

# Uniform Voidable Transactions Act

The Uniform Voidable Transactions Act (UVTA), formerly named the Uniform Fraudulent Transfer Act (UFTA), strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor’s creditors. The 2014 amendments to the UVTA address a small number of narrowly-defined issues, and are not a comprehensive revision of the act.

The Uniform Fraudulent Transfer Act was promulgated in 1984 and has been enacted by 43 states, the District of Columbia, and the U.S. Virgin Islands as of 2014. The act replaced the very similar Uniform Fraudulent Conveyance Act, which was promulgated in 1918 and remains in force in two states as of 2014.

Submitted as:

Kentucky

[SB 204](#)

Status: Signed into law on March 20, 2015.

## Suggested State Legislation

(Title, enacting clause, etc.)

- 1 Section 1. [*Definitions.*]  
2 As used in this chapter:  
3 (1) “Affiliate” means:  
4 (a) A person that directly or indirectly owns, controls, or holds with power to vote, twenty  
5 percent (20%) or more of the outstanding voting securities of the debtor, other than a  
6 person that holds the securities:  
7 1. As a fiduciary or agent without sole discretionary power to vote the securities; or  
8 2. Solely to secure a debt, if the person has not in fact exercised the power to vote;  
9 (b) A corporation twenty percent (20%) or more of whose outstanding voting securities are  
10 directly or indirectly owned, controlled, or held with power to vote, by the debtor or a  
11 person that directly or indirectly owns, controls, or holds, with power to vote, twenty  
12 percent (20%) or more of the outstanding voting securities of the debtor, other than a  
13 person that holds the securities:  
14 1. As a fiduciary or agent without sole discretionary power to vote the securities; or  
15 2. Solely to secure a debt, if the person has not in fact exercised the power to vote;  
16 (c) A person whose business is operated by the debtor under a lease or other agreement, or a  
17 person substantially all of whose assets are controlled by the debtor; or  
18 (d) A person that operates the debtor's business under a lease or other agreement or controls  
19 substantially all of the debtor's assets;  
20 (2) “Asset” means property of a debtor, but the term does not include:  
21 (a) Property to the extent it is encumbered by a valid lien;  
22 (b) Property to the extent it is generally exempt under nonbankruptcy law; or  
23 (c) An interest in property held in tenancy by the entireties to the extent it is not subject to  
24 process by a creditor holding a claim against only one (1) tenant.

- 1 (3) "Claim," except as used in "claim for relief," means a right to payment, whether or not the  
2 right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,  
3 undisputed, legal, equitable, secure, or unsecured;
- 4 (4) "Creditor" means a person that has a claim;
- 5 (5) "Debt" means liability on a claim;
- 6 (6) "Debtor" means a person that is liable on a claim;
- 7 (7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless,  
8 optical, electromagnetic, or similar capabilities;
- 9 (8) "Insider" includes:
- 10 (a) If the debtor is an individual:
- 11 1. A relative of the debtor or of a general partner of the debtor;
- 12 2. A partnership in which the debtor is a general partner;
- 13 3. A general partner in a partnership described in subparagraph 2. of this paragraph; or
- 14 4. A corporation of which the debtor is a director, officer, or person in control;
- 15 (b) If the debtor is a corporation:
- 16 1. A director of the debtor;
- 17 2. An officer of the debtor;
- 18 3. A person in control of the debtor;
- 19 4. A partnership in which the debtor is a general partner;
- 20 5. A general partner in a partnership described in subparagraph 4. of this paragraph; or
- 21 6. A relative of a general partner, director, officer, or person in control of the debtor;
- 22 (c) If the debtor is a partnership:
- 23 1. A general partner in the debtor;
- 24 2. A relative of a general partner in, a general partner of, or a person in control of the  
25 debtor;
- 26 3. Another partnership in which the debtor is a general partner;
- 27 4. A general partner in a partnership described in subparagraph 3. of this paragraph; or
- 28 5. A person in control of the debtor;
- 29 (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- 30 (e) A managing agent of the debtor;
- 31 (9) "Lien" means a charge against or an interest in property to secure payment of a debt or  
32 performance of an obligation, and includes a security interest created by agreement, a judicial  
33 lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory  
34 lien;
- 35 (10) "Organization" means a person other than an individual;
- 36 (11) "Person" means an individual, estate, business or nonprofit entity, public corporation,  
37 government or governmental subdivision, agency, or instrumentality, or other legal entity;
- 38 (12) "Property" means anything that may be the subject of ownership;
- 39 (13) "Record" means information that is inscribed on a tangible medium or that is stored in an  
40 electronic or other medium and is retrievable in perceivable form;
- 41 (14) "Relative" means an individual related by consanguinity within the third degree as  
42 determined by the common law, a spouse, or an individual related to a spouse within the third  
43 degree as so determined, and includes an individual in an adoptive relationship within the  
44 third degree;
- 45 (15) "Sign" means, with present intent to authenticate or adopt a record:
- 46 (a) To execute or adopt a tangible symbol; or

