

The 2014 Florida Statutes

Title XLI

STATUTE OF FRAUDS, FRAUDULENT TRANSFERS, AND GENERAL ASSIGNMENTS

Chapter 726

FRAUDULENT TRANSFERS

View Entire Chapter

CHAPTER 726

FRAUDULENT TRANSFERS

726.101 Short title.

726.102 Definitions.

726.103 Insolvency.

726.104 Value.

726.105 ~~Transfers fraudulent as to present and future creditors~~Transfer or Obligation Voidable as to Present or Future Creditor.

726.106 ~~Transfers fraudulent~~Transfer or Obligation Voidable as to ~~present creditors~~Present Creditor.

726.107 When transfer made or obligation incurred.

726.108 Remedies of ~~creditors~~creditor.

726.109 Defenses, liability, and protection of transferee or obligee.

726.110 Extinguishment of ~~cause of action.~~claim for relief

726.111 Governing Law.

726.112 Application to series organization.

726.113 Supplementary provisions.

~~726.112~~726.114 Uniformity of application and construction.

~~726.201 Fraudulent loans void.~~726.115 Relation to electronic signatures om global and national commerce act.

~~726.101~~726.116 Short title.—This act may be cited as the “Uniform Voidable Transactions Act.”

726.201 Fraudulent ~~Transfer Act.~~loans void.

History.—s. 1, ch. 87-79.

726.102 Definitions.—As used in [this](#) ss. 726.101-~~726.112~~ – [726.116](#):

(1) “Affiliate” means:

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

~~1~~-[\(A\)](#) As a fiduciary or agent without sole discretionary power to vote the securities; or

~~2~~-[\(B\)](#) Solely to secure a debt, if the person has not [in fact](#) exercised the power to vote.

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

~~1~~-[\(A\)](#) As a fiduciary or agent without sole [discretionary](#) power to vote the securities; or

~~2~~-[\(B\)](#) Solely to secure a debt, if the person has not in fact exercised the power to vote.

(~~c~~[i](#)) 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; or

(~~c~~[i](#)) A person ~~who~~[that](#) 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 the term does not include:

(~~a~~[i](#)) Property to the extent it is encumbered by a valid lien;

(~~b~~[i](#)) Property to the extent it is generally exempt under nonbankruptcy law; or

(~~c~~[i](#)) 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.

(3) “Charitable contribution” means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(4) “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.

(5) “Creditor” means a person ~~who~~that has a claim.

(6) “Debt” means liability on a claim.

(7) “Debtor” means a person ~~who~~that is liable on a claim.

(8) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(9) “Insider” includes:

(a) If the debtor is an individual:

~~1-~~(A) A relative of the debtor or of a general partner of the debtor;

~~2-~~(B) A partnership in which the debtor is a general partner;

~~3-~~(C) A general partner in a partnership described in subparagraph 2.; or

~~4-~~(D) A corporation of which the debtor is a director, officer, or person in

control;

(b) If the debtor is a corporation:

~~1-~~(A) A director of the debtor;

~~2-~~(B) An officer of the debtor;

~~3-~~(C) A person in control of the debtor;

~~4-~~(D) A partnership in which the debtor is a general partner;

~~5-~~(E) A general partner in a partnership described in subparagraph 4.; or

~~6-~~(F) A relative of a general partner, director, officer, or person in control of the

debtor.

(c) If the debtor is a partnership:

~~1-(A)~~ A general partner in the debtor;

~~2-(B)~~ A relative of a general partner in, a general partner of, or a person in control of the debtor;

~~3-(C)~~ Another partnership in which the debtor is a general partner;

~~4-(D)~~ A general partner in a partnership described in ~~subparagraph 3.~~clause (C);

or

~~5-(E)~~ A person in control of the debtor.

~~(div)~~ An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

~~(ev)~~ A managing agent of the debtor.

~~(9)10~~ “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.

~~(10)11~~ “Person” means an individual, estate, partnership, ~~corporation~~, association, ~~organization~~trust, business or nonprofit entity, public corporation, government or governmental subdivision ~~or~~, agency, ~~business trust, estate, trust, or any~~or instrumentality, or other legal or commercial entity.

~~(11)12~~ “Organization” means a person other than an individual.

~~(13)~~ “Property” means anything that may be the subject of ownership.

~~(12)“Qualified religious or charitable entity or organization” means:~~14) “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.

~~(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or~~

~~(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.~~

~~(13)15~~ “Relative” means an individual related by consanguinity 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.

