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Property; Uniform Fraudulent Transfer Act

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Property

Property; Uniform Fraudulent Transfer Act

NEV. REV. STAT. §§ 111.225, 112.010, 112.020, 112.030, 112.040, 112.050, 112.060, 112.070, 112.080, 112.090, 112.100, 112.110, 112.120, 112.130 (repealed); § 112.____ (new); § 11.190 (amended). AB 60 (Sader); 1987 STAT. Ch 8

In 1931, Nevada enacted the Uniform Fraudulent Conveyances Act.¹ In 1984, the National Conference of Commissioners on Uniform State Law revised the Act in response to the development of the Bankruptcy Code and the Uniform Commercial Code.² The name was changed to the Uniform Fraudulent Transfer Act in recognition of the Act's applicability to transfers of personal property as well as real property.³ Chapter 8 enacts, with minor variations, the Uniform Fraudulent Transfer Act.⁴

INSOLVENCY

Under prior law, a person⁵ was insolvent when the present fair salable value of the assets⁶ of the person was less than the amount

1. 1931 Nev. Stat. ch. 217, at 392. See generally Kennedy, *The Uniform Fraudulent Transfer Act*, 18 U.C.C. L.J. 195, 195-98 (1986) [hereinafter Kennedy] (brief history of the Uniform Fraudulent Conveyance Act).

2. See Uniform Fraudulent Transfer Act (1984), 7A U.L.A. 639 (1985) [hereinafter UFTA].

3. *Id.* at 640. See generally, Kennedy, *supra* note 1, at 198-200 (brief history of the Uniform Fraudulent Transfer Act).

4. Compare 1987 Nev. Stat. ch. 8, secs. 2-13, at ____ (enacting NEV. REV. STAT. § 112.____) with UFTA, *supra* note 2, at 643. Unless displaced by Chapter 8, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement the provisions of Chapter 8. 1987 Nev. Stat. ch. 8, sec. 12, at ____ (enacting NEV. REV. STAT. § 112.____). Furthermore, Chapter 8 must be applied and construed to effectuate the general purpose of making the law uniform with respect to fraudulent transfers among states enacting the Uniform Fraudulent Transfer Act. *Id.* sec. 13, at ____ (enacting NEV. REV. STAT. § 112.____). Hawaii, North Dakota, and Oregon have enacted the Uniform Fraudulent Transfer Act. UFTA, 7A U.L.A. 20 (1986 Supp.). See generally Kennedy, *supra* note 1, at 214 (providing a table of corresponding provisions of the Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act).

5. NEV. REV. STAT. § 0.039 (definition of a person).

6. 1931 Nev. Stat. ch. 217, sec. 1, at 393 (definition of assets).

that would be required to pay that person's liability on existing debt⁷ as the debt became absolute and matured.⁸ Under Chapter 8, a debtor⁹ is insolvent if the sum of the debts¹⁰ is greater than all of the assets¹¹ of the debtor at a fair valuation.¹² Furthermore, a debtor who is generally not paying debts as the debts become due is presumed¹³ to be insolvent.¹⁴ Chapter 8 generally retains the definition of partnership¹⁵ insolvency contained in the Uniform Fraudulent Conveyance Act¹⁶ by providing that a partnership is insolvent if the sum of the partnership's debts is greater than the aggregate of all the partnership's assets and the sum of the excess of the value of the nonpartnership assets of each general partner¹⁷ over his nonpartnership debts.¹⁸

VALUE

Under prior law, fair consideration was given for property or for an obligation when property or an antecedent debt, equivalent in value, was conveyed¹⁹ in good faith.²⁰ Fair consideration was also given when the property or obligation was received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property

7. *Id.* (definition of a debt).

8. *Id.*

9. 1987 Nev. Stat. ch. 8, sec. 3, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of debtor).

10. *Id.* at ___ (enacting NEV. REV. STAT. § 112.____) (definition of debt). Debts under insolvency do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. *Id.* sec. 4, at ___ (enacting NEV. REV. STAT. § 112.____).

