



CHAPTER 11.18

FRAUDULENT DISPOSITIONS ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

FRAUDULENT DISPOSITIONS ACT

Act 26 of 1998 .. in force 9 April 1999

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FRAUDULENT DISPOSITIONS ACT
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CHAPTER 11.18
FRAUDULENT DISPOSITIONS ACT

(Act 26 of 1998)

AN ACT TO PROVIDE NEW RULES TO DEAL WITH THE FRAUDULENT
DISPOSITIONS OF PROPERTY GENERALLY.

Short title

1. This Act may be cited as the Fraudulent Dispositions Act.

Interpretation

2. (1) In this Act—

“**Court**” means the High Court;

“**creditor**” means a person to whom an obligation is owed;

“**intent to defraud**” means an intention of a transferor wilfully to defeat an obligation owed to the creditor;

“**obligation**” means—

- (a) an obligation or liability that existed on or before the date of a relevant disposition and of which the transferor had notice, and
- (b) includes a liability contingent upon an obligation or liability referred to in paragraph (a);

“**relevant disposition**” means a disposition to which section 3 applies;

“**transferee**” means the person to whom a relevant disposition is made and includes any successor in title;

“**transferor**” means the person who as owner or as the holder of a power in that behalf directly or indirectly makes a relevant disposition or causes it to be made;

“**undervalue**”, in relation to a disposition of property, means—

- (a) the provision of no consideration for the disposition; or
- (b) a consideration for the disposition the value of which in money or money’s worth is significantly less than the value of the property the subject of the disposition.

(2) This Act applies to any action or proceeding relating to the disposition of property, whether the property is situate within or outside Montserrat, if—

- (a) the disposition takes place after the commencement of this Act; or
- (b) the disposition took place before the commencement of this Act but the proceedings were not begun within eighteen months after the commencement of this Act.

Fraudulent disposition void

3. (1) Subject to this Act, every disposition of property made with an intent to defraud or at an undervalue shall be voidable at the instance of a creditor thereby prejudiced.

(2) The burden of establishing an intent to defraud or that a disposition is made at an undervalue for the purposes of this Act shall be upon the creditor seeking to set aside the disposition.

(3) No action or proceedings shall be commenced pursuant to this Act later than three years after the date of the relevant disposition.

Certain rights

4. In the event that any disposition is set aside pursuant to this Act, then—

- (a) if the court is satisfied that the transferee has not acted in bad faith—
 - (i) the transferee shall have a first and paramount charge over the property, the subject of the disposition, of an amount equal to the entire costs incurred by the transferee in the defence of the action or proceedings to set aside (and not merely such costs as might otherwise be allowed by the court); and

- (ii) the relevant disposition shall be set aside subject to the proper fees, costs, pre-existing rights, claims and interests of the transferee (and of any predecessor transferee which has not acted in bad faith); and
- (b) if the court is satisfied that a beneficiary of a trust has not acted in bad faith the disposition shall only be set aside subject to the right of such beneficiary to retain any distribution consequent upon the prior exercise of a trust, power or discretion vested in the trustee of such trust, or any other person, and otherwise properly exercised.

Extent of avoidance of relevant dispositions

5. A disposition shall be set aside pursuant to this Act only to the extent necessary to satisfy the obligation to a creditor at whose instance the disposition has been set aside.

Act not to validate certain dispositions

6. Nothing in this Act shall validate any disposition of property which is neither owned by the transferor nor the subject of a power in that behalf vested in the transferor, and this Act does not affect the recognition of foreign laws in determining whether the transferor is the owner of such property or the holder of such power.

No interest to defraud

7. The fact that a settler of a trust is a beneficiary under the trust or a trustee thereof does not *per se* constitute an intent to defraud.

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