

CHAPTER 2013-189

Committee Substitute for House Bill No. 95

An act relating to charitable contributions; amending s. 726.102, F.S.; defining the terms “charitable contribution” and “qualified religious or charitable entity or organization”; amending s. 726.109, F.S.; providing that a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer; providing exceptions; amending ss. 213.758, 718.704, and 721.05, F.S.; conforming cross-references; providing for applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of section 726.102, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), and (15), respectively, and new subsections (3) and (12) are added to that section to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(3) “Charitable contribution” means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(12) “Qualified religious or charitable entity or organization” means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

Section 2. Subsection (7) is added to section 726.109, Florida Statutes, to read:

726.109 Defenses, liability, and protection of transferee.—

(7)(a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under s. 726.105(1)(b).

(b) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before,

the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

Section 3. Paragraph (c) of subsection (1) of section 213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

(1) As used in this section, the term:

(c) “Insider” means:

1. Any person included within the meaning of insider as used in s. 726.102~~(7)~~; or

2. A manager of, a managing member of, or a person who controls a transferor that is a limited liability company, or a relative as defined in s. 726.102~~(11)~~ of any such persons.

Section 4. Subsection (4) of section 718.704, Florida Statutes, is amended to read:

718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or

(c) By a person who would be considered an insider under s. 726.102~~(7)~~.

Section 5. Subsection (10) of section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter, the term:

(10) “Developer” includes:

(a)1. A “creating developer,” which means any person who creates the timeshare plan;

2.(b) A “successor developer,” which means any person who succeeds to the interest of the persons in this subsection by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests in the ordinary course of business; and

3.(c) A “concurrent developer,” which means any person acting concurrently with the persons in this subsection with the purpose of offering timeshare interests in the ordinary course of business.

(b)(d) The term “developer” does not include:

1. An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption exists ~~shall exist~~ that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

2. A managing entity, not otherwise a developer, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;

3. A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

4. A person who acquires ~~has acquired~~ or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization, conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by a developer ~~one or more developers~~ in the ordinary course of business on its ~~their~~ own behalf ~~behalfes~~ or on behalf of such person.

(c)(e) A successor or concurrent developer is ~~shall be~~ exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan, except as provided in s. 721.15(7), ~~provided that~~ This exemption does ~~shall~~ not apply to any of the successor or concurrent developer’s responsibilities, duties, or liabilities with respect to the timeshare plan which ~~that~~ accrue after the date the successor or concurrent developer became a successor or concurrent developer, and ~~provided that~~ such transfer does not constitute a fraudulent transfer. ~~In addition to other provisions of law,~~ A transfer by a predecessor developer to a successor or concurrent developer shall be deemed fraudulent if the predecessor developer made the transfer:

1. With actual intent to hinder, delay, or defraud any purchaser or the division; or
2. To a person that would constitute an insider under s. 726.102(7).

~~The provisions of This paragraph~~ does shall not be construed to relieve any successor or concurrent developer from the obligation to comply with the provisions of any applicable timeshare instrument.

Section 6. This act shall take effect July 1, 2013, and applies to all charitable contributions made on or after that date.

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.