

ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER F60

FRAUDULENT DISPOSITIONS ACT

Showing the Law as at 15 December 2000

Published by Authority

Printed in
The Attorney General's Chambers
ANGUILLA

© Government of Anguilla

All rights reserved. No part of this publication may be reproduced in any form or by any means (including photocopying) without the written permission of the Government of Anguilla except as permitted by the Copyright Act or under the terms of a licence from the Government of Anguilla.

FRAUDULENT DISPOSITIONS ACT

TABLE OF CONTENTS

SECTION

1. Interpretation
2. Application
3. Avoidance of fraudulent dispositions
4. Saving of certain rights
5. Extent of avoidance of relevant dispositions
6. Act not to validate certain dispositions
7. Relationship with Trusts Act
8. Citation

———————

FRAUDULENT DISPOSITIONS ACT

Interpretation

1. In this Act—

"Court" means the High Court;

"creditor" means a person to whom an obligation is owed;

"disposition", in relation to property, means every form of conveyance, transfer, assignment, lease, mortgage, pledge or other transaction whereby any legal or equitable interest therein is created, transferred or extinguished;

"intent to defraud" means an intention of a transferor wilfully to defeat an obligation owed to a creditor;

"obligation" means an obligation or liability (which shall include a contingent liability) which existed on or prior to the date of a relevant disposition and of which the transferor had notice;

"relevant disposition" means a disposition to which section 3(1) applies;

"transferee" means the person to whom a relevant disposition is made and shall include any successor in title;

"transferor" means the person who as owner or as the holder of a power in that behalf directly or indirectly makes relevant disposition or causes it to be made;

"undervalue", in relation to a disposition of property, means—

(a) no consideration for the disposition; or

(b) a consideration for the disposition, the value of which in money or money's worth is significantly less than the market value of the property, the subject of the disposition.

Application

2. This Act shall apply to every disposition of property by any person and whether or not the property, the subject of the disposition, is situated in Anguilla or elsewhere.

Avoidance of fraudulent dispositions

3. (1) Subject to the provisions of this Act, every disposition of property made with an intent to defraud and at an undervalue shall be voidable at the instance of a creditor thereby prejudiced.

(2) The burden of establishing an intent to defraud for the purposes of this Act shall be upon the creditor seeking to set aside the disposition.

(3) No action or proceedings shall be commenced pursuant to this Act unless commenced within 3 years of the date of the relevant disposition, and section 24 of the Limitation Act shall have no application for the purposes of determining the limitation period.

Saving of certain rights

4. (1) In the event that any disposition shall be set aside pursuant to this Act, then—

(a) if the Court is satisfied that the transferee has not acted in bad faith—

(i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs properly incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the Court), and

(ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee; and

(b) if the Court is satisfied that a beneficiary of a trust has not acted in bad faith, the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution made consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust, or any other person, and otherwise properly exercised.

(2) The burden of proving that a transferee or beneficiary has acted in bad faith shall be upon the person making the allegation.

Extent of avoidance of relevant dispositions

5. A disposition shall be set aside pursuant to this Act only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside together with such costs as the Court may allow.

Act not to validate certain dispositions

6. Nothing in this Act—

(a) shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor; or

(b) shall affect the recognition of a foreign law in determining whether the transferor is the owner of such property or the holder of such power.

Relationship with Trusts Act

7. Nothing in this Act shall create or enable any right, claim or interest on behalf of a creditor or person which would be avoided or defeated by the Trusts Act.

Citation

8. This Act may be cited as the Fraudulent Dispositions Act, Revised Statutes of Anguilla, Chapter F60.

———————