

Fraudulent Transfer State Law Survey Chart

adapted from [Collier on Bankruptcy 548.01A](#), [548.01B](#), and [548.01C](#)

This fraudulent transfer state law survey chart is for use by attorneys bringing a fraudulent transfer action under state law.

For information on fraudulent transfer law, see [Fraudulent Transfers](#), [Fraudulent Conveyances versus Preference Actions](#), [Bankruptcy Fraud](#), and [Bankruptcy Based Lender Liability Claims](#). For a form complaint, see [Complaint to Avoid and Recover Fraudulent Transfers](#).

Overview

[Sections 544](#) and [548 of the Bankruptcy Code](#) establish the rules for bringing fraudulent conveyance actions in a bankruptcy proceeding. Section 548 sets forth the criteria for bringing fraudulent conveyance actions under the Bankruptcy Code. [Section 544\(b\) of the Bankruptcy Code](#) gives the trustee the rights under state law to avoid fraudulent transfers.

Most state laws are modeled after either the Uniform Fraudulent Conveyance Act (UFCA), the Uniform Fraudulent Transfer Act (UFTA), or the Uniform Voidable Transactions Act (UVTA). These statutes generally provide that a transfer is avoidable if it is either actually fraudulent or constructively fraudulent. The UFTA, drafted in 1984, replaced the UFCA in most states, and the UVTA amended and updated the UFTA. Determining which applicable law might apply is essential, because each state's fraudulent transfer law may present different elements that must be proven, different burdens of proof, and different statutes of limitation. Note that a handful of states use a codified version of the Statute of Elizabeth of 1571. [Collier on Bankruptcy 548.01](#).

Comparison of Major Provisions of Different Fraudulent Transfer Laws

This chart compares the requirements under the various fraudulent conveyance laws.

Feature of Law	Bankruptcy Code	UFTA/UVTA	UFCA
Actual intent	Must be intent to hinder, delay, or defraud creditors. 11 U.S.C. § 548(a)(1)(A) .	Standard is intent to hinder, delay, or defraud. UFTA § 4(a)(1). Statute lists 11 badges of fraud to which "consideration may be given." UFTA § 4(b)(1)-(11).	Must be intent to hinder, delay, or defraud creditors. UFCA § 7.
Constructive intent—quantum of consideration	Reasonably equivalent value. 11 U.S.C. § 548(a)(2)(B)(i) . BFP v. Resolution Trust Co., 511 U.S. 531 (1994) , holds that reasonably equivalent value is given presumptively in any non-collusive, properly conducted foreclosure under non-bankruptcy law.	Reasonably equivalent value. UFTA §§ 4(a)(2); 5(a). Section 3(b) states that "person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale" UFTA § 3(b).	Fair consideration. UFCA §§ 4–6. Section 3(a) requires both an exchange of a "fair equivalent" and good faith. UFCA § 3(a). Also note that Section 3(b) requires, in the context of the grant of security, good faith and that the debt secured not be in an "amount not disproportionately small as compared with the value of the property [transferred]" UFCA § 3(b).
Constructive intent—financial condition	Insolvency. 11 U.S.C. § 548(a)(1)(B)(ii)(I) . Insolvency is defined in Section 101(32) of the Bankruptcy Code essentially	Insolvency. UFTA § 5(a). Insolvency is defined in Section 2 as a balance sheet test similar to that used in the Bankruptcy Code, but	Insolvency. UFCA § 4. Insolvency is defined in Section 2(1) as the state in which the "present fair salable value of . . . assets is less than the amount

