

## CHAPTER 20

### IMPROVIDENT TRANSFERS OF TITLE

#### §1021. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [PL 1987, c. 699, §1 (NEW).]

**1. Dependent.** "Dependent," with respect to an elderly person, means wholly or partially dependent upon one or more other persons for care or support, either emotional or physical, because the elderly person:

A. Suffers from a significant limitation in mobility, vision, hearing, emotional or mental functioning or the ability to read or write; or [PL 1987, c. 699, §1 (NEW).]

B. Is suffering or recovering from a major illness or is facing or recovering from major surgery. [PL 1987, c. 699, §1 (NEW).]

[PL 1987, c. 699, §1 (NEW).]

**2. Elderly person.** "Elderly person" means a person who is 60 years of age or older.

[PL 1987, c. 699, §1 (NEW).]

**3. Independent counsel.** "Independent counsel" means an attorney retained by the elderly dependent person to represent only that person's interests in the transfer.

[PL 1987, c. 699, §1 (NEW).]

**4. Less than full consideration.** "Less than full consideration," with respect to a transfer of property, means the transferee pays less than fair market value for the property or the transfer is supported by past consideration.

[PL 1987, c. 699, §1 (NEW).]

**5. Major transfer of personal property or money.** "Major transfer of personal property or money" means a transfer of money or items of personal property which represent 10% or more of the elderly dependent person's estate.

[PL 1987, c. 699, §1 (NEW).]

**6. Transfer.** "Transfer" includes, but is not limited to, a transfer under the Uniform Real Property Transfer on Death Act, but does not include testamentary transfers, which are outside the scope of this chapter. For purposes of this chapter, a transfer under the Uniform Real Property Transfer on Death Act occurs when the deed is executed or recorded.

[PL 2017, c. 402, Pt. E, §1 (AMD); PL 2019, c. 417, Pt. B, §14 (AFF).]

#### SECTION HISTORY

PL 1987, c. 699, §1 (NEW). PL 1989, c. 238, §§1,4 (AMD). PL 2017, c. 402, Pt. E, §1 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

#### §1022. Undue influence

**1. Presumption.** In any transfer of real estate or major transfer of personal property or money for less than full consideration or execution of a guaranty by an elderly person who is dependent on others to a person with whom the elderly dependent person has a confidential or fiduciary relationship, it is presumed that the transfer or execution was the result of undue influence, unless the elderly dependent person was represented in the transfer or execution by independent counsel. When the elderly dependent person successfully raises the presumption of undue influence by a preponderance of the evidence and when the transferee or person who benefits from the execution of a guaranty fails to rebut

the presumption, the elderly dependent person is entitled to avoid the transfer or execution and entitled to the relief set forth in section 1024.

[PL 2003, c. 236, §1 (AMD).]

**2. Confidential or fiduciary relationship.** For the purpose of this section, the transfer of property or execution of a guaranty is deemed to have been made in the context of a confidential or fiduciary relationship if the transferee or person who benefits from the execution of a guaranty had a close relationship with the elderly dependent person prior to the transfer or execution. Confidential or fiduciary relationships include the following:

A. A family relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, including relationships by marriage and adoption; [PL 2003, c. 236, §1 (AMD).]

B. A fiduciary relationship between the elderly dependent person and the transferee or person who benefits from the execution of a guaranty, such as with a guardian, conservator, trustee, accountant, broker or financial advisor; [PL 2003, c. 236, §1 (AMD).]

C. A relationship between an elderly dependent person and a physician, nurse or other medical or health care provider; [PL 1987, c. 699, §1 (NEW).]

D. A relationship between the elderly dependent person and a psychologist, social worker or counselor; [PL 1987, c. 699, §1 (NEW).]

E. A relationship between the elderly dependent person and an attorney; [PL 1987, c. 699, §1 (NEW).]

F. A relationship between the elderly dependent person and a priest, minister, rabbi or spiritual advisor; [PL 1987, c. 699, §1 (NEW).]

G. A relationship between the elderly dependent person and a person who provides care or services to that person whether or not care or services are paid for by the elderly person; [PL 1987, c. 699, §1 (NEW).]

H. A relationship between an elderly dependent person and a friend or neighbor; or [PL 1987, c. 699, §1 (NEW).]

I. A relationship between an elderly dependent person and a person sharing the same living quarters. [PL 1987, c. 699, §1 (NEW).]

When any of these relationships exist and when a transfer or execution is made to a corporation or organization primarily on account of the membership, ownership or employment interest or for the benefit of the fiduciary or confidante, a fiduciary or confidential relationship with the corporation or organization is deemed to exist.

[PL 2003, c. 236, §1 (AMD).]

## SECTION HISTORY

PL 1987, c. 699, §1 (NEW). PL 2003, c. 236, §1 (AMD).

### §1023. Civil action; relief available

**1. Civil action.** A civil action may be brought to obtain relief under this chapter by an elderly dependent person, that person's legal representative or the personal representative of the estate of an elderly dependent person.

[PL 2003, c. 236, §2 (AMD).]

**2. Relief available; protected transfers and executions.** When a court finds that a transfer of property or execution of a guaranty was the result of undue influence, it shall grant appropriate relief enabling the elderly dependent person to avoid the transfer or execution, including the rescission or

reformation of a deed or other instrument, the imposition of a constructive trust on property or an order enjoining use of or entry on property or commanding the return of property. When the court finds that undue influence is a good and valid defense to a transferee's suit on a contract to transfer the property or a suit of a person who benefits from the execution of a guaranty on that guaranty, the court shall refuse to enforce the transfer or guaranty.

No relief obtained or granted under this section may in any way affect or limit the right, title and interest of good faith purchasers, mortgagees, holders of security interests or other 3rd parties who obtain an interest in the transferred property for value after its transfer from the elderly dependent person. No relief obtained or granted under this section may affect any mortgage deed to the extent of value given by the mortgagee.

[PL 2003, c. 236, §2 (AMD).]

**3. Statute of limitations.** The limitations imposed by Title 14, section 752, apply to all actions brought under this chapter.

[PL 1987, c. 699, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 699, §1 (NEW). PL 1989, c. 238, §§2,4 (AMD). PL 2003, c. 236, §2 (AMD).

#### §1024. Other common law and statutory causes of action and relief still available

Nothing in this chapter may be construed to abrogate any other causes of action or relief at law or equity to which elderly dependent persons are entitled under other laws or at common law. [PL 1987, c. 699, §1 (NEW).]

#### SECTION HISTORY

PL 1987, c. 699, §1 (NEW).

#### §1025. Title practices

This chapter does not require that language showing compliance with this chapter be included in a deed and does not require that evidence of compliance with this chapter be recorded in the registry of deeds. Any attempt to record such evidence is void and has no effect on title. [PL 1989, c. 238, §3 (NEW).]

#### SECTION HISTORY

PL 1989, c. 238, §§3,4 (NEW).

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