarly to bar rights of redemption, after said certificate has been
7 recorded in the office of the county recording officer. Neither the
8 foreclosure nor the recording of any such judgment or certificate
9 shall be construed to be a sale, transfer, or conveyance of title or
10 interest to the subject property under the provisions of the "Uniform
11 **【Fraudulent Transfer】** Voidable Transactions Act," R.S.25:2-20 et
12 seq.
13 (cf: P.L.2015, c.16, s.4)

14

15 26. Section 37 of P.L.1948, c.96 (C.54:5-104.65) is amended to
16 read as follows:

17 37. Upon the recording of a certified copy of such judgment in
18 the office of the county recording officer, the plaintiff shall be
19 seized of an estate in fee simple, in the lands described therein,
20 absolute and free and clear of all liens and encumbrances, in
21 accordance with the terms of said judgment. Neither the foreclosure
22 nor the recording of any such judgment or certificate shall be
23 construed to be a sale, transfer or conveyance of title or interest to
24 the subject property under the provisions of the "Uniform
25 **【Fraudulent Transfer】** Voidable Transactions Act," R.S.25:2-20 et
26 seq.
27 (cf: P.L.1994, c.32, s.16)

28

29 27. This act shall take effect on the 90th day following
30 enactment.

31 This act shall apply to a transfer made or obligation incurred on
32 or after its effective date. This act shall not apply to a transfer
33 made or obligation incurred before its effective date. This act shall
34 not apply to a right of action that has accrued before its effective
35 date. For the foregoing purposes, a transfer is made and an
36 obligation is incurred at the time provided in R.S.25:2-28.

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38

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STATEMENT

40

41 This bill revises the “Uniform Fraudulent Transfer Act” by
42 making changes approved and recommended for enactment in all
43 states by the Uniform Law Commission, and in New Jersey by the
44 New Jersey Law Revision Commission. The bill provides that the
45 “Uniform Fraudulent Transfer Act” shall be known, on or after the
46 bill’s effective date, as the “Uniform Voidable Transactions Act.”

1 Generally, the bill recategorizes certain transactions by debtors
2 as “voidable” rather than “fraudulent” to more accurately reflect the
3 nature of the transactions.

4 The bill establishes a “preponderance of evidence” standard,
5 applicable to various provisions in the act, including providing that
6 a creditor has the burden of proving the elements of a voidable
7 transaction claim by a preponderance of the evidence.

8 The bill provides that a debtor that is generally not paying debts
9 as they become due, other than as a result of a bona fide dispute, is
10 presumed to be insolvent. The bill removes the requirement that the
11 net worth of a general partner must be included in determining the
12 insolvency of a partnership. The bill also makes certain revisions to
13 provisions relating to the defenses available to a transferee or
14 debtors.

15 The bill also provides statutory rules for determining a debtor’s
16 location, and provides guidance to address conflict of law issues.

17 Finally, the bill provides that the act generally modifies, limits,
18 and supersedes the “Electronic Signatures in Global and National
19 Commerce Act,” 15 U.S.C. s.7001 et seq., but with certain
20 exceptions as noted in the bill.

21 The bill also replaces references to the “Uniform Fraudulent
22 Transfer Act” or the former “Uniform Fraudulent Conveyance Law”
23 with references to the “Uniform Voidable Transactions Act.”