

Practice Bulletin: Update to New York's Fraudulent (Voidable) Transfer Laws

Fraudulent (aka “voidable”) conveyance laws provide creditors with remedies against debtors and transferees who have removed assets with the intent to hinder, delay, or defraud collection of debts. These laws were valuable tools in the wake of the 2008 financial crisis, and **New York's newly-amended voidable transfer laws promise to take on new importance in the coming months** as parties reckon with the effects of the COVID-19 pandemic.

When Governor Cuomo signed into law substantial changes to New York's fraudulent conveyance statutes in December 2019, the COVID-19 crisis and its broader financial market implications were not yet on the radar. Now, several months later, these amendments look timely — important resources for creditors attempting to collect on defaulted obligations.

In December 2019, New York updated its fraudulent conveyance statute to conform with the Uniform Voidable Transactions Act (“UVTA”). The UVTA is a standardized scheme, promulgated by the Uniform Law Commission, adopted by more than twenty states.¹ New York's fraudulent conveyance laws had remained substantially unchanged since enactment in 1925.

The key features of the law are as follows:

New Terminology: The new New York UVTA replaces all references to “fraudulent” (i.e., “fraudulent transfer” or “fraudulent conveyance”) with the term “voidable.” This clarifies that voidable transactions and transfers are not a species of “fraud,” or subject to heightened pleading standards, but subject to unwinding based on transferor intent.

Effective Date: The New York UVTA is effective on April 4, 2020 — but it is not retroactive. The law applies only to transfers made after April 4, 2020, and not merely to causes of action brought after the Effective Date if the transfer was made prior.

Statute of Limitations: New York's fraudulent conveyance law previously had a uniquely long six-year statute of limitations. The New York UVTA shortens the statute of

Legislation				
Jurisdiction	Year	Bill Number	Status	Sponsor
New York	2020	AB 5622	Enacted	Weinstein
Wisconsin	2020	AB 719/SB 643	Introduced	Tusler/Risser
Massachusetts	2020	HB 58	Introduced	
South Carolina	2020	SB 262	Introduced	Goldfinch
New York	2019	AB 5622	Enacted	Weinstein
Nebraska	2019	LB 70	Enacted	Hansen
West Virginia	2018	HB 4233	Enacted	Storch
Rhode Island	2018	HB 7334	Enacted	Keable
Alabama	2018	SB 152	Enacted	Smitherman
Pennsylvania	2018	SB 629	Enacted	Reschenthaler
Arkansas	2017	HB 2139	Enacted	Whitaker
Vermont	2017	HB 35	Enacted	Botzow
Indiana	2017	SB 316	Enacted	Bray
Washington	2017	SB 5085	Enacted	Pedersen
Utah	2017	SB 58	Enacted	Hillyard
Michigan	2017	SB 982	Enacted	Schuitmaker
Iowa	2016	HF 2400	Enacted	
North Dakota	2015	HB 1135	Enacted	
New Mexico	2015	HB 85	Enacted	Alcon
Idaho	2015	HB 92	Enacted	
Minnesota	2015	HF1342/SF1816	Enacted	Smith
North Carolina	2015	SB 123	Enacted	Hartsell
California	2015	SB 161	Enacted	Vidak
Kentucky	2015	SB 204	Enacted	McGarvey
Georgia	2015	SB 65	Enacted	Jacobs

¹ <https://www.uniformlaws.org/committees/community-home?CommunityKey=64ee1ccc-a3ae-4a5e-a18f-a5ba8206bf49> (last visited April 7, 2020).

limitations to four years from the date of the transfer, or one year after the reasonable discovery of the transaction.

Choice of Law: The new law codifies a choice of law analysis, which focuses on the chief executive office of the conveyor. Previously, choice of law was determined based on a multi-factor common law analysis. The new bright line rule protects the “reasonable expectation” of parties who transact business in New York with foreign (e.g., Delaware) entities, even where the parties may be part of a choice-of-law clause.

Burden of Proof: The new law substantially lowers the evidentiary bar for proving that a transfer is voidable. Whereas previously, New York required creditors to prove their case with “clear and convincing” evidence (the requisite standard for showing fraud), the new law requires proof by a “preponderance of the evidence,” the more typical civil standard.

“Good Faith” Requirement: The UVTA removes a previous New York requirement that a plaintiff plead and prove the transfer was not made in “good faith.” The elimination of a “good faith” requirement recognizes that for certain transfers, *i.e.*, transfers made with intent to defraud, it is presumed that the transferor was acting in bad faith.

Attorneys’ Fees: New York’s law provides for an award of attorneys fees to a judgment creditor in a special proceeding to collect or enforce the debt. Whereas previously New York law provided for recovery of attorneys’ fees in a wider set of circumstances, *i.e.*, where the debtor acted with “actual intent, as distinguished from intent presumed by law, to hinder, delay or defraud,” the new New York UVTA limits recovery of attorneys’ fees to collection of realized judgments. The availability of attorneys’ fees as a deterrent to debtors distinguishes New York from other jurisdictions (e.g., Delaware) which do not permit such remedy.

New York’s adoption of the UVTA provides brightline rules to clarify by statute an area of law the contours of which have largely been determined by decades of case law. The changes represent important and valuable reform to creditors seeking to collect matured and unmatured debts against secured borrowers, business counterparties, and judgment debtors. Just as New York’s existing fraudulent transfer laws were an important tool following the 2008 financial crisis, we anticipate that New York UVTA will be the subject of substantial litigation following the COVID-19 crisis, as parties seek to enforce defaulted obligations.

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Slarskey LLC focuses on complex commercial litigation, including business divorce, contract disputes, business torts, employment matters, financial services disputes, and real estate-related litigation. The firm regularly litigates matters under New York’s Creditor & Debtor Law.