~~(14)16~~ “Sign” means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(17) “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.

~~(15)~~(18) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

History.—s. 2, ch. 87-79; s. 1, ch. 2013-189.

726.103 Insolvency.—

~~(1a)~~ A debtor is insolvent if , at a fair valuation, the sum of the debtor’s debts is greater than ~~all~~the sum of the debtor’s assets ~~at a fair valuation~~.

~~(2b)~~ A debtor ~~who~~that is generally not paying ~~his or her~~the debtor’s debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent.~~(3) A partnership is insolvent under subsection (1) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, 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. 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.~~

~~(4c)~~ 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 ss. 726.101-726.112.

~~(5d)~~ 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.

History.—s. 3, ch. 87-79; s. 936, ch. 97-102.

726.104 Value.—

~~(1a)~~ 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.

~~(2b)~~ For the purposes of ss. 726.105~~(1a)~~~~(b2)~~ and 726.106, a person gives a reasonably equivalent value if the person acquires an interest of 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~~c) 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.

History.—s. 4, ch. 87-79.

726.105 ~~Transfers fraudulent as to present and future creditors~~Transfer or Obligation Voidable as to Present or Future Creditor.—

(~~1~~a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~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:

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

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

~~1~~-(i) 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

~~2~~-(ii) Intended to incur, or believed or reasonably should have believed that ~~he or she~~the debtor would incur, debts beyond ~~his or her~~the debtor's ability to pay as they became due.

(~~2~~b) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(~~a~~1) The transfer or obligation was to an insider.

(~~b~~2) The debtor retained possession or control of the property transferred after the transfer.

(~~c~~3) The transfer or obligation was disclosed or concealed.

(~~d~~4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(~~e~~5) The transfer was of substantially all the debtor's assets.

(~~f~~6) The debtor absconded.

(~~g~~7) The debtor removed or concealed assets.

(~~h~~8) 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~~9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(~~j~~10) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(~~k~~11) The debtor transferred the essential assets of the business to a lienor ~~who~~that transferred the assets to an insider of the debtor.

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

History.—s. 5, ch. 87-79; s. 937, ch. 97-102.

726.106 ~~Transfers fraudulent~~Transfer or Obligation Voidable as to ~~present creditors~~Present Creditor.—

(~~1~~a) A transfer made or obligation incurred by a debtor is ~~fraudulent~~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.

(~~2~~b) A transfer made by a debtor is ~~fraudulent~~voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to s. 726.103(b), a creditor making a claim for relief under subsection (a) or (b) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

History.—s. 6, ch. 87-79.

726.107 When transfer made or obligation incurred.—For the purposes of ss. 726.101-~~726.112~~726.116:

(~~1~~a) A transfer is made:

(~~a~~i) 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~~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.

(~~b~~ii) 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 ss. 726.101-~~726.112~~726.116 that is superior to the interest of the transferee.

(~~2~~b) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under ss. 726.101-~~726.112~~726.116, the transfer is deemed made immediately before the commencement of the action.

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

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

(~~5~~e) An obligation is incurred:

(~~a~~i) If oral, when it becomes effective between the parties; or

(~~b~~ii) If evidenced by a writing record, when the ~~writing-executed~~record signed by the obligor is delivered to or for the benefit of the obligee.

History.—s. 7, ch. 87-79; s. 28, ch. 91-110.

726.108 Remedies of ~~creditors~~creditor.—

(~~1~~a) In an action for relief against a transfer or obligation under ss. 726.101-~~726.112~~726.116, a creditor, subject to the limitations in s. 726.109 may obtain:

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

(~~b~~2) An attachment or other provisional remedy against the asset transferred or other property of the transferee ~~in accordance with~~if available under applicable law; and

(~~c~~3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

~~1-~~(i) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

~~2-~~(ii) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

~~3-(iii)~~ Any other relief the circumstances may require.

~~(2b)~~ If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

History.—s. 8, ch. 87-79.

726.109 Defenses, liability, and protection of transferee or obligee.—

~~(1a)~~ A transfer or obligation is not voidable under s. 726.105(1)(a) against a person ~~who~~that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

~~(2) Except as otherwise provided in this section, to b)~~ To the extent a transfer is ~~voidable~~avoidable in an action by a creditor under s. 726.108(~~1~~)~~(a)~~(1), the following rules apply:

(1) ~~2) Except as otherwise provided in this section,~~ the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), 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~~ii) An immediate or mediate transferee of the first transferee, other than :

(A) a good faith transferee ~~who~~that took for value ~~or from any subsequent;~~ or

(B) In immediate or mediate good-faith transferee of a person described in (A).

