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**REPORT BY THE
COMMITTEE ON COMMERCIAL AND UNIFORM STATE LAWS AND
COMMITTEE ON BANKRUPTCY AND CORPORATE REORGANIZATION
IN SUPPORT OF THE ENACTMENT OF THE
UNIFORM VOIDABLE TRANSACTIONS ACT IN NEW YORK**

SUMMARY

The Committee on Commercial and Uniform State Laws and the Committee on Bankruptcy and Corporate Reorganization of the New York City Bar Association support the enactment in New York of the Uniform Voidable Transactions Act (the “UVTA”). The UVTA would replace the present New York law on this topic—the Uniform Fraudulent Conveyance Act (the “UFCA”)—which was approved by the Uniform Law Commissioners in 1918. The UFCA was enacted in New York in 1925 as Article 10 of the Debtor and Creditor Law (§§ 270-281) and has not been updated significantly during the past 90 years.

The existing New York statute differs in various important respects from the Uniform Fraudulent Transfer Act (“UFTA”), which was promulgated by the Uniform Law Commissioners in 1984 and adopted in most other states, and from the analogous provisions of the U.S. Bankruptcy Code, which are similar to those in the UFTA (a comparison chart is attached as Appendix A). The divergence between the New York statute and the UFTA has led to confusion, disparate results, and costly litigation over choice-of-law issues.

In July 2014, the Uniform Law Commissioners approved changes to the UFTA and renamed it the Uniform Voidable Transactions Act. The UVTA codifies the remedies available to creditors injured by what traditionally have been referred to as “intentional” or “constructive” fraudulent conveyances or transfers—property transferred or obligations incurred (a) by a debtor with actual intent to hinder, delay or defraud its creditors or (b) for less than fair consideration by an insolvent or undercapitalized debtor. The proposed legislation (attached as Appendix B) would modernize the New York statute and resolve questions that have arisen under the current law regarding burdens of proof, pleading requirements and choice of law. Enactment of the UVTA would not impair any important New York state policies expressed in the existing law.

New York is the country’s financial center and a leader in the development of commercial law. It is in the general public interest and the interest of commerce for New York to have efficient and fair remedies for creditors who are victims of voidable transactions while also protecting the interests of innocent and good faith recipients or beneficiaries of challenged transactions. It is also

in the public interest to avoid unnecessary litigation over choice of law by making New York voidable transactions law consistent with the law of other states and by having clear New York choice of law rules that produce predictable results. Enactment of the UVTA would further all of these interests.

BACKGROUND

Uniform Laws. Recognizing the need to update the UFCA to address intervening developments (including the adoption of the Uniform Commercial Code and of the federal Bankruptcy Code in 1978, the Uniform Law Commissioners promulgated the Uniform Fraudulent Transfer Act in 1984. The UFTA was subsequently adopted by 43 states. In 2011, a study committee was organized by the Uniform Law Commissioners to consider amendments to the UFTA. In July 2014, the Uniform Law Commissioners approved the amendments which, among other things, changed the name of the statute to the Uniform Voidable Transactions Act.

New York. New York is one of the few jurisdictions which adopted the UFCA but never adopted the UFTA. Today, the UFCA is in effect only in New York, Maryland and the Virgin Islands, while the UFTA is in effect in most other jurisdictions. Eight states have already enacted the UVTA.

UVTA. As will be described in more detail below, the UVTA addresses issues that have arisen in the application of both the UFCA and UFTA and modernizes both laws. The Uniform Law Commissioners have approved the UVTA as an update to replace the text of the UFTA adopted in 1984.¹

Name change. The drafters of the UVTA have replaced the word “fraudulent” with “voidable.” The Official Comment states that “[t]he change in title is not intended to effect any change in the meaning of the Act”; instead, because “fraud” is not a necessary element of any claim under the Act, the new title is intended to avoid “confusion” or “misleading” shorthand. *See* UVTA § 14 cmt. 1.

