

552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b)(1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3)) that is not covered under section 548(a)(1)(B), by reason of section 548(a)(2). Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2596; Pub. L. 98-353, title III, § 459, July 10, 1984, 98 Stat. 377; Pub. L. 105-183, § 3(b), June 19, 1998, 112 Stat. 518.)

HISTORICAL AND REVISION NOTES

LEGISLATIVE STATEMENTS

Section 544(a)(3) modifies similar provisions contained in the House bill and Senate amendment so as not to require a creditor to perform the impossible in order to perfect his interest. Both the lien creditor test in section 544(a)(1), and the bona fide purchaser test in section 544(a)(3) should not require a transferee to perfect a transfer against an entity with respect to which applicable law does not permit perfection. The avoiding powers under section 544(a)(1), (2), and (3) are new. In particular, section 544(a)(1) overrules *Pacific Finance Corp. v. Edwards*, 309 F.2d 224 (9th Cir. 1962), and *In re Federalers, Inc.*, 553 F.2d 509 (6th Cir. 1977), insofar as those cases held that the trustee did not have the status of a creditor who extended credit immediately prior to the commencement of the case.

The House amendment deletes section 544(c) of the House bill.

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Subsection (a) is the “strong arm clause” of current law, now found in Bankruptcy Act § 70c [section 110(c) of former title 11]. It gives the trustee the rights of a creditor on a simple contract with a judicial lien on the property of the debtor as of the date of the petition; of a creditor with a writ of execution against the property of the debtor unsatisfied as of the date of the petition; and a bona fide purchaser of the real property of the debtor as of the date of the petition. “Simple contract” as used here is derived from Bankruptcy Act § 60a(4) [section 96(a)(4) of former title 11]. The third status, that of a bona fide purchaser of real property, is new.

Subsection (b) is derived from current section 70e [section 110(e) of former title 11]. It gives the trustee the rights of actual unsecured creditors under applicable law to void transfers. It follows *Moore v. Bay*, 284 U.S. 4 (1931), and overrules those cases that hold section 70e gives the trustee the rights of secured creditors.

Editorial Notes

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-183 designated existing provisions as par. (1), substituted “Except as provided in paragraph (2), the trustee” for “The trustee”, and added par. (2).

1984—Subsec. (a)(1). Pub. L. 98-353, § 459(1), inserted “such” after “obtained”.

Subsec. (a)(2). Pub. L. 98-353, § 459(2), substituted “; or” for “; and”.

Subsec. (a)(3). Pub. L. 98-353, § 459(3), inserted “, other than fixtures,” after “property”, and “and has perfected such transfer” after “purchaser” the second place it appeared.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-183, § 5, June 19, 1998, 112 Stat. 518, provided that: “This Act [amending this section and sections 546, 548, 707, and 1325 of this title and enacting provisions set out as notes under this section and section 101 of this title] and the amendments made by this Act shall apply to any case brought under an applicable provision of title 11, United States Code, that is pending or commenced on or after the date of enactment of this Act [June 19, 1998].”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

CONSTRUCTION OF 1998 AMENDMENT

Pub. L. 105-183, § 6, June 19, 1998, 112 Stat. 519, provided that: “Nothing in the amendments made by this Act [amending this section and sections 546, 548, 707, and 1325 of this title] is intended to limit the applicability of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2002bb [2000bb] et seq.).”

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) first becomes effective against the debtor—

(A) when a case under this title concerning the debtor is commenced;

(B) when an insolvency proceeding other than under this title concerning the debtor is commenced;

(C) when a custodian is appointed or authorized to take or takes possession;