1 (b) To attach to or logically associate with the record an electronic symbol, sound, or  
2 process;

3 (16) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or  
4 involuntary, of disposing of or parting with an asset or an interest in an asset, and includes  
5 payment of money, release, lease, license, and creation of a lien or other encumbrance; and

6 (17) "Valid lien" means a lien that is effective against the holder of a judicial lien  
7 subsequently obtained by legal or equitable process or proceedings.

8  
9 Section 2. [*Insolvency.*]

10 (1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the  
11 sum of the debtor's assets.

12 (2) A debtor that is generally not paying the debtor's debts as they become due other than as a  
13 result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the  
14 party against which the presumption is directed the burden of proving that the nonexistence  
15 of insolvency is more probable than its existence.

16 (3) Assets under this section do not include property that has been transferred, concealed, or  
17 removed with intent to hinder, delay, or defraud creditors or that has been transferred in a  
18 manner making the transfer voidable under this chapter.

19 (4) Debts under this section do not include an obligation to the extent it is secured by a valid lien  
20 on property of the debtor not included as an asset.

21  
22 Section 3. [*Value.*]

23 (1) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation,  
24 property is transferred or an antecedent debt is secured or satisfied, but value does not  
25 include an unperformed promise made otherwise than in the ordinary course of the  
26 promisor's business to furnish support to the debtor or another person.

27 (2) For the purposes of subsection (1)(b) of Section 4 of this Act and Section 5 of this Act, a  
28 person gives a reasonably equivalent value if the person acquires an interest of the debtor in  
29 an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a  
30 power of sale for the acquisition or disposition of the interest of the debtor upon default  
31 under a mortgage, deed of trust, or security agreement.

32 (3) A transfer is made for present value if the exchange between the debtor and the transferee is  
33 intended by them to be contemporaneous and is in fact substantially contemporaneous.

34  
35 Section 4. [*Transfer or obligation voidable as to present future creditor.*]

36 (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the  
37 creditor's claim arose before or after the transfer was made or the obligation was incurred, if  
38 the debtor made the transfer or incurred the obligation:

39 (a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

40 (b) Without receiving a reasonably equivalent value in exchange for the transfer or  
41 obligation, and the debtor:

42 1. Was engaged or was about to engage in a business or a transaction for which the  
43 remaining assets of the debtor were unreasonably small in relation to the business or  
44 transaction; or

45 2. Intended to incur, or believed or reasonably should have believed that the debtor  
46 would incur, debts beyond the debtor's ability to pay as they became due.

- 1 (2) In determining actual intent under subsection (1)(a) of this section, consideration may be  
2 given, among other factors, to whether:  
3 (a) The transfer or obligation was to an insider;  
4 (b) The debtor retained possession or control of the property transferred after the transfer;  
5 (c) The transfer or obligation was disclosed or concealed;  
6 (d) Before the transfer was made or obligation was incurred, the debtor had been sued or  
7 threatened with suit;  
8 (e) The transfer was of substantially all the debtor's assets;  
9 (f) The debtor absconded;  
10 (g) The debtor removed or concealed assets;  
11 (h) The value of the consideration received by the debtor was reasonably equivalent to the  
12 value of the asset transferred or the amount of the obligation incurred;  
13 (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the  
14 obligation was incurred;  
15 (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and  
16 (k) The debtor transferred the essential assets of the business to a lienor that transferred the  
17 assets to an insider of the debtor.  
18 (3) A creditor making a claim for relief under subsection (1) of this section has the burden of  
19 proving the elements of the claim for relief by a preponderance of the evidence.  
20

21 Section 5. [*Transfer or obligation voidable as to present creditor.*]

- 22 (1) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim  
23 arose before the transfer was made or the obligation was incurred if the debtor made the  
24 transfer or incurred the obligation without receiving a reasonably equivalent value in  
25 exchange for the transfer or obligation and the debtor was insolvent at the time or the debtor  
26 became insolvent as a result of the transfer or obligation.  
27 (2) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer  
28 was made, if the transfer was made to an insider for an antecedent debt, the debtor was  
29 insolvent at that time, and the insider had reasonable cause to believe that the debtor was  
30 insolvent.  
31 (3) Subjection to subsection (2) of Section 2 of this Act, a creditor making a claim for relief  
32 under subsection (1) or (2) of this section has the burden of proving the elements of the claim  
33 for relief by a preponderance of the evidence.  
34