SUMMARY OF SIGNIFICANT CHANGES TO PRESENT NEW YORK LAW IF UVTA IS ENACTED

Choice of Law

The UVTA’s most significant provision is its choice of law rule for voidable transactions. The UVTA makes the law of the place where the debtor/transferor is located when the transfer is made² the law applicable to the voidability of the transfer (UVTA § 10). The rules for determining where a debtor is located under Section 10 of the UVTA are similar to those for determining where a debtor is located for the purposes of perfecting security interests under Article 9 of the Uniform Commercial Code. An organization is located at its place of business or, if it has more than one

¹ The official UVTA text with comments is available at:
http://www.uniformlaws.org/shared/docs/Fraudulent%20Transfer/2014_AUVTA_Final%20Act_2016mar8.pdf.

² For simplicity of discussion and ease of reading, this memorandum refers only to avoiding “transfers made” or “transactions”, although the statute applies equally to both avoiding transfers made and avoiding obligations incurred.

place of business, at its chief executive office (*Id.*). This choice of law rule makes more sense than any alternative choice of law rule – because the remedy to set aside the transfer is based on the improper act of the transferor in conveying the property or incurring the obligation, which act impairs the ability of the transferor to pay its debts. It is both clear and sensible to apply the law of the transferor’s location to determine whether the transfer was improper – rather than the law where property may have been located, where the transferee may be located, where the plaintiff creditor is located or governing any contract under which the relevant claim arose.

Currently, the choice of law rule in New York for fraudulent conveyances applies the law of the place where the “injury” occurred, and then requires the court to weigh numerous “factors” to determine what that place is. The decisions utilizing this factor analysis produce unpredictable, if not arbitrary, results that encourage expensive and uncertain choice of law litigation. If New York does not adopt the UVTA, uncertainty will persist as to the law that governs the voidability of transfers whenever they involve a debtor, property, transferee and creditors in multiple states. The clear choice of law rule of the UVTA would avoid unnecessary litigation over the applicable law. The central wrong addressed by voidable transactions law is a debtor’s impairment of the ability of one or more of its creditors to enforce their claims against it as a result of its transfer to another person; in other words, the interests at stake are those of the plaintiff-creditor, of the transferee and of the debtor. Application of the law of the debtor’s location provides a clear rule of decision ascertainable in advance by both a transferee and by affected creditors. Such a predictable rule cannot be obtained from focusing on such chance factors, which can only be determined after the transfer, as the location of transferred property, the location of the transferee, the location of the plaintiff-creditor or the law specified in a contract governing the debtor’s relationship with the particular creditor who happens to challenge the transfer. Use of the law of the place where the debtor/transferor is located is a clear, simple and appropriate choice of law rule that will produce predictable and consistent results, and is fair to both creditors and transferees of the debtor by enabling them to ascertain what law will govern the parties’ rights before any transfers occur.

Burden of Proof

The burden of proof for all claims and defenses under the UVTA is “preponderance of the evidence.” UVTA §§ 4(c), 5(c), 8(h). New York’s current law applies a heightened “clear and convincing” standard for “actual intent” transfers, which require proof of the transferor’s intent to hinder, delay or defraud creditors. In contrast, current law also applies a “preponderance” standard to “constructive” fraudulent transfers. *See e.g., U.S. v. McCombs*, 30 F.3d 310, 328 (2d Cir. 1994) (applying clear and convincing standard); *Lippe v. Bairnco Corp.*, 249 F. Supp. 2d 357, 376 (S.D.N.Y. 2003) (applying preponderance standard); *see also In re Dreier*, 452 B.R. 391, 423 (2011) (noting the split in authority on the issue). By adopting the preponderance standard for all transfers, including “actual intent” transfers, the drafters of the UVTA make clear that avoidance claims are ordinary civil actions, and thereby reject any analogy to common law fraud and its heightened standard of proof. UVTA § 4 cmt. 10.

Pleading Standard

The bill adopting the UVTA in New York should include clarifying language that the requirement for pleading fraud with particularity under CPLR 3016(b) does not apply to claims

under the UVTA. Such language would ensure consistency between the burden of pleading and the burden of proof.

Burdens and Presumptions

The UVTA is more precise than either New York law or prior uniform legislation in allocating the burden of going forward and the burden of proof on the elements of a claim to set aside a transfer and of establishing any of the defenses available to transferees. It specifies with great particularity the element of each claim and each defense and allocates the burden of proof on the elements of the claims to the plaintiff (UVTA §§ 4(c), 5(c) while allocating the burden of proof of most elements of the available defenses to the defendant (UVTA § 8(g)). These provisions will provide clarity to parties and courts.