11. *Id.* at ___ (enacting NEV. REV. STAT. § 112.____) (definition of asset). Assets under insolvency do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that have been transferred in a manner making the transfer voidable under Chapter 8. *Id.* sec. 4, at ___ (enacting NEV. REV. STAT. § 112.____).

12. 1987 Nev. Stat. ch. 8, sec. 4, at ___ (enacting NEV. REV. STAT. § 112.____).

13. The presumption is rebuttable and is established in recognition of the difficulties typically imposed on a creditor in proving insolvency. UFTA, *supra* note 2, sec. 2, comment 2, at 648.

14. 1987 Nev. Stat. ch. 8, sec. 4, at ___ (enacting NEV. REV. STAT. § 112.____).

15. NEV. REV. STAT. § 87.060 (definition of a partnership).

16. Compare 1931 Nev. Stat. ch. 217, sec. 2, at 392 with 1987 Nev. Stat. ch. 8, sec. 4, at ___ (enacting NEV. REV. STAT. § 112.____). See also, UFTA, *supra* note 2, sec. 2, comment 3, at 650 (stating the definition generally conforms to the same term of the Uniform Fraudulent Conveyance Act).

17. *Id.* § 88.315 5 (definition of a general partner).

18. 1987 Nev. Stat. ch. 8, sec. 4, at ___ (enacting NEV. REV. STAT. § 112.____).

19. 1931 Nev. Stat. ch. 217, sec. 1, at 392 (definition of conveyance).

20. *Id.* sec. 3, at 393.

or obligation obtained.²¹ Under Chapter 8, value²² is given for a transfer²³ or an obligation if property²⁴ is transferred, or an antecedent debt is secured or satisfied, in exchange for the transfer or obligation.²⁵ Under Chapter 8, a person²⁶ gives a reasonably equivalent value if the person acquires an interest in a debtor's asset pursuant to a regularly conducted, noncollusive foreclosure sale,²⁷ or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default²⁸ under a mortgage,²⁹ deed of trust,³⁰ or a security agreement.³¹

FRAUDULENT TRANSFERS OR OBLIGATIONS INCURRED

Under prior law, any conveyance or obligation incurred with actual intent³² to hinder, delay, or defraud either present or future creditors was fraudulent as to both present and future creditors.³³ Under

21. *Id.*

22. The Uniform Fraudulent Conveyance Act does not recognize that an unperformed promise can constitute fair consideration. McLaughlin, *Application of the Uniform Fraudulent Conveyance Act*, 46 HARV. L. REV. 404, 414 (1933). Courts construing these provisions of the prior law nevertheless have held unperformed promises to constitute value in a variety of circumstances. UFTA, *supra* note 2, sec. 3, comment 4, at 651. Under Chapter 8, however, value does not include an unperformed promise made other than in the ordinary course of the business of the promisor to furnish support to the debtor or another person. 1987 Nev. Stat. ch. 8, sec. 5, at ___ (enacting NEV. REV. STAT. § 112.____).

23. 1987 Nev. Stat. ch. 8, sec. 3, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of transfer). A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. *Id.* sec. 5, at ___ (enacting NEV. REV. STAT. § 112.____).

24. *Id.* sec. 3, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of property).

25. *Id.* sec. 5, at ___ (enacting NEV. REV. STAT. § 112.____). *See also* Durrett v. Washington National Insurance Company, 621 F.2d 201, 204 (5th Cir. 1980) (a foreclosure sale of a debtor's property under a mortgage was held a fraudulent transfer when the sale resulted in a recovery of less than 70% of the property's value). Chapter 8 rejects the rule in *Durrett* and accepts the view taken in *Lawyers Title Ins. Corp. v. Madrid*, 21 Bankr. 424 (Bankr. 9th Cir.), *aff'd on another ground* 725 F.2d 1197 (9th Cir. 1984), that the price bid at a public foreclosure sale determines the fair value of the property sold. UFTA, *supra* note 2, sec. 3, comment 5, at 652. *See generally* Kennedy, *supra* note 1, at 206-08 (discussing the problems with *Durrett* and the resolution of those problems with the enactment of this provision in Chapter 8).

