***The Uniform Fraudulent Transfer Act*—1988 N.J. Sess. Law Serv. 74 (West) (to be codified at N.J. Stat. Ann. §§ 25:2-20 to -34).**

On August 1, 1988, the New Jersey Legislature revised the law governing fraudulent transfers of real and personal property by adopting the Uniform Fraudulent Transfer Act (UFTA).[1] The UFTA repeals the Uniform Fraudulent Conveyances Act (UFCA).[2] The UFTA and the UFCA share the same general framework and purpose in that both seek to avoid the fraudulent transfer of real and personal property.

Both Acts differentiate between actual and constructive fraudulent transfers. An actual fraudulent transfer is one in which a debtor actually intends to hinder, delay, or defraud a creditor.[3] Intent can be shown by proving the debtor's actual intent or by relying on a statutory presumption. The UFTA provides a list of eleven factors which may be considered in determining actual intent.[4] Previously, case law was used to determine a debtor's fraudulent intent.

A constructive fraudulent transfer is one in which the debtor makes an exchange without receiving a reasonably equivalent value.[5] The reasonably equivalent value requirement replaces the "fair consideration" requirement found in the UFCA.[6]

Under the UFCA a creditor was required to demonstrate a lack of both fair consideration and good faith.[7] The UFTA has eliminated the good faith requirement and focuses solely on the value of the exchange.

In addition, the debtor's financial instability must be shown in order to establish a constructive fraudulent conveyance.[8] A

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1 1988 N.J. Sess. Law Serv. 74 (West) (to be codified at N.J. STAT. ANN. §§ 25:2-20 to -34).

2 *See* N.J. STAT. ANN. §§ 25:2-7 to -19 (West 1940) (repealed by 1988 N.J. Sess. Law Serv. 74 (West)).

3 N.J. STAT. ANN. § 25:2-25(a); *see also id.* § 25:2-13 (West 1940) (repealed by 1988 N.J. Sess. Law Serv. 74 (West)).

4 *Id.* § 25:2-26.

5 *Id.* § 25:2-25(b). For a definition of "value" in the UFTA, see *id.* § 25:2-24.

6 *Id.* § 25:2-9 (West 1940) (repealed by 1988 N.J. Sess. Law Serv. 74 (West)).

7 *Id.* § 25:2-9 (West 1940) (repealed by 1988 N.J. Sess. Law Serv. 74 (West)). The transferee's good faith, however, may still be used to protect the amount of value given in a constructive fraudulent transfer even though the exchange was not reasonably equivalent. *Id.* § 25:2-30.

8 *Id.* § 25:2-25(b).

debtor's financial instability can be proved three ways. A creditor may show that the transfer would leave the debtor with unreasonably small assets to continue doing business.[9] Secondly, a creditor may show that the debtor believed he would incur debts beyond his ability to pay as they became due.[10] Lastly, a creditor who had a claim prior to the transfer may choose to establish the insolvency of the debtor at the time of the transfer.[11]

To establish a debtor's insolvency, the UFTA adopts a balance sheet test which measures the debtor's assets against his liabilities using a fair valuation.[12] Excluded from the balance sheet are hidden assets and encumbered property.[13] A creditor's burden to prove a debtor's insolvency is materially lightened by a rebuttable presumption of insolvency applied when the debtor is not paying debts when due.[14]

The UFTA provides for the avoidance of certain preferential transfers made to an insider.[15] A creditor can avoid a transfer made to an insider for an antecedent debt if the transfer occurred after the creditor's claim arose.[16] The transfer to the insider must have been for an antecedent debt, made while the debtor was insolvent, and the insider had reasonable cause to know of the debtor's insolvency.[17] This new section reflects the policy that a debtor should pay debts to ordinary creditors before those debts due to creditors closely associated with the debtor.[18]

The UFTA also includes a provision to determine when a transfer of real or personal property has been made or an obligation has occurred.[19] An oral obligation is incurred when it is effective between the parties.[20] A written obligation is incurred when it is delivered to the obligee.[21]

The UFTA includes a statute of limitations for bringing an

9 *Id.* § 25:2-25(b)(1).
10 *Id.* § 25:2-25(b)(2).
11 *Id.* § 25:2-27(a).
12 *Id.* § 25:2-23(a).
13 *Id.* § 25:2-23(d).
14 *Id.* § 25:2-23(b).
15 *Id.* § 25:2-27(b). For a definition of "insider," see *id.* § 25:2-22.
16 *Id.* § 25:2-27(a).
17 *Id.*; Committee Statement to A.1265.
18 Committee Statement to A.1265.
19 N.J. STAT. ANN. § 25:2-28.
20 *Id.* § 25:2-28(e)(1).
21 *Id.* § 25:2-28(e)(2).

action. A four year statute of limitations is adopted, except for actual fraudulent transfers which entitle a creditor to an additional year upon the discovery of the transfer.[22] The statute of limitations for present creditors bringing a constructive fraudulent action based on the debtor's insolvency is one year from the time the transfer has occurred.[23]

Under the UFTA, the creditor may have the fraudulent transfer set aside, prevent the person holding the property from disposing of it, or may have a custodian for the property appointed.[24]

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22 *Id.* § 25:2-31(a), (b).
23 *Id.* § 25:2-31(c).
24 *Id.* § 25:2-29.