Insolvency Standard

The UFTA cleans up and rationalizes the provisions of the UFCA that define how bad a transferor's financial condition must be in order to render a transfer for less than equivalent value susceptible to avoidance on the basis of the constructive fraud. For example:

- (a) The constructive fraud provisions of both the UFCA and the UFTA apply if the transferor is "insolvent." The definition of the term "insolvent" in the UFCA (§ 2(1)) confusingly includes both language of balance-sheet insolvency ("present fair salable value of [the transferor's] assets") and language suggestive of equity insolvency ("his probable liability on his existing debts as they become absolute and matured"). The UFTA revises the definition to be clearly and unequivocally a balance sheet concept (§ 2(a)). In addition to removing this important ambiguity, the UFTA definition of "insolvent" is very similar to the definition of that term in the Bankruptcy Code (§ 101(32)).
- (b) It is notoriously difficult to ascertain (certainly before the fact) whether an entity is "insolvent" in the balance-sheet sense, based on fair valuations, at a given moment. The UFCA does not address this difficulty. The UFTA, by contrast, adds a rebuttable presumption that a transferor who is "not generally paying his debts as they become due" is insolvent in the balance sheet sense (§ 2(b)).
- (c) The constructive fraud provisions of both the UFCA and the UFTA also apply if the transferor is insolvent in the equity sense at the time the transferor makes a transfer without receiving fair value in exchange. The UFCA definition of equity-sense insolvency is, however, purely subjective: it applies only if the transferor "intends or believes" that he will incur debts beyond his ability to repay (§ 6). The UFTA, like the Bankruptcy Code, rationalizes this provision by providing that a transferor is insolvent in the equity sense if he is unable to pay his debts as they become due, either in his subjective belief or as judged by the standard of objective reasonableness (§ 4(a)(ii)).

Statute of Repose

Section 9 of the UVTA contains a four-year statute of repose—i.e., four years from the date the transfer was made or the obligation was incurred—for claims other than an "insider preference"

(discussed below), for which the period to bring a claim is one year from the date the transfer was made. Section 9(a) also includes a “discovery rule” that extends the four-year statute of repose for claims to set aside transfers made with actual intent to hinder, delay or defraud; such claims are preserved until “not later than one year after the transfer or obligation” subject to challenge “was or could reasonably have been discovered,” which is similar to the discovery rule provided by CPLR 213(8) for fraud claims. UVTA § 9(a).

Notably, New York applies the six-year fraud statute of limitations to all avoidance claims. *See* CPLR 213. This results in New York’s having the longest period in the country during which a transfer may be challenged after the fact. This six-year period is also applicable to transfers made for inadequate consideration by debtors who are allegedly undercapitalized or insolvent, where no question of intent is relevant. Such a lengthy limitation period appears both unwarranted and unnecessary. It creates uncertainty for transferees for an undue period of time and probably results in the commencement of frivolous avoidance actions, given the unlikelihood that six years might pass after an insolvent or undercapitalized debtor transferred assets before its creditors realized that its ability to pay its debts had been impaired and brought suit. Thus, adoption of Section 9 of the UVTA would appear to be a beneficial change creating greater certainty for recipients of transfers without significantly impairing any legitimate interest of creditors. In the interest of such certainty, of conforming New York’s law on fraudulent conveyances with that of other states and in order to minimize incentives to litigate choice of law to obtain the benefit of a longer New York statute of limitations, wholesale adoption of the UVTA, including Section 9, is preferable. As a drafting alternative, the substance of Section 9 of the UVTA might be included in Article 2 (Limitations of Time) of the CPLR.

The shortening of the period during which recipients of transfers are subject to claims to avoid transactions from six to four years, while retaining a discovery rule, fairly balances the impact on parties of the reduction in the burden of persuasion from the preponderance standard and the other changes that on balance, benefit parties who will be asserting claims.