26. Under Chapter 8, person includes a government and a governmental subdivision or agency. *Id.* sec. 3, at ___ (enacting NEV. REV. STAT. § 112.____).

27. *See generally* NEV. REV. STAT. §§ 40.430-40.450 (actions for foreclosure of real mortgages); §§ 40.451-40.459 (standards for conducting foreclosure sales).

28. *See generally id.* §§ 104.9501-104.9507 (provisions for default of secured transactions).

29. *Id.* § 0.037 (definition of mortgage).

30. *See generally id.* §§ 107.020-107.100 (provisions for deeds of trust).

31. 1987 Nev. Stat. ch. 8, sec. 5, at ___ (enacting NEV. REV. STAT. § 112.____) (only applicable as to specified sections for the purpose of transfers fraudulent as to present and future creditors). NEV. REV. STAT. § 104.9105 1(l) (definition of security agreement).

32. Actual intent was distinguished from intent presumed at law. 1931 Nev. Stat. ch. 217, sec. 7, at 393.

33. *Id.*

Chapter 8, every transfer made³⁴ or obligation³⁵ incurred with actual intent to hinder, delay, or defraud any creditor is fraudulent,³⁶ irrespective of when the creditor's claim³⁷ arises.³⁸ Under prior law, every conveyance made without fair consideration³⁹ was fraudulent as to creditors⁴⁰ without regard to actual intent.⁴¹ Under Chapter 8, any transfer or obligation, incurred without receiving a reasonably equivalent value⁴² in exchange for the transfer or obligation,⁴³ is fraudulent without regard to actual intent.⁴⁴

Under prior law, any conveyance made or obligation incurred by a person who was or would be rendered insolvent was fraudulent as to creditors, regardless of the actual intent, if made or incurred without fair consideration.⁴⁵ Under Chapter 8, any transfer made or obligation incurred by a debtor, who is insolvent,⁴⁶ without exchanging reasonably equivalent value for the transfer or obligation is fraudulent.⁴⁷ Chapter 8 further provides that a transfer by a debtor

34. 1987 Nev. Stat. ch. 8, sec. 8, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of when a transfer is made). *See generally* Kennedy, *supra* note 1, at 208-09 (discussing when a transfer is perfected against a third person).

35. *Id.* (enacting NEV. REV. STAT. § 112.____) (definition of when an obligation is incurred). *See generally* Kennedy, *supra* note 1, at 210 (discussing when an obligation is incurred).

36. Chapter 8 provides a list of factors to determine actual intent. *Id.* sec. 6, at ___ (enacting NEV. REV. STAT. § 112.____). *See generally* Kennedy, *supra* note 1, at 200-02 (discussing the fear of some observers that the presence of one of the factors named in a case would create a presumption of actual intent by the finder of fact and not be viewed as only part of the evidence).

37. *Id.* sec. 3, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of claim).

38. *Id.* sec. 6, at ___ (enacting NEV. REV. STAT. § 112.____) (claim may arise before or after the transfer, or before or after the obligation is incurred). *See infra* notes 61, 62 and accompanying text.

39. The person making the conveyance must have been engaged in a business or transaction for which the property remaining in his hands after the conveyance was an unreasonably small capital. 1931 Nev. Stat. ch. 217, sec. 5, at 393. *Id.* sec. 3, at 393 (definition of fair consideration).

40. The conveyance was also fraudulent as to other persons who became creditors during the continuance of such business or transaction. *Id.* sec. 5, at 393.

41. *Id.* (fraudulent as to both present and future creditors).

42. 1987 Nev. Stat. ch. 8, sec. 5, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of reasonably equivalent value). *See generally* Kennedy, *supra* note 1, at 202-04 (discussing the reasoning behind changing fair consideration to reasonably equivalent value and the effects of that change).