(2) Recovery pursuant to s. 726.108(a)(1) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (1)(i) or (ii).

~~(3c)~~ If the judgment under subsection (2) 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.

~~(4d)~~ Notwithstanding voidability of a transfer or an obligation under ss. 726.101-~~726.112~~,726.116, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

~~(a1)~~ A lien on or a right to retain ~~any~~an interest in the asset transferred;

(b2) Enforcement of ~~any~~ obligation incurred; or

(c3) A reduction in the amount of the liability on the judgment.

(5e) A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

(a1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b2) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6f) A transfer is not voidable under s. 726.106(2):

(a1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made ~~unless, except to the extent~~ the new value was secured by a valid lien;

(b2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c3) 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.

(7g)(a1) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(~~1a~~)(b2) or 726.106(a).

(b2) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1.i. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2.ii. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

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

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

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

(3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).

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

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

History.—s. 9, ch. 87-79; s. 2, ch. 2013-189.

726.110 Extinguishment of ~~cause of action.~~—~~A cause of action~~claim for relief.—A claim for relief with respect to a ~~fraudulent~~ transfer or obligation under ss. 726.101–~~726.112~~ – 726.116 is extinguished unless action is brought:

(1a) Under s. 726.105(~~1a~~)(a1), ~~within 4~~not later than four years after the transfer was made or the obligation was incurred or, if later, ~~within 1~~not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2b) Under s. 726.105(~~1a~~)(b2) or ~~s.~~726.106(~~1a~~), ~~within 4~~not later than four years after the transfer was made or the obligation was incurred; or

(3c) Under ~~s.~~726.106(~~2b~~), ~~within 1~~not later than one year after the transfer was made ~~or the obligation was incurred.~~

History.—s. 10, ch. 87-79.

726.111 Governing Law.

(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 for relief in the nature of a claim for relief under ss. 726.101 – 726.116 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. "Local" law means the substantive avoidance law of the referenced jurisdiction, and not its choice of law rules.

(c) This Section 726.111 does not purport (and should not be interpreted) to be a choice of law rule for any other claims or issues as between the parties. If this Section directs the application of a foreign state's substantive law governing claims for relief in the nature of a claim for relief under ss. 726.101 – 726.116, because the debtor was "located" in such foreign state at the time when the transfer was made, such a choice of law determination would not apply to the determination of which state's exemption laws apply, would not import the foreign state's constitutional exemptions, and would not have any impact on the debtor's entitlement to Florida's constitutional homestead protection (Article X, section 4(a)).

726.112 Application to series organization.

(a) In this Section:

(1) "Protected Series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).

(2) "Series Organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.

(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of ss. 726.101 – 726.116, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. Law other than ss. 726.101 – 726.116 determines whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than this Uniform Voidable Transactions Act.

[726.113](#) Supplementary provisions.—Unless displaced by the provisions of ss. 726.101-~~726.112~~,[726.116](#), 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 those provisions.

History.—s. 11, ch. 87-79.

~~726.112~~[726.114](#) Uniformity of application and construction.—Chapter 87-79, Laws of Florida, shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the law among states enacting it.

History.—s. 12, ch. 87-79.

[726.115](#) [Relation to Electronic Signatures in Global and National Commerce Act. SS. 726.101 – 726.116, modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 10\(c\) of that act, 15 U.S.C. Section 7001\(c\), or authorize electronic delivery of any of the notices described in Section 103\(b\) of that act, 15 U.S.C. Section 7001\(b\).](#)

[726.116](#) [Short Title. SS. 726.101 – 726.116, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable Transactions Act.](#)

726.201 Fraudulent loans void.—When any loan of goods and chattels shall be pretended to have been made to any person with whom or those claiming under her or him, possession shall have remained for the space of 2 years without demand and pursued by due process of law on the part of the pretended lender, or where any reservation or limitation shall be pretended to have been made of a use or property by way of condition, reversion, remainder or otherwise in goods and chattels, and the possession thereof shall have remained in another as aforesaid, the same shall be taken, as to the creditors and purchasers of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and the absolute property shall be with the possession, unless such loan, reservation or limitation of use or property were declared by will or deed in writing proved and recorded.

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