Attorneys’ Fees

The Uniform Law Commissioners did not expressly include attorneys’ fees as an element of damages in UVTA cases. New York currently includes a non-uniform amendment to the UFCA that gives a prevailing party attorney’s fees in cases where a transfer is avoided based on a finding of actual intent to hinder, delay or defraud, but not in cases where the transfer is avoided based on insufficient consideration and the transferor’s financial condition. *See* Debtor & Creditor Law § 276-a. This encourages plaintiffs to pursue actual intent claims, resulting in more factually complex litigation. Modifying the statute to remove the attorneys’ fee provision is consistent with the notion that an actual intent fraudulent conveyance does not imply that a debtor engaged in actual fraudulent misconduct; the requirement of “actual intent” can be established with proof of intent to “hinder” or “delay” creditors. And, even without a provision requiring an award of attorneys’ fees, a court may assess fees under UVTA § 7(a)(3)(iii) as “other relief the circumstances may require” “subject to applicable principles of equity”, if merited by the circumstances.

“Badges of Fraud” – Defendant in Litigation

Another non-uniform provision in the New York law makes a transfer by a defendant during pending litigation, if made without “fair consideration,” voidable as to the plaintiff in the litigation (but not other creditors of the defendant) if the plaintiff obtains a judgment that is not otherwise satisfied. Debtor and Creditor Law § 273-a. No other state has adopted such a *per se* rule making potentially voidable all transfers by defendants without regard to their intent. Under the uniform statutes, a transfer by a defendant in a pending litigation is identified as a “badge of fraud” that may be relied upon, along with other factors, in evaluating whether intent to hinder, delay or defraud creditors can be inferred from a transfer. UVTA § 4(b)(4). The absence of a *per se* rule is consistent with the intent of the drafters that “a court should evaluate all the relevant circumstances involving a challenged transfer or obligation” before determining whether it is an intentional voidable transfer. UVTA § 4 cmt. 7

Good Faith as an Element of Fair Consideration

To avoid a transfer as “constructively fraudulent,” New York law requires the plaintiff to prove that the transfer was not for “fair consideration,” and defines “fair consideration” to require that a “fair equivalent” have been given by the transferee “in good faith.” Debtor and Creditor Law §§ 273-275 (elements); § 272 (definition). The New York statute thus, in theory, permits the avoidance of a transfer as constructively fraudulent even if the debtor received equivalent value if the plaintiff can prove that the value was not provided by the transferee in “good faith.” This applies even when the value given is the satisfaction of an antecedent debt, which is otherwise recognized as a sufficient form of equivalent value. Avoidance based on the transferee’s lack of good faith is permitted despite the fact that the debtor-transferor’s intent is not an element of the claim to avoid transfer as “constructively fraudulent”. This drafting anomaly has resulted in the concept of an “insider preference” as a form of fraudulent conveyance, (*see* discussion of “Insider Preference,” *infra*). Under the UVTA, as under the Bankruptcy Code, the transferee’s intent is irrelevant to the question of whether a transfer is voidable. Transfers are voidable if the transferor had improper intent or if the transferor was undercapitalized or insolvent and received inadequate consideration for the transfer. Where the transferee gave equivalent value, the transfer is not voidable unless the transferor was acting with improper intent. In that event, the transferee may have an affirmative defense based on the value it gave, but it has the burden of proving that it gave that value in good faith. Thus, under the UVTA, the transferee’s “good faith” is relevant only to the transferee’s affirmative defenses to a transfer that has been found voidable based on the transferor’s improper intent. With the clarification of the burden of proof rules, this properly places the burden of establishing the transferee’s good faith on the transferee when the transferee asserts an affirmative defense based on the consideration it has given for the transfer. This change would clarify and rationalize New York law, while also promoting uniformity not only with other states but also with the Bankruptcy Code.

Measure of Fair Consideration in Security Transfers

Under the current New York law, the test of fair value for a grant of a security interest is whether the debt being secured is “disproportionately small” as compared to the value of the collateral subject to the security interest. The UVTA abandons this test as archaic and unnecessary. Transactions involving grants of security interests are judged by the same reasonably equivalent

value standard as all other transactions. The “disproportionately small” test is not consistent with modern concepts of commercial law. Subjecting property to a security interest, even if the value of the property is well beyond the amount of the obligation being secured, does not deprive other creditors of the residual value of that property. The holder of the security interest is entitled to the value of its collateral only up to the amount of the obligation owing to it; anything in excess of that will be available to the debtor and its creditors. The holder of the security interest will not be able to recover anything in excess of its claim. The new test conforms the law to commercial reality.