43. The debtor must also engage in a business or transaction for which: (1) The remaining assets of the debtor are unreasonably small in relation to the business or transaction, or (2) the debtor would incur debts beyond the ability of the debtor to pay. *Id.* sec. 6, at ___ (enacting NEV. REV. STAT. § 112.____).

44. *Id.* (regardless of when the claim of the creditor arose).

45. 1931 Nev. Stat. ch. 217, sec. 4, at 393.

46. The debtor may also become insolvent as a result of the transfer or obligation. 1987 Nev. Stat. ch. 8, sec. 7, at ___ (enacting NEV. REV. STAT. § 112.____).

47. *Id.* (only fraudulent as to creditors whose claims arose before the transfer was made or the obligation was incurred).

who is insolvent⁴⁸ to an insider⁴⁹ is fraudulent.⁵⁰

REMEDIES

Under prior law, when a conveyance or obligation was fraudulent, a creditor whose claim had matured could have the conveyance set aside or obligation annulled as against any person⁵¹ to the extent necessary to satisfy the claim.⁵² The creditor alternatively could have the conveyance disregarded and attach a levy execution upon the property conveyed.⁵³ Prior law also provided that where a conveyance or obligation was fraudulent and the creditor's claim had not matured, the creditor could proceed against any person as if the claim had matured.⁵⁴ Thus, the court could restrain the defendant from disposing of his property, appoint a receiver to take charge of the property, set aside the conveyance or annul the obligation, or make any order which the circumstances may have required.⁵⁵ Under Chapter 8, a creditor in an action for relief against a transfer or obligation may obtain, subject to limitations:⁵⁶ (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the claim of the creditor; (2) an attachment or garnishment against the asset transferred or the other property of the transferee;⁵⁷ (3) an injunction against further disposition by the debtor or transferee, or both, of the asset transferred or other property; (4) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or (5) any other relief the circumstances require.⁵⁸ Furthermore, Chapter 8

48. The insider must also have reasonable cause to believe that the debtor is insolvent. *Id.* sec. 7, at ____ (enacting NEV. REV. STAT. § 112.____).

49. *Id.* sec. 3, at ____ (enacting NEV. REV. STAT. § 112.____) (definition of insider).

50. *Id.* sec. 7, at ____ (if the claim arose before the transfer was made or the obligation was incurred). See UFTA, *supra* note 2, sec. 5, comment 2, at 658 (providing a list of cases whose rules this section adopts for general application and cases that the section overrules). See also *id.* comment 3, at 658 (this section does not extend as far as Uniform Fraudulent Conveyance Act, § 8(a), 7A U.L.A. 430, 576 (1985) (1931 Nev. Stat. ch. 217, sec. ____, at 393)). See generally Kennedy, *supra* note 1, at 204-06 (discussing the reasons for enacting the insider preference provisions).

51. 1931 Nev. Stat. ch. 217, sec. ____, at ____ (excepts bona fida purchasers for value).

52. *Id.* sec. 9, at 394.

53. *Id.*

54. *Id.* sec. 10, at 394.

55. *Id.*

56. See 1987 Nev. Stat. ch. 8, sec. 10, at ____ (enacting NEV. REV. STAT. § 112.____) (defenses, liabilities, and protection of transferee).

57. See NEV. REV. STAT. §§ 31.010-31.460 (provisions governing attachment or garnishment).

58. 1987 Nev. Stat. ch. 8, sec. 9, at ____ (enacting NEV. REV. STAT. § 112.____). The injunction, appointment of a receiver, or other appropriate relief are subject to applicable principles of equity and civil procedure. *Id.*

provides that if a creditor has obtained a judgment on a claim against the debtor, the creditor may levy execution on the asset transferred or the proceeds of the transfer.⁵⁹