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	as a balance sheet test. 11 U.S.C. § 101(32). Unreasonably small capital. 11 U.S.C. § 548(a)(1)(B)(ii)(II). Knowingly incurring debts beyond ability to repay. 11 U.S.C. § 548(a)(1)(B)(ii)(III). Out of the ordinary course transfer to insider under an employment contract. 11 U.S.C. § 548(a)(1)(B)(ii)(IV).	presumption of insolvency arises if debtor not generally paying debts as they become due. UFTA § 2. Unreasonably small assets. UFTA § 4(a)(2)(i). Knowingly incurring debts beyond ability to repay. UFTA § 4(a)(2)(ii) (objective standard).	that will be required to pay . . . probable liability on . . . existing debts as they become absolute and matured." UFCA § 2(1). Unreasonably small capital. UFCA § 5. Knowingly incurring debts beyond ability to repay. UFCA § 6 (subjective standard).
Remedies	Transfer or obligation avoided. 11 U.S.C. § 548(a). If lien, preserved for the benefit of the estate—11 U.S.C. § 551; otherwise, may recover property or (if the court orders) its value—11 U.S.C. § 550(a).	Transfer or obligation avoided, but only to the extent necessary to satisfy creditor's claim. UFTA § 7(1). May also use to enjoin further disposition of asset, to attach or to justify appointment of receiver. UFTA § 7(3).	Conveyance set aside, obligation annulled or transaction disregarded, but only to the extent necessary to satisfy creditor's claim. UFCA § 9(1).
Defenses	Transferee has a lien (or may retain its interest or enforce its obligation) to the extent that transferee gives value in good faith. 11 U.S.C. § 548(c). Transferee has other defenses as set forth in 11 U.S.C. § 550. Subsequent transferee has defense if value is given in good faith. 11 U.S.C. § 550(b). Any transferee has lien to secure value increases and cost of improvements. 11 U.S.C. § 550(e). Transferee has defense if a religious or charitable institution, and amount of transfer not in excess of 15% of transferor's gross annual income, or if transfer was consistent with past practices of debtor. 11 U.S.C. § 548(a)(2).	Transferee has a lien (or may retain its interest or enforce its obligation) to the extent that transferee gives value in good faith. UFTA § 8(d). Complete defenses exist if the transfer is the termination of a lease after default or the transfer of title after a foreclosure (other than strict foreclosure) in compliance with Article 9 of the UCC. UFTA § 8(e).	"A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment." UFCA § 9(2).
Statute of limitations	Two years prior to filing of petition. 11 U.S.C. § 548(a). 10 years if an actual intent transfer to self-settled trust. 11 U.S.C. § 548(e). If avoided, action for money damages in lieu of avoidance must be brought within one year	Four years from the date of the transfer or obligation. UFTA § 9 (statute acts to "extinguish" cause of action).	No provision. Varied from six years to one year. Some courts held that there was no applicable statute of limitations if the plaintiff was the government.

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	of the avoidance. 11 U.S.C. § 550(f) .		
Standing	Suit may be brought by representative of the estate so long as some unsecured creditor would benefit.	Creditors whose debts were in existence on the date of the transfer or obligation may sue under all sections. UFTA §§ 4 and 5. Creditors whose debts arose after the transfer or obligation cannot sue under the insolvency section. UFTA § 5(a). Bankruptcy trustee or estate representative can bring action under Section 544(b) of the Bankruptcy Code and under <i>Moore v. Bay</i> entire transaction avoided regardless of creditors' claims. 284 U.S. 4 (1931).	Creditors whose debts in existence on the date of the conveyance may sue under any section. UFCA §§ 4–7. Future creditors cannot sue under insolvency section, (UFCA § 4), but may use the unreasonably small capital section against conveyances only; obligations not covered, UFCA § 5. Bankruptcy trustee or estate representative can bring action under Section 544(b) of the Bankruptcy Code and under <i>Moore v. Bay</i> entire transaction avoided regardless of creditors' claims. 284 U.S. 4 (1931).

State Law Survey

This chart lists the fraudulent conveyance statute and governing law for each state.

State	Statute	Governing Law (UFTA/UVTA/UFCA/Statute of Elizabeth)
Alabama	Ala. Code §§ 8-9B-1 through 8-9B-16	UVTA
Alaska	Alaska Stat. § 34.40.010	Statute of Elizabeth
Arizona	Ariz. Rev. Stat. Ann. §§ 44-1001 through 44-1010	UFTA
Arkansas	Ark. Code Ann. §§ 4-59-201 through 4-59-215	UVTA
California	Cal. Civ. Code §§ 3439 through 3439.14	UVTA
Colorado	Colo. Rev. Stat. §§ 38-8-101 through 38-8-112	UFTA
Connecticut	Conn. Gen. Stat. §§ 52-552a through 52-552l	UFTA
Delaware	Del. Code Ann. tit. 6, §§ 1301 through 1311	UFTA
D.C.	D.C. Code §§ 28-3101 through 28-3111	UFTA
Florida	Fla. Stat. §§ 726.101 through 726.112	UFTA
Georgia	Ga. Code Ann. §§ 18-2-70 through 18-2-85	UVTA
Hawaii	Haw. Rev. Stat. §§ 651C-1 through 651C-	UFTA