Insider Preference

The UVTA adds a provision new to New York law expressly rendering voidable a transfer made by a debtor to an insider of the debtor to satisfy an existing debt while the debtor was insolvent if the insider had reasonable cause to believe that the debtor was insolvent. *See* UVTA § 5(b). For example, the grant by a corporation of a security interest in the corporation’s equipment to the corporate principal on the eve of the corporation’s bankruptcy to a secure a debt owed by the corporation to the principal is voidable. *See* UVTA § 5 cmt. 2. Adoption of this provision of the UVTA would codify New York case law which arrived at this result circuitously by applying the “good faith” requirement in the definition of “fair consideration” in order to hold that the relationship between the parties and knowledge by the recipient of the insolvency of the transferor may negate its good faith, rendering the equivalent value it gave in the form of debt satisfaction as not fair consideration.

Regularly Conducted Foreclosure of Real and Personal Property

The UVTA explicitly protects from avoidance regularly conducted foreclosures of real property and the exercise of remedies under Article 9 of the UCC by a secured creditor with respect to personal property, except for “strict foreclosure” where the secured creditor accepts the property in satisfaction of the debt without a sale. Adoption of the UVTA would provide much needed certainty for creditors, purchasers at foreclosure auctions and other interested parties with respect to purchases of property in transactions involving the enforcement of liens, mortgages and security interests in real and personal property. This certainty should improve the prices realized in such sales, to the benefit of both borrowers and their secured creditors.

Transferees

The UVTA clarifies the protections available to initial transferees and subsequent transferees of property transferred in a voidable transaction, including the credit available for any amounts paid or expended for the property. Adoption of these rules in New York would protect innocent parties that enter into transactions without knowledge of the impaired financial condition of the transferor from whom they receive their interest in the property transferred. Similar protections are contained in the UFTA and the Bankruptcy Code. Adoption of the UVTA in New York would provide beneficial certainty in the foregoing respects as well as bring greater uniformity with the Bankruptcy Code and other UFTA and UVTA jurisdictions.

Ponzi Schemes

The “Ponzi” schemes orchestrated by Bernard Madoff, Marc Dreier, Allen Stanford and others have been a highly visible area of fraudulent transfer litigation. The trustees in bankruptcy of the companies that were used in these Ponzi schemes have used fraudulent transfer law to “claw back” payments made to certain Ponzi scheme victims in order to equalize the recoveries of all victims. There has been extensive litigation over the investors’ obligations to return payments received based on, among other things, whether the investors recovered more than their investment in the scheme and whether the investors had reason to believe that the investment was a fraud because of “red flags” that should have alerted them to the fraud. The courts have applied a “Ponzi scheme presumption” – holding that the existence of the scheme establishes the elements of the claim to recover the property, subject to the defenses available to an investor who did not recover more than the amount invested and was not on notice that the promoter was operating a Ponzi scheme.

The UVTA contains no provisions expressly dealing with Ponzi schemes. However, certain aspects of the legislation would be highly relevant in future Ponzi scheme cases. In particular: (1) if adopted, the provision limiting avoidance claims to four years would provide certainty to defrauded investors that they are not at risk of having to disgorge payments received earlier; (2) the elimination of the requirement of “good faith” from the definition of reasonably equivalent value would make clear that bankruptcy trustees may not avoid payments as constructive fraudulent transfers where “reasonably equivalent value” (e.g. in the form of a dollar-for-dollar debt repayment) is present; and (3) bankruptcy trustees seeking to maximize recoveries for fraud victims would not have to meet heightened standards of pleading and proof.

Partnership Insolvency

New York law currently includes special rules applicable to partnerships that do not appear in either the UFTA or the UVTA. Section 271(2) of the Debtor & Creditor Law includes the value of the assets of general partners in excess of the claims of their separate creditors in determining whether a partnership is insolvent. Section 277 of the Debtor & Creditor Law makes every conveyance of partnership property to a partner while the partnership is insolvent voidable as to partnership creditors. There are no similar rules applicable to other forms of business organizations. The drafters of the UFTA noted also that no rule similar to the partnership insolvency test applies where there are guarantors of the debts of other business entities.