DEFENSES, LIABILITY, AND PROTECTION OF THE TRANSFEREE

Under prior law, a purchaser who gave less than fair consideration for the conveyance or obligation, without fraudulent intent, may retain the property or obligation as security for repayment.⁶⁰ Under Chapter 8, if the debtor makes a transfer or incurs an obligation with actual intent to hinder, delay, or defraud any creditor,⁶¹ the transfer is not voidable against a person who takes in good faith and for a reasonably equivalent value.⁶² Furthermore, Chapter 8 provides that to the extent a transfer is voidable,⁶³ the creditor may recover a judgment for the value of the asset transferred, or in the amount necessary to satisfy the claim of the creditor, whichever is less.⁶⁴ The judgment may be entered against the first transferee⁶⁵ or against any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.⁶⁶ Under Chapter 8, however, a good faith transferee or obligee⁶⁷ is entitled to a lien⁶⁸ on or a right to retain any interest in the asset transferred, enforcement of any obligation incurred, or a reduction in the amount

59. *Id.* (enacting NEV. REV. STAT. § 112.____) (if the court so orders).

60. 1931 Nev. Stat. ch. 217, sec. 9, at 394.

61. 1987 Nev. Stat. ch. 8, sec. 6, at ____ (enacting NEV. REV. STAT. § 112.____) (whether claim arose before or after obligation or transfer).

62. *Id.* sec. 10, at ____ (enacting NEV. REV. STAT. § 112.____). The transfer is also not voidable against any subsequent transferee or obligee. *Id.* See *Chorost v. Grand Rapids Factory Showrooms, Inc.*, 77 F. Supp 276, 280 (D.N.J. 1948), *aff'd* 172 F.2d 327, 329 (3d Cir. 1949) (the person who invokes this defense carries the burden of establishing good faith and the reasonable equivalence of the consideration exchanged).

63. *Id.* sec. 9, at ____ (transfer is voidable in an action by a creditor seeking to avoid the transfer or obligation to the extent necessary to satisfy the claim of the creditor).

64. *Id.* sec. 10, at ____ (enacting NEV. REV. STAT. § 112.____). The judgment must be for an amount equal to the value of the asset at the time of the transfer subject to adjustment as the equities may require. *Id.* (enacting NEV. REV. STAT. § 112.____). See UFTA, *supra* note 2, sec. 8, comment 3, at 663 (discussing the rationale behind the enactment of this section).

65. 1987 Nev. Stat. ch. 8, sec. 10, at ____ (or person for whose benefit the transfer was made).

66. *Id.* (enacting NEV. REV. STAT. § 112.____).

67. An insider who receives property or an obligation in satisfaction of an antecedent debt of the transferor or obligor is not a good faith transferee or obligee if the insider has reasonable cause to believe that the debtor is insolvent at the time the transfer is made or the obligation is incurred. UFTA, *supra* note 2, sec. 8, comment 4, at 664.

68. 1987 Nev. Stat. ch. 8, sec. 3, at ____ (enacting NEV. REV. STAT. § 112.____) (definition of a lien).

of the liability on the judgment.⁶⁹ Furthermore, Chapter 8 provides that certain transfers⁷⁰ made without receiving equivalent value in exchange for the transfer or the obligation are not voidable if the transfer results from the termination of a lease upon default by the debtor,⁷¹ or the transfer results from the enforcement of a security interest.⁷² Chapter 8 further provides that a transfer made to an insider for an antecedent debt when the debtor is insolvent, or the insider has reasonable cause to believe that the debtor is insolvent, is not voidable: (1) To the extent the insider gave new value to the debtor after the transfer was made, unless the new value was secured by a valid lien;⁷³ (2) if made in the ordinary course of business or financial affairs of the debtor or insider; or (3) if made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.⁷⁴

Under existing law, an action for relief on the ground of fraud or mistake must be brought within three years upon the discovery of the facts constituting the fraud or mistake.⁷⁵ Under Chapter 8, a claim for relief on a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor may be brought within four years after the transfer was made or the obligation incurred.⁷⁶ Additionally, such a cause of action may be brought within one year after the transfer was made or the obligation was or could have reasonably been discovered.⁷⁷ Chapter 8 provides that other claims arising from specified transfers or obligations⁷⁸ must be

69. *Id.* sec. 10, at ___ (enacting NEV. REV. STAT. § 112.____) (to the extent of the value given the debtor for the transfer or obligation).

