



NEW JERSEY STATE BAR ASSOCIATION

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The Honorable Phil Murphy
Office of the Governor
Post Office Box 001
Trenton, New Jersey 08625

Re: S3171 (Pou)/A3384 (McKeon) – Uniform Voidable Transactions Act

Dear Governor Murphy:

On behalf of the New Jersey State Bar Association, I write to convey our concerns about S3171 (Pou)/A3384 (McKeon), the Uniform Voidable Transactions Act. This bill is an important piece of legislation to update New Jersey's statutory construct regarding voidable transactions. Our members who practice in this area have reviewed this bill and urge three amendments to clarify and restate what has been the general practice in this area of the law. As such, we ask for an opportunity to meet with your staff to discuss these amendments further.

We note that we conferred with the New Jersey Law Revision Commission and suggest further changes beyond those recommended by the NJLRC. With these amendments, the NJSBA supports this legislation.

First Recommendation:

With regard to Section 4, this section involves the consideration of Domestic Asset Protection Trusts (DAPTs). The official comments written by the Uniform Law Commission, which are likely to be considered by the New Jersey Judiciary in interpreting the statute, indicate that DAPTs could be considered per se impermissible under the UVTA. However, this is not currently the case in New Jersey.

New Jersey practitioners use DAPTs in appropriate cases to maximize the benefit of estate planning for their clients (e.g. to ease transfers of property utilizing the annual gift tax exemption). To the extent this is seen as a negative use of DAPTs, it should be noted that DAPTs may not be used to defraud creditors or to hide assets that rightfully are the subject of a judgment by a creditor.

The current bills, as amended, might prohibit the use of DAPTs, or make them per se impermissible. This would eliminate a valuable estate planning tool that is beneficial not only in

estate planning but provides for a business friendly atmosphere in New Jersey. In fact, 16 other states permit DAPTs in some form, including Delaware.

For this reason, we recommend language amending Section 4 to ensure that the Uniform Law Commission's official comments on this topic are not adopted in New Jersey, ensuring that DAPTs continue to be available to New Jersey practitioners. We recommend the following language:

N.J.S. 25:2-33. Uniformity of application and construction. [This article] The "Uniform Voidable Transactions Act," R.S.25:2-20 et seq., shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it. However, Comment 2 and Comment 8 to Section 4 of the Uniform Voidable Transactions Act as promulgated in 2014 by the National Conference of Commissioners on Uniform State Laws do not state New Jersey law and should not be considered as representing the intent of the Legislature when interpreting this [article].

Second Recommendation:

With regard to Section 12, we recommend clarifying the scope of the discovery rule under the UVTA, limiting it to one year after a transfer or obligation was discovered or could reasonably have been discovered. This is consistent with other areas of New Jersey law, as well as the UVTA as drafted by the Uniform Law Commission. We recommend the following language:

N.J.S. 25:2-31. Extinguishment of claim for relief: (a) "... one year after the transfer or obligation was discovered or reasonably could have been discovered by the claimant;"

Third Recommendation:

A general recommendation is to utilize the NJ LRC's final report for cross-references to other sections of the bill.

I thank you for your consideration of these recommended amendments. We are committed to working with you on this important legislation. I look forward to the opportunity to meet with your staff to discuss these recommendations. Our Director of Government Affairs, Lisa Chapland, can be reached at lchapland@njsba.com or 732-239-3356 to coordinate such a meeting. On behalf of the NJSBA, thank you for your continued leadership.

Very truly yours,



Kimberly A. Vonta
President

cc: Ed Doherty, Governor's Counsel
Angela Scheck, NJSBA Executive Director
Domenick Carmagnola, Esq., NJSBA President-Elect