The draconian impact of the rule that makes every transfer to partners voidable was illustrated in the recent decision by Bankruptcy Judge Glenn in the *Dewey & LeBoeuf* bankruptcy case reported at 518 B.R. 766 (Bankr. S.D.N.Y. 2014). Applying the New York “no compensation” rule, Judge Glenn ruled that all transfers to the partners after the partnership became insolvent were recoverable by the trustee in bankruptcy, and that the partners had no right to offset against the trustee’s claim the value to the partnership after the transfers in the form of services performed or receivables collected absent special circumstances. Adoption of the UVTA in New York would eliminate this rule and bring the law in New York into line with other states, almost all of which have abandoned these archaic rules.

Series Organizations

The UVTA includes rules addressing the application of the law to “series organizations” – business organizations such as series trusts and series limited liability companies created under Delaware law. A series organization is permitted to divide its assets and liabilities among “protected series” such that the assets of one series are not available to the creditors of a second series and vice versa. Section 11 of the UVTA recognizes the separation accomplished in series organizations for the purpose of voidable transactions law. New York does not have laws permitting creation of series organizations and has not addressed the recognition in New York of series organizations formed under the law of other states. Modernizing New York’s voidable transactions law should be accomplished without the need to address the broader issue involved in the recognition in New York of series organizations.

IMPACT ON OTHER AREAS OF THE LAW

Civil Procedure, Remedies, Pleading and Proof

As summarized above, the new legislation would change the choice of law rules applicable to voidable transfers to follow the pattern similar to Article 9 of the Uniform Commercial Code to determine where a debtor is located and what state’s law should be applied. The proposed legislation also addresses the provisional and final remedies available for voidable transactions, would change rules of pleading, and add explicit rules for presumptions and burden of persuasion. Revisions to the CPLR with respect to the statute of limitations applicable to claims under the UVTA may also be required.

Family Law

Voidable transaction claims can arise in the context of divorce and property settlements. The law of voidable transaction is a tool available to a spouse to recover property that the other spouse may have transferred to frustrate rights to equitable distribution. The UVTA also clarifies the protections available to an innocent spouse who has received property in connection with the dissolution of a marriage to retain that property against challenges from creditors of the former spouse.

Tax and Tort Claimants

Certain claimants may find themselves to be “involuntary” creditors of a debtor, as when an individual is personally injured and has a damage claim against a debtor, or a taxing authority is seeking to collect unpaid taxes from a debtor. The UVTA provides the same protections for tort and tax creditors as it does for contractual creditors against the debtor’s trying to move assets out of the reach of the debtor’s creditors. Clarifying the protections available to involuntary creditors will be of assistance to these creditors in collecting on their claims.

Real Property

Adoption of the UVTA would clarify the protections available to the purchaser of real property that has previously been the subject of a foreclosure sale by establishing the finality of a

transfer pursuant to a regularly conducted foreclosure sale. This rule will benefit the institutions that make mortgage loans by reducing the costs of providing mortgages, and protect persons who purchase real property that had been the subject of a foreclosure.

Uniform Commercial Code and Security Interests

The new statute would clarify the protections available to the purchaser of personal property that has previously been the subject of a foreclosure sale by establishing the finality of a transfer pursuant to a regularly conducted Article 9 foreclosure sale while creating an exception for property retained by the secured creditor as the result of “strict foreclosure” that occurs without a market test of the value given.

Criminal Law

The proposed legislation proposes no changes to criminal law applicable to persons who commit frauds.