70. *Id.* (applies to transactions in which the debtor was engaged or about to engage in a business for which the remaining assets of the debtor were unreasonably small in relation to the business).

71. *Id.* (lease must be terminable pursuant to applicable law).

72. *Id.* (enacting NEV. REV. STAT. § 112.____) (enforcement must be in compliance with Nevada law on secured transactions).

73. *Id.* sec. 3, at ___ (enacting NEV. REV. STAT. § 112.____) (definition of valid lien).

74. *Id.* sec. 10, at ___ (enacting NEV. REV. STAT. § 112.____).

75. NEV. REV. STAT. § 11.190 3(d) (amended by Nev. Stat. ch. 8, sec. 14, at ___).

76. 1987 Nev. Stat. ch. 8, sec. 11, at ___ (enacting NEV. REV. STAT. § 112.____).

77. *Id.*

78. *Id.* sec. 14, at ___ (amending NEV. REV. STAT. § 11.190) (applies to transfers made to an insider for an antecedent debt, the debtor insolvent at the time, and the insider has reasonable cause to believe that the debtor was insolvent).

brought within four years after the transfer was made or the obligation incurred.⁷⁹

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79. *Id.* (enacting NEV. REV. STAT. § 112.____) (applies if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction). A claim must also be brought within four years if the debtor intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as the debts became due, or the debtor was insolvent as a result of the transfer or obligation. *Id.* See generally Kennedy, *supra* note 1, at 210-11 (the Uniform Fraudulent Transfer Act provides a basis for clarifying the statute of limitation problem regarding fraudulent transfers which in the past caused great difficulty in determining what statute of limitation applied and varied enormously from state to state).

Property; Uniform Statutory Rule Against Perpetuities

NEV. REV. STAT. § 111.____ (new); §§ 111.103, 117.103 (amended).
AB 182 (Committee on Judiciary); 1987 STAT. Ch 25

Under prior law, the principles of the *cy pres*¹ and the “wait and see”² doctrines were combined to form the basis of the statutory rule against perpetuities.³ Chapter 25 adopts the Uniform Statutory Rule Against Perpetuities.⁴ Chapter 25 provides that a nonvested property interest⁵ is invalid unless the interest, when created,⁶ is

1. See Note, *Property—Perpetuities—Texas Enacts Cy Pres Statute*, 49 TEX. L. REV. 181, 184 (Dec. 1970); see TEX. CIV. STAT. ANN. art. 1291b (Supp. 1969) (definition of *cy pres* doctrine).

2. See Case Comment, *Property Law—Rule Against Perpetuities - Use of Cy Pres Doctrine to Reform Testamentary Trust Violating Rule Against Perpetuities* — In re Chun Quan Yee Hop, 84 HARV. L. REV. 738, 744 (Jan. 1971) (definition of the “wait & see” doctrine).

3. 1983 Nev. Stat. ch. 388, sec. 4, at 928 (enacting NEV. REV. STAT. § 111.103). See 1983 PAC. L.J. REV. NEV. LEGIS. 117, 134 (Oct. 1983).

4. 1987 Nev. Stat. ch. 25, sec. 7, at ____ (amending NEV. REV. STAT. 111.103).

5. 1987 Nev. Stat. ch. 25, sec. 5, at ____ (enacting NEV. REV. STAT. § 111.____). A nonvested property interest is subject to the rule against perpetuities if the interest is a donative transfer, or if the interest is a nondonative transfer and arose out of the following: (1) A premarital or postmarital agreement; (2) a separation or divorce settlement; (3) a spouse's election; (4) a similar arrangement arising out of a prospective, existing or previous marital relationship between the parties; (5) a contract to make or not to revoke a will or trust; (6) a contract to exercise or not to exercise a power of appointment; (7) a transfer in satisfaction of a duty of support; or (8) a reciprocal transfer. *Id.*

6. 1987 Nev. Stat. ch. 25, sec. 3, at ____ (enacting NEV. REV. STAT. § 111.____). If a person can exercise a power created by a governing instrument to become the unqualified