35 Section 6. [*When transfer is made or obligation is incurred.*]

36 For the purposes of this chapter:

- 37 (1) A transfer is made:  
38 (a) With respect to an asset that is real property other than a fixture, but including the interest  
39 of a seller or purchaser under a contract for the sale of the asset, when the transfer is so  
40 far perfected that a good-faith purchaser of the asset from the debtor against which  
41 applicable laws permit the transfer to be perfected cannot acquire an interest in the asset  
42 that is superior to the interest of the transferee; and  
43 (b) With respect to an asset that is not real property or that is a fixture, when the transfer is so  
44 far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise  
45 than under this chapter that is superior to the interest of the transferee.

- 1 (2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this  
2 section, and the transfer is not so perfected before the commencement of an action for relief  
3 under this chapter, the transfer is deemed made immediately before the commencement of  
4 the action.
- 5 (3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of  
6 this section, the transfer is made when it becomes effective between the debtor and the  
7 transferee.
- 8 (4) A transfer is not made until the debtor has acquired rights in the asset transferred.
- 9 (5) An obligation is incurred:
- 10 (a) If oral, when it becomes effective between the parties; or
- 11 (b) If evidenced by a record, when the record, signed by the obligor, is delivered to or for the  
12 benefit of the obligee.

13  
14 Section 7. [*Remedies of creditor.*]

- 15 (1) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to  
16 the limitations in Section 8 of this Act, may obtain:
- 17 (a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's  
18 claim;
- 19 (b) An attachment or other provisional remedy against the asset transferred or other property  
20 of the transferee if available under applicable law; and
- 21 (c) Subject to applicable principles of equity and in accordance with applicable Rules of  
22 Civil Procedure:
- 23 1. An injunction against further disposition by the debtor or a transferee, or both, of the  
24 asset transferred or of other property;
- 25 2. Appointment of a receiver to take charge of the asset transferred or of the other  
26 property of the transferee; or
- 27 3. Any other relief the circumstances may require.
- 28 (2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court  
29 so orders, may levy execution on the asset transferred or its proceeds.

30  
31 Section 8. [*Defenses, liability, and protection of transferee or obligee.*]

- 32 (1) A transfer or obligation is not voidable under subsection (1)(a) of Section 4 of this Act  
33 against a person that took in good faith and for a reasonably equivalent value given the  
34 debtor or against any subsequent transferee or obligee.
- 35 (2) To the extent a transfer is avoidable in an action by a creditor under subsection (1)(a) of  
36 Section 7 of this Act, the following rules apply:
- 37 (a) Except as otherwise provided in this section, the creditor may recover judgment for the  
38 value of the asset transferred, as adjusted under subsection (3) of this section, or the  
39 amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be  
40 entered against:
- 41 1. The first transferee of the asset or the person for whose benefit the transfer was made;  
42 or
- 43 2. An immediate or mediate transferee of the first transferee, other than:
- 44 a. A good-faith transferee that took for value; or
- 45 b. An immediate or mediate good-faith transferee of a person described in  
46 subdivision a. of this subparagraph; and

- 1 (b) Recovery pursuant to subsection (1)(a) or (b) of Section 7 of this Act of or from the asset  
2 transferred or its proceeds, by levy or otherwise, is available only against a person  
3 described in subsection (2)(a)1. or 2. of this section.
- 4 (3) If the judgment under subsection (2) of this section is based upon the value of the asset  
5 transferred, the judgment shall be for an amount equal to the value of the asset at the time of  
6 the transfer, subject to adjustment as the equities may require.
- 7 (4) Notwithstanding voidability of a transfer or an obligation under this chapter, a good-faith  
8 transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or  
9 obligation, to:
- 10 (a) A lien on or a right to retain an interest in the asset transferred;  
11 (b) Enforcement of an obligation incurred; or  
12 (c) A reduction in the amount of the liability on the judgment.
- 13 (5) A transfer is not voidable under subsection (1)(b) of Section 4 of this Act or Section 5 of this  
14 Act if the transfer results from:
- 15 (a) Termination of a lease upon default by the debtor when the termination is pursuant to the  
16 lease and applicable law; or  
17 (b) Enforcement of a security interest in compliance with Subtitle 9 of KRS Chapter 355,  
18 other than acceptance of collateral in full or partial satisfaction of the obligation it  
19 secures.
- 20 (6) A transfer is not voidable under subsection (2) of Section 5 of this Act:
- 21 (a) To the extent the insider gave new value to or for the benefit of the debtor after the  
22 transfer was made, except to the extent the new value was secured by a valid lien;  
23 (b) If made in the ordinary course of business or financial affairs of the debtor and the  
24 insider; or  
25 (c) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured  
26 present value given for that purpose as well as an antecedent debt of the debtor.
- 27 (7) The following rules determine the burden of proving matters referred to in this section:
- 28 (a) A party that seeks to invoke subsection (1), (4), (5) or (6) of this section has the burden of  
29 proving the applicability of the subsection invoked;  
30 (b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, the creditor has  
31 the burden of proving each applicable element of subsections (2) or (3) of this section;  
32 (c) The transferee has the burden of proving the applicability to the transferee of subsection  
33 (2)(a)2.a. or b. of this section; and  
34 (d) A party that seeks adjustment under subsection (3) of this section has the burden of  
35 proving the adjustment.
- 36 (8) The standard of proof required to establish matters referred to in this section is  
37 preponderance of the evidence.

