

Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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**2014 AMENDMENTS TO THE UNIFORM VOIDABLE TRANSACTIONS ACT
(FORMERLY THE UNIFORM FRAUDULENT TRANSFER ACT)**

- Summary -

State of the Law

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.

The Uniform Act: Nature of Amendments

The 2014 amendments are the first made to the act since its original promulgation. The amendments address a small number of narrowly-defined issues, and are not a comprehensive revision. The principal features of the amendments are as follows:

Name Change. The amendments change the title of the act to the “Uniform Voidable Transactions Act.” The name change is not motivated by the substantive revisions made by the amendments, which are relatively minor. Rather, the original title of the act, though sanctioned by historical usage, has always been a misleading description of its provisions in two respects. First, fraud is not, and never has been, a necessary element of a claim under the act. Second, the act has always applied to the incurrence of obligations as well as to transfers of property.

Choice of Law. The amendments add, for the first time, a choice of law rule for claims of the nature governed by the act.

Evidentiary Matters. New provisions add uniform rules allocating the burden of proof and defining the standard of proof with respect to claims and defenses under the act.

Deletion of the Special Definition of “Insolvency” for Partnerships. Under the general definition of “insolvency” in the act, a debtor is insolvent if, at a fair valuation, the sum of the debtor’s debts is greater than the sum of the debtor’s assets. The act as originally written set forth a special definition of “insolvency” applicable to partnerships, which adds to the sum of the partnership’s assets the net worth of each of its general partners. The amendments delete that special definition, with the result that a partnership will be subject to the general definition.

Defenses. The amendments refine in relatively minor respects several provisions relating to defenses available to a transferee or obligee, as follows:

- As originally written, Section 8(a) of the act creates a complete defense to an action under Section 4(a)(1) (which renders voidable a transfer made or obligation incurred with actual intent to hinder, delay, or defraud any creditor of the debtor) if the transferee or obligee takes in good faith and for a reasonably equivalent value. The amendments add to Section 8(a) the further requirement that the reasonably equivalent value must be given the debtor.

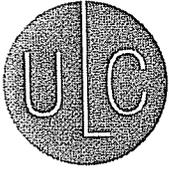
- Section 8(b), derived from Bankruptcy Code §§ 550(a), (b) (1984), creates a defense for a subsequent transferee (that is, a transferee other than the first transferee) that takes in good faith and for value, and for any subsequent good-faith transferee from such a person. The amendments clarify the meaning of Section 8(b) by rewording it to follow more closely the wording of Bankruptcy Code §§ 550(a), (b) (which is substantially unchanged as of 2014).
- Section 8(e)(2) as originally written created a defense to an action under Section 4(a)(2) or Section 5 to avoid a transfer if the transfer results from enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code. The amendments exclude from that defense acceptance of collateral in full or partial satisfaction of the obligation it secures (a remedy sometimes referred to as “strict foreclosure”).

Series Organizations. The amendments add a new section which provides that each “protected series” of a “series organization” is to be treated as a person for purposes of the act, even if it is not treated as a person for other purposes. This change responds to the emergence of the “series organization” as a significant form of business organization.

Medium Neutrality. In order to accommodate modern technology, the amendments replace references in the act to a “writing” with “record,” and make related changes.

Conclusion

The amendments do not contemplate enactment by states with a uniform effective date. However, the lack of a choice of law rule for claims of the nature governed by the act under current law has led to uncertainty and wasteful litigation in respect of such claims in regard to transactions that touch on more than one jurisdiction. To alleviate that problem and install a clear and uniform choice of law regime for such claims, all states are urged to adopt the 2014 amendments as quickly as possible.



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**WHY YOUR STATE SHOULD ADOPT THE
2014 AMENDMENTS TO THE UNIFORM VOIDABLE TRANSACTIONS ACT
(FORMERLY THE UNIFORM FRAUDULENT TRANSFER ACT)**

The Uniform Voidable Transactions Act (UVTA), formerly named the Uniform Fraudulent Transfer Act, strengthens creditor protections by providing remedies for certain transactions by a debtor that are unfair to the debtor's creditors. For example, the UVTA provides a remedy to a creditor whose debtor transfers property to a relative or third party to keep the property away from the creditor's reach.

The 2014 amendments to the UVTA update the existing Uniform Fraudulent Transfer Act, originally promulgated in 1984, with a number of key changes described below.

- ***The amendments clarify terminology that was confusing to many courts and litigants.*** The change of the act's title to the Uniform Voidable Transaction Act does not change the meaning of the act. Rather, the new title is a more accurate description of what the act already says, and will reduce misunderstanding by courts, lawyers, and others affected by the law.
- ***The amendments add a clear choice-of-law provision that offers predictability and reduces costs.*** Courts have used various legal theories to determine which state's voidable transaction law should apply in a given case. These court decisions are unpredictable and inconsistent. The UVTA resolves these choice-of-law questions by providing a straightforward solution for transaction parties and courts to apply uniformly. Clarifying these rules will reduce transaction and litigation costs and conserve court resources.
- ***The amendments improve provisions for determining a debtor's insolvency.*** The amendments delete the former requirement that the net worth of a general partner be included in determining the insolvency of a partnership, and otherwise refine the rules for determining a debtor's insolvency.
- ***The amendments address emerging legal developments.*** For example, the amendments add new provisions addressing electronic communications and the treatment of "series organizations," a new and increasingly utilized type of business entity.
- ***The amendments provide crucial guidance to courts and litigants regarding key evidentiary matters.*** The amendments set out the burden of proof of each party in a UVTA lawsuit. The amendments clarify that the "preponderance of the evidence" standard applies throughout the act, meaning that the party required to prove a fact must establish that the fact is more likely to be true than not true.

A state that has enacted the Uniform Fraudulent Transfer Act will want the benefit of these changes. A state that has not enacted the Uniform Fraudulent Transfer Act will want to consider enacting the act with the 2014 amendments.