

(10) **TERMINATION OF GARNISHMENT.**—A garnishment under this chapter is terminated only by—

(A) a court order quashing the writ of garnishment;

(B) exhaustion of property in the possession,<sup>1</sup> custody, or control of the garnishee in which the debtor has a substantial nonexempt interest (including nonexempt disposable earnings), unless the garnishee reinstates or reemploys the judgment debtor within 90 days after the judgment debtor's dismissal or resignation; or

(C) satisfaction of the debt with respect to which the writ is issued.

(Added Pub. L. 101-647, title XXXVI, §3611, Nov. 29, 1990, 104 Stat. 4956.)

**§ 3206. Discharge**

A person who pursuant to an execution or order issued under this chapter by a court pays or delivers to the United States, a United States marshal, or a receiver, money or other personal property in which a judgment debtor has or will have an interest, or so pays a debt such person owes the judgment debtor, is discharged from such debt to the judgment debtor to the extent of the payment or delivery.

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

**SUBCHAPTER D—FRAUDULENT TRANSFERS INVOLVING DEBTS**

Sec.	
3301.	Definitions.
3302.	Insolvency.
3303.	Value for a transfer or obligation. <sup>1</sup>
3304.	Transfer fraudulent as to a debt to the United States.
3305.	When transfer is made or obligation is incurred.
3306.	Remedies of the United States.
3307.	Defenses, liability and protection of transferee. <sup>1</sup>
3308.	Supplementary provision.

**§ 3301. Definitions**

As used in this subchapter:

(1) "Affiliate" means—

(A) a person who 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 holds the securities—

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) 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 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 the person who holds securities—

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) 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

(D) a person who 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 does not include—

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in real property held in tenancy by the entirety, or as part of a community estate, to extent such interest is not subject to process by the United States holding a claim against only one tenant or co-owner.

(3) "Claim" 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.

(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.<sup>1</sup>

(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)<sup>2</sup> "Lien" means a charge against or an interest in property to secure payment of a debt

<sup>1</sup> So in original. Probably should be "possession."

<sup>1</sup> So in original. Does not conform to section catchline.

<sup>1</sup> So in original. The period probably should be a semicolon.

<sup>2</sup> So in original. Probably should be "(6)".

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)<sup>3</sup> “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)<sup>4</sup> “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)<sup>5</sup> “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

(B) the insider had reasonable cause to believe that the debtor was insolvent.

(b) TRANSFERS WITHOUT REGARD TO DATE OF JUDGMENT.—(1) 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, whether such debt arises before or after the transfer is made or the obligation is incurred, if the debtor makes the transfer or incurs the obligation—

(A) with actual intent to hinder, delay, or defraud a creditor; or

(B) without receiving a reasonably equivalent value in exchange for the transfer or obligation if the debtor—

(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

(ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

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

(A) the transfer or obligation was to an insider;

(B) the debtor retained possession or control of the property transferred after the transfer;

(C) the transfer or obligation was disclosed or concealed;

(D) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(E) the transfer was of substantially all the debtor’s assets;

(F) the debtor absconded;

<sup>3</sup> So in original. Probably should be “(7)”.

<sup>4</sup> So in original. Probably should be “(8)”.

<sup>5</sup> So in original. Probably should be “(9)”.