38  
39 **Section 9. [Extinguishment of claim for relief.]**

40 A claim for relief with respect to a transfer or obligation under this chapter is extinguished unless  
41 action is brought:

- 42 (1) Under subsection (1)(a) of Section 4 of this Act, not later than four (4) years after the transfer  
43 was made or the obligation was incurred or, if later, not later than one (1) year after the  
44 transfer or obligation was or could reasonably have been discovered by the claimant;
- 45 (2) Under subsection (1)(b) of Section 4 of this Act or subsection (1) of Section 5 of this Act, not  
46 later than four (4) years after the transfer was made or the obligation was incurred; or

1 (3) Under subsection (2) of Section 5 of this Act, no later than one (1) year after the transfer was  
2 made.  
3

4 Section 10. [*Governing Law.*]

5 (1) In this section, the following rules determine a debtor's location:

- 6 (a) A debtor who is an individual is located at the individual's principal residence;
- 7 (b) A debtor that is an organization and has only one (1) place of business is located at its  
8 place of business; and
- 9 (c) A debtor that is an organization and has more than one (1) place of business is located at  
10 its chief executive office.

11 (2) A claim for relief in the nature of a claim for relief under this chapter is governed by the local  
12 laws of the jurisdiction in which the debtor is located when the transfer is made or the  
13 obligation is incurred.  
14

15 Section 11. [*Application to series organization.*]

16 (1) In this section:

- 17 (a) "Protected series" means an arrangement, however denominated, created by a series  
18 organization that, pursuant to the law under which the series organization is organized,  
19 has the characteristics set forth in paragraph (b) of this subsection; and
- 20 (b) "Series organization" means an organization that, pursuant to the law under which it is  
21 organized, has the following characteristics:
  - 22 1. The organic record of the organization provides for creation by the organization of  
23 one (1) or more protected series, however denominated, with respect to specified  
24 property of the organization, and for records to be maintained for each protected  
25 series that identify the property of, or associated with, the protected series;
  - 26 2. Debt incurred or existing with respect to the activities of, or property of, or associated  
27 with, a particular protected series is enforceable against the property of, or associated  
28 with, the protected series only, and not against the property of, or associated with, the  
29 organization or other protected series of the organization; and
  - 30 3. Debt incurred or existing with respect to the activities or property of the organization  
31 is enforceable against the property of the organization only, and not against the  
32 property of, or associated with, a protected series of the organization.

33 (2) A series organization and each protected series of the organization is a separate person for  
34 purposes of this chapter, even if for other purposes a protected series is not a person separate  
35 from the organization or other protected series of the organization.  
36

37 Section 12. [*Supplementary provisions.*]

38 Unless displaced by the provisions of this chapter, the principles of law and equity, including the  
39 law merchant and the law relating to principal and agent, estoppel, laches, fraud,  
40 misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating  
41 cause, supplement its provisions.  
42

43 Section 13. [*Uniformity of application and construction.*]

44 This chapter shall be applied and construed to effectuate its general purpose to make uniform the  
45 law with respect to the subject of this chapter among states enacting it.

- 1 Section 14. [*Relation to Electronic Signatures in Global and National Commerce Act.*]  
2 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National  
3 Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or supersede Section  
4 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices  
5 described in Section 103(B) of that act, 15 U.S.C. sec. 7003(b).  
6  
7 Section 15. [*Short Title.*]  
8 This chapter may be cited as the [Kentucky] Uniform Voidable Transactions Act.  
9  
10 Section 16. [*Repeals; conforming agreements.*]  
11  
12 Section 17. [*Effective Date.*]