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Idaho	<u>Idaho Code Ann. §§ 55-910 through 55-922</u>	UVTA
Illinois	<u>740 Ill. Comp. Stat. Ann.160/1 through 160/12</u>	UFTA
Indiana	<u>Ind. Code §§ 32-18-2-2 through 32-18-2-23</u>	UVTA
Iowa	<u>Iowa Code §§ 684.1 through 684.15</u>	UVTA
Kansas	<u>Kan. Stat. Ann. §§ 33-201 through 33-212</u>	UFTA
Kentucky	<u>Ky. Rev. Stat. Ann. §§ 378A.005 through 378A.140</u>	UVTA
Maine	<u>Me. Rev. Stat. Ann. tit. 14, §§ 3571 through 3582</u>	UFTA
Louisiana	<u>La. Civ. Code Ann. Art. 2036 and 2044</u>	Separate (not based on the uniform laws or Statute of Elizabeth)
Maryland	<u>Md. Code Ann., Com. Law §§ 15-201 through 15-214</u>	UFCA
Massachusetts	<u>Mass. Gen. Laws ch. 109A, §§ 1 through 12</u>	UFTA
Michigan	<u>Mich. Comp. Laws Ann. §§ 566.31 through 566.45</u>	UVTA
Minnesota	<u>Minn. Stat. §§ 513.41 through 513.51</u>	UVTA
Mississippi	<u>Miss. Code Ann. §§ 15-3-101 through 15-3-121</u>	UFTA
Missouri	<u>Mo. Rev. Stat. §§ 428.005 through 428.059</u>	UFTA
Montana	<u>Mont. Code Ann. §§ 31-2-326 through 31-2-342</u>	UFTA
Nebraska	<u>Neb. Rev. Stat. §§ 36-801 through 36-815</u>	UVTA
Nevada	<u>Nev. Rev. Stat. §§ 112.140 through 112.250</u>	UFTA
New Hampshire	<u>N.H. Rev. Stat. Ann. §§ 545-A:1 through 545-A:12</u>	UFTA
New Jersey	<u>N.J. Stat. Ann. §§ 25:2-20 through 25:2-33</u>	UFTA
New Mexico	<u>N.M. Stat. Ann. §§ 56-10-14 through 56-10-29</u>	UVTA
New York	<i>N.Y. Debtor and Creditor Law §§ 270 through 281-a</i>	UVTA
North Carolina	<u>N.C. Gen. Stat. §§ 39-23.1 through 39-23.12</u>	UVTA

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North Dakota	<i>N.D. Cent. Code §§ 13-02.1-01 through 13-02.1-13</i>	UVTA
Ohio	<i>Ohio Rev. Code Ann. §§ 1336.01 through 1336.11</i>	UFTA
Oklahoma	<i>Okla. Stat. tit. 24, §§ 112 through 123</i>	UFTA
Oregon	<i>Or. Rev. Stat. §§ 95.200 through 95.310</i>	UFTA
Pennsylvania	<i>12 Pa. Cons. Stat. Ann. §§ 5101 through 5114</i>	UVTA
Rhode Island	<i>R.I. Gen. Laws 1956, §§ 6-16-1 through 6-16-17</i>	UVTA
South Carolina	<i>S.C. Code Ann. § 27-23-20</i>	Statute of Elizabeth
South Dakota	<i>S.D. Codified Laws §§ 54-8A-1 through 54-8A-12</i>	UFTA
Tennessee	<i>Tenn. Code Ann. §§ 66-3-301 through 66-3-313</i>	UFTA
Texas	<i>Tex. Bus. & Comm. Code Ann. §§ 24.001 through 24.013</i>	UFTA
Utah	<i>Utah Code Ann. §§ 25-6-101 through 25-6-502</i>	UVTA
Vermont	<i>Vt. Stat. Ann. tit. 9, §§ 2285 through 2299</i>	UVTA
Virgin Islands	<i>V.I. Code Ann. tit. 28, §§ 171 through 182</i>	UFTA
Virginia	<i>Va. Code Ann. § 55.1-400</i>	Statute of Elizabeth
Washington	<i>Wash. Rev. Code Ann. §§ 19.40.011 through 19.40.905</i>	UVTA
West Virginia	<i>W. Va. Code §§ 40-1A-1 through 40-1A-15</i>	UVTA
Wisconsin	<i>Wis. Stat. §§ 242.01 through 242.11</i>	UFTA
Wyoming	<i>Wyo. Stat. Ann. §§ 34-14-201 through 34-14-212</i>	UFTA

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