

(4) “Creditor” means a person who has a claim.

(5) “Insider” includes—

(A) if the debtor is an individual—

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

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

(iii) a general partner in a partnership described in clause (ii); or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation—

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

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

(v) a general partner in a partnership described in clause (iv); or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership—

(i) a general partner in the debtor;

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

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in clause (iii); or

(v) a person in control of the debtor.¹

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

(4)² “Lien” means a charge against or an interest in property to secure payment of a debt 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.

(5)³ “Relative” means an individual related, by consanguinity or adoption, within the third degree as determined by the common law, a spouse, or an individual so related to a spouse within the third degree as so determined.

(6)⁴ “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, and creation of a lien or other encumbrance.

(7)⁵ “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained in legal or equitable proceeding.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4959.)

§ 3302. Insolvency

(a) IN GENERAL.—Except as provided in subsection (c), a debtor is insolvent if the sum of

the debtor’s debts is greater than all of the debtor’s assets at a fair valuation.

(b) PRESUMPTION.—A debtor who is generally not paying debts as they become due is presumed to be insolvent.

(c) CALCULATION.—A partnership is insolvent under subsection (a) if the sum of the partnership’s debts is greater than the aggregate, at a fair valuation, of—

(1) all of the partnership’s assets; and

(2) the sum of the excess of the value of each general partner’s non-partnership assets over the partner’s non-partnership debts.

(d) ASSETS.—For purposes of this section, assets do not include property that is 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 this subchapter.

(e) DEBTS.—For purposes of this section, debts do not include an obligation to the extent such obligation is secured by a valid lien on property of the debtor not included as an asset.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4961.)

§ 3303. Value for transfer or obligation

(a) TRANSACTION.—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.

(b) REASONABLY EQUIVALENT VALUE.—For the purposes of sections 3304 and 3307, 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 such interest upon default under a mortgage, deed of trust, or security agreement.

(c) PRESENT VALUE.—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.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4961.)

§ 3304. Transfer fraudulent as to a debt to the United States

(a) DEBT ARISING BEFORE TRANSFER.—Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if—

(1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and

(B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or

(2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and

¹ So in original. The period probably should be a semicolon.

² So in original. Probably should be “(6)”.

³ So in original. Probably should be “(7)”.

⁴ So in original. Probably should be “(8)”.

⁵ So in original. Probably should be “(9)”.