Chapter 95

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Fraudulent Transfers and Conveyances

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CROSS REFERENCES

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95.010 [Repealed by 1985 c.664 §16]
95.020 [Repealed by 1985 c.664 §16]
95.030 [Repealed by 1985 c.664 §16]
95.040 [Repealed by 1985 c 664 §16]
95.050 [Repealed by 1985 c.664 §16]
95.060 [Repealed by 1985 c.664 §16]
95.070 [Repealed by 1985 c.664 §16]
95.080 [Repealed by 1985 c 664 §16]
95.090 [Repealed by 1985 c 664 §16]
95.100 [Repealed by 1985 c.664 §16]

95.200 Definitions for ORS 95.200 to 95.310. As used in ORS 95.200 to 95.310:

(1) "Affiliate" means any of the following:

(a) A person who directly or indirectly owns, controls or holds with power to vote 20 or more percent of the outstanding voting securities of the debtor, other than a person who holds the securities:

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

(B) Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) A corporation, 20 or more percent of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the debtor or by a person who directly or indirectly owns, controls or holds with power to vote 20 or more percent of the outstanding voting securities of the debtor, other than a person who holds the securities:

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

(B) Solely to secure a debt, if the person has not in fact 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.

(d) A person who 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 that it is encumbered by a valid lien;

(b) Property to the extent that it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entirety to the extent that it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" 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 who has a claim against a debtor.

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

(6) "Debtor" means a person against whom a creditor has a claim.

(7) An "insider" includes:

(a) If the debtor is an individual:

(A) A relative of the debtor or of a general partner of the debtor;

(B) A partnership in which the debtor is a general partner;

(C) A general partner in a partnership described in subparagraph (B) of this paragraph; or

(D) A corporation of which the debtor is a director, officer or person in control.

(b) If the debtor is a corporation:

(A) A director of the debtor;

(B) An officer of the debtor;

(C) A person in control of the debtor;

(D) A partnership in which the debtor is a general partner;

(E) A general partner in a partnership described in subparagraph (D) of this paragraph; or

(F) A relative of a general partner, director, officer or person in control of the debtor.

(c) If the debtor is a partnership:

(A) A general partner in the debtor;

(B) A relative of a general partner in a debtor, of a general partner of a debtor, or of a person in control of the debtor;

(C) Another partnership in which the debtor is a general partner;

(D) A general partner in a partnership described in subparagraph (C) of this paragraph; or

(E) A person in control of the debtor.

(d) An affiliate or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, including 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.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate,

trust or any other legal or commercial entity.

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

(11) "Relative" means an individual related 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.

(12) "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 a payment of money, a release, a lease and the creation of a lien or encumbrance.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. [1985 c.664 §1]

95.210 Insolvency described. (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than all of the debtor's assets.

(2) A debtor who is generally not paying debts of the debtor as they become due is presumed to be insolvent.

(3) A partnership is insolvent under subsection (1) of this section if, at a fair valuation, the sum of the partnership's debts is greater than the aggregate of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(4) 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 ORS 95.200 to 95.310.

(5) Debts under this section do not include an obligation to the extent the obligation is secured by a valid lien on property of the debtor not included as an asset. [1985 c.664 §2]

95.220 Value described. (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, 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.

(2) For the purposes of ORS 95.230 (1)(b) and 95.240, a person gives a reasonably equivalent value if the person acquires an interest in 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 in fact substantially contemporaneous. [1985 c.664 §3]

95.230 Transfers fraudulent as to present and future creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent 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:

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

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

(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; or

(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 become due.

(2) In determining actual intent under paragraph (a) of subsection (1) of this section, consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider;

(b) The debtor had retained possession or control of the property transferred after the transfer;

(c) The transfer or obligation was disclosed or concealed;

(d) Before the transfer was made or obligation was incurred, the debtor was sued or threatened with suit;

(e) The transfer was of substantially all the debtor's assets;

(f) The debtor had absconded;

(g) The debtor had removed or concealed assets;

(h) 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;

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(j) The transfer had occurred shortly before or shortly after a substantial debt was incurred; and

(k) The debtor had transferred the essential assets of the business to a lienor who had transferred the assets to an insider of the debtor. [1985 c.664 §4]

95.240 Transfers fraudulent as to present creditors. (1) A transfer made or obligation incurred by a debtor is fraudulent 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 becomes insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for other than a present, reasonably equivalent value, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent. [1985 c.664 §5]

95.250 When transfer is made or obligation is incurred. For the purposes of ORS 95.200 to 95.310:

(1) A transfer is made:

(a) 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 whom 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

(b) 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 ORS 95.200 to 95.310 that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under ORS 95.200 to 95.310, the transfer is made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

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

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties.

(b) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee. [1985 c.664 §6]

95.260 Remedies of creditors. (1) In any action for relief against a transfer or obligation under ORS 95.200 to 95.310, a creditor, subject to the limitations provided in ORS 95.270, may obtain:

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

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by any applicable provision of any other statute or the Oregon Rules of Civil Procedure.

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

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

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

(C) Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor and if the court so orders, the creditor may levy execution on the asset transferred or its proceeds. [1985 c.664 §7]

95.270 Defenses, liability and protection of transferee. (1) A transfer or obligation is not voidable under ORS 95.230 (1)(a) as against a person who took in good faith and for a reasonably equivalent value or any subsequent transferee or obligee.

(2) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under ORS 95.260 (1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

(b) Any subsequent transferee.

(3) If the judgment under subsection (2) of this section is based upon the value of the asset transferred, the judgment must 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.

(4) A creditor may not recover under paragraph (b) of subsection (2) of this section from a good-faith transferee or obligee who took for value or from any subsequent transferee or obligee.

(5) Notwithstanding voidability of a transfer or an obligation under ORS 95.200 to 95.310, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain any interest in the asset transferred;

(b) Enforcement of any obligation incurred; or

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

(6) A transfer is not voidable under ORS 95.240 (2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by an otherwise unavoidable lien;

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

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

(7) A transfer is not voidable under ORS 95.230 (1)(b) or 95.240 if the transfer results from:

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

(b) Enforcement of a security interest in compliance with ORS 79.1010 to 79.5070 and 79.8010. [1985 c.664 §8]

95.280 Extinguishment of claim for relief. A claim for relief with respect to a fraudulent transfer or obligation under ORS 95.200 to 95.310 is extinguished unless action is brought:

(1) Under ORS 95.230 (1)(a) within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under ORS 95.230 (1)(b) or 95.240 (1), within four years after the transfer was made or the obligation was incurred; or

(3) Under ORS 95.240 (2), within one year after the transfer was made or the obligation was incurred. [1985 c.664 §9]

95.290 General principles of law and equity as supplement to ORS 95.200 to 95.310. Unless displaced by the provisions of ORS 95.200 to 95.310, 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. [1985 c.664 §10]

95.300 Uniformity of application and construction. ORS 95.200 to 95.310 shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of ORS 95.200 to 95.310 among states enacting it. [1985 c.664 §11]

95.310 Short title. ORS 95.200 to 95.310 may be cited as the Uniform Fraudulent Transfer Act. [1985 c.664 §12]