

BANKING CODE OF 1999 (EXCERPT)
Act 276 of 1999

487.12404 Lien on property or assets; voidable transfer.

Sec. 2404.

(1) A transfer of or lien on the property or assets of the bank is voidable by the receiver if the transfer or lien was 1 or more of the following:

(a) Made or created within 1 year before the date the bank is ordered in receivership if the receiving transferee or lien holder was at the time an affiliate, officer, director, employee, or principal shareholder of the bank or an affiliate of the bank.

(b) Made or created on or within 90 days before the date the bank is ordered in receivership with the intent of giving to a creditor or depositor, or enabling a creditor or depositor to obtain, a greater percentage of the claimant's debt than is given or obtained by another claimant of the same class.

(c) Accepted after the bank is ordered in receivership by a creditor or depositor having reasonable cause to believe that a preference will occur.

(d) Voidable by the bank and the bank may recover the property transferred or its value from the person to whom it was transferred or from a person who has received it, unless the transferee or recipient was a bona fide holder for value before the date the bank was ordered in receivership.

(2) For purposes of this section, "preference" means a transfer or grant of an interest in the property or assets of the bank that is either of the following:

(a) Made or incurred with the intent to hinder, delay, or defraud an entity to which, on or after the date that the transfer or grant of interest was made, the bank was or became indebted.

(b) Made or incurred for less than a reasonably equivalent value in exchange for the transfer or grant of interest if the bank was insolvent on the date that the transfer or grant of interest was made or became insolvent as a result of the transfer or grant of interest.

(3) A person acting on behalf of the bank, who knowingly has participated in implementing a voidable transfer or lien, and each person receiving property or the benefit of property of the bank as a result of the voidable transfer or lien, is personally liable for the property or benefit received and shall account to the receiver for the benefit of the bank.

(4) Notwithstanding any other provisions of this act, an otherwise voidable transfer under this section will not be voided by the receiver, if any of the following apply:

(a) The transfer or lien does not exceed the value of \$1,000.00.

(b) The transfer or lien was received in good faith by a person, who is not a person described in subsection (1) (a), who gave value.

(c) The transfer of lien was intended by the bank and the transferee or lien holder to be, and in fact substantially was, a contemporaneous exchange for new value given to the bank.

History: 1999, Act 276, Eff. Mar. 1, 2000