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**FRAUD, FAIRNESS AND THE BANKRUPTCY TRUSTEE'S POWER TO AVOID  
REGULATED TRANSFERS**

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**SELECTED STATUTES AND MODEL LAWS**

***BANKRUPTCY CODE***

**11 U.S.C. § 548. FRAUDULENT TRANSFERS AND OBLIGATIONS**

(a)(1) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily -

(A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor has or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

(B)(i) received less than reasonably a reasonably equivalent value in exchange for such transfer or obligation; and (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation; . . . .

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under [another of the trustee's avoiding powers], a transferee or obligee of such transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

***UNIFORM FRAUDULENT CONVEYANCE ACT***

**SECTION 3. FAIR CONSIDERATION**

Fair consideration is given for property, or obligation,

(a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(b) When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

**SECTION 4. CONVEYANCES BY INSOLVENT**

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.

**SECTION 7. CONVEYANCE MADE WITH INTENT TO DEFRAUD**

Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors.

*UNIFORM FRAUDULENT TRANSFER ACT*

**SECTION 3. VALUE**

(b) For the purposes of Sections 4(a)(2)[transfers fraudulent as to post-transfer or “future” creditors] and 5, 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.

**SECTION 5. TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS**

(a) 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 became insolvent as a result of the transfer or obligation.