



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3325

by Rep. Ann Williams

#### SYNOPSIS AS INTRODUCED:

755 ILCS 5/4a-5  
755 ILCS 5/4a-10  
755 ILCS 5/4a-15  
755 ILCS 5/4a-30

Amends the Presumptively Void Transfers Article of the Probate Act of 1975. Replaces references to the term "transfer instrument" with "transfer". Changes the definitions of "caregiver", "family member", "transfer", "transferee", and "transferor". Provides that if the property in question is an interest in real property, a purchaser or mortgagee for value and without notice, before the recordation of a lis pendens for an action, shall take free and clear of the action. Effective immediately.

LRB099 09128 HEP 29323 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Probate Act of 1975 is amended by changing  
5 Sections 4a-5, 4a-10, 4a-15, and 4a-30 as follows:

6 (755 ILCS 5/4a-5)

7 Sec. 4a-5. Definitions. As used in this Article:

8 (1) "Caregiver" means a person who voluntarily, or in  
9 exchange for compensation, has assumed responsibility for all  
10 or a substantial portion of the care of another person who  
11 needs assistance with activities of daily living. "Caregiver"  
12 includes a caregiver's ~~spouse~~, cohabitant, ~~child~~, or employee.  
13 "Caregiver" does not include a family member of the person  
14 receiving assistance.

15 (2) "Family member" means a spouse, civil union partner,  
16 child, step-child, grandchild, sibling, aunt, uncle, niece,  
17 nephew, first cousin, or parent of the person receiving  
18 assistance, or a spouse of one of those relatives.

19 (3) "Transfer ~~instrument~~" means ~~the legal document~~  
20 ~~intended to effectuate~~ a transfer effective on or after the  
21 transferor's death and includes, without limitation, a  
22 transfer effectuated by a will, trust, transfer on death  
23 instrument ~~deed~~, form designated as payable on death, contract,

1 or other beneficiary designation form.

2 (4) "Transferee" means a legatee, a beneficiary of a trust,  
3 a grantee of a transfer on death instrument ~~deed~~, or any other  
4 person designated in a transfer instrument to receive a  
5 nonprobate transfer.

6 (5) "Transferor" means a testator, settlor, grantor of a  
7 transfer on death instrument ~~deed~~, or a decedent whose interest  
8 is transferred pursuant to a nonprobate transfer.

9 (Source: P.A. 98-1093, eff. 1-1-15.)

10 (755 ILCS 5/4a-10)

11 Sec. 4a-10. Presumption of void transfer.

12 (a) In any civil action in which a transfer ~~instrument~~ is  
13 being challenged, there is a rebuttable presumption, except as  
14 provided in Section 4a-15, that the transfer ~~instrument~~ is void  
15 if the transferee is a caregiver and the fair market value of  
16 the transferred property exceeds \$20,000.

17 (b) Unless a shorter limitations period is required by  
18 Section 8-1 or 18-12 of this Act, any action under this Section  
19 shall be filed within 2 years of the date of death of the  
20 transferor.

21 (c) If the property in question is an interest in real  
22 property, a purchaser or mortgagee for value and without  
23 notice, before the recordation of a lis pendens for an action  
24 under this Section, shall take free and clear of the action.

25 (Source: P.A. 98-1093, eff. 1-1-15.)

1 (755 ILCS 5/4a-15)

2 Sec. 4a-15. Exceptions. The rebuttable presumption  
3 established by Section 4a-10 can be overcome if the transferee  
4 proves to the court either:

5 (1) by a preponderance of evidence that the  
6 transferee's share under the transfer ~~instrument~~ is not  
7 greater than the share the transferee was entitled to under  
8 the transferor's transfer ~~instrument~~ in effect prior to the  
9 transferee becoming a caregiver; or

10 (2) by clear and convincing evidence that the transfer  
11 was not the product of fraud, duress, or undue influence.

12 (Source: P.A. 98-1093, eff. 1-1-15.)

13 (755 ILCS 5/4a-30)

14 Sec. 4a-30. No independent duty. The rebuttable  
15 presumption set forth in Section 4a-10 of this Article applies  
16 only in a civil action in which a transfer ~~instrument~~ is being  
17 challenged, and does not create or impose an independent duty  
18 on any financial institution, trust company, trustee, or  
19 similar entity or person related to any transfer ~~instrument~~.

20 (Source: P.A. 98-1093, eff. 1-1-15.)

21 Section 99. Effective date. This Act takes effect upon  
22 becoming law.