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APPENDIX A

COMPARISON OF DCL, UVTA AND COMMITTEE'S PROPOSAL

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
In this article "assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor, such property shall be included in his assets. (§ 270)	"Asset" means property of a debtor, but the term does not include: (i) property to the extent it is encumbered by a valid lien; (ii) property to the extent it is generally exempt under nonbankruptcy law: or (iii) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant. (§ 1(2))	Same as UVTA.
None.	"Property" means anything that may be the subject of ownership. (§ 1(12))	Same as UVTA.
"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance. (§ 270)	"Transfer" means every mode, direct or indirect, absolute or conditional, voluntary' or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance. (§ 1(16))	Same as UVTA.
"Creditor" is a person having any claim, whether natured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.(§ 270)	"Creditor" means a person who has a claim. (§ 1(4))	Same as UVTA.
"Debt" includes any legal liability, whether matured unmatured, liquidated or unliquidated, absolute, fixed or contingent. (§ 270)	"Debt" means liability on a claim. (§ 1(5))	Same as UVTA.
None.	"Affiliate" means: (i) a person who directly or indirectly owns, controls, or	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities, (A) as a fiduciary or agent without sole discretionary power to vote the securities; or (B) solely to secure a debt, if the person has not exercised the power to vote</p> <p>(ii) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities, (A) as a fiduciary or agent without sole power to vote the securities; or (B) solely to secure a debt, if the person has not in fact exercised the power to vote;</p> <p>(iii) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or</p> <p>(iv) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets. (§ 1(1))</p>	
None.	"Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. (§ 1(3))	Same as UVTA.
None.	"Debtor" means a person who is liable on a claim. (§ 1(6))	Same as UVTA.
None.	<p>"Insider" includes:</p> <p>(i) if the debtor is an individual,</p>	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>(A) a relative of the debtor or of a general partner of the debtor;</p> <p>(B) a partnership in which the debtor is a general partner;</p> <p>(C) a general partner in a partnership described in clause(B);or</p> <p>(D) a corporation of which the debtor is a director, officer, or person in control;</p> <p>(ii) if the debtor is a corporation,</p> <p>(A) a director of the debtor;</p> <p>(B) an officer of the debtor;</p> <p>(C) a person in control of the debtor;</p> <p>(D) a partnership in which the debtor is a general partner;</p> <p>(E) a general partner in a partnership described in clause (D); or</p> <p>(F) a relative of a general partner, director, officer, or person in control of the debtor;</p> <p>(iii) if the debtor is a partnership,</p> <p>(A) a general partner in the debtor;</p> <p>(B) a relative of a general partner in, or a general partner of, or a person in control of the debtor;</p> <p>(C) another partnership in which the debtor is a general partner;</p> <p>(D) a general partner in a partnership described in clause (C); or</p> <p>(E) a person in control of the debtor;</p> <p>(iv) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and</p> <p>a managing agent of the debtor. (§ 1(8))</p>	
None.	"Relative" means an individual related by consanguinity the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree. (§ 1(14))	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
None.	"Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien. (§ 1(9))	Same as UVTA.
None.	"Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings. (§ 1(17))	Same as UVTA.
None.	"Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity. (§ 1(11))	Same as UVTA.
None.	"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. (§ 1(7))	Same as UVTA.
None.	"Organization" means a person other than an individual. (§ 1(10))	Same as UVTA.
None.	"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (§ 1(13))	Same as UVTA.
None.	"Sign" means, with present intent to authenticate or adopt a record: <ul style="list-style-type: none"> (i) to execute or adopt a tangible symbol; or (ii) to attach to or logically associate with the record an electronic symbol, sound, or process. (§ 1(15)) 	Same as UVTA.
A person is insolvent when the present fair salable value of his assets is less than the amount that will	(a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation.	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
<p>be required to pay his probable liability on his existing debts as they become absolute and matured. (§ 271, subd. 1)</p>	<p>(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.</p> <p>(c) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this [Act].</p> <p>(d) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. (§ 2)</p>	
<p>In determining whether a partnership is insolvent there shall be added to the partnership property the present fair salable value of the separate assets of each general partner in excess of the amount probably sufficient to meet the claims of his separate creditors, and also the amount of any unpaid subscription to the partnership of each limited partner, provided the present fair salable value of the assets of such limited partner is probably sufficient to pay his debts, including such unpaid subscription. (§ 271, subd. 2)</p>	<p>Omitted.</p>	<p>Same as UVTA.</p>
<p>Fair consideration is given for property, or obligation,</p> <p>a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent</p>	<p>(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.</p>	<p>Same as UVTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
<p>debt is satisfied, or</p> <p>b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained. (§ 272)</p>	<p>(b) For the purposes of Section 4(a)(2) and Section 5, a 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 or execution of a power of sale for the acquisition of disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.</p> <p>(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. (§ 3)</p>	
<p>Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration.(§ 273)</p>	<p>(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. (§ 5(a))</p> <p>A creditor making a claim for relief under subsection (a) . . . has the burden of proving the elements of the claim for relief by a preponderance of the evidence. (§ 5(c))</p>	Same as UVTA.
<p>Every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment. (§ 273-a)</p>	None.	Same as UVTA.
Every conveyance made without fair consideration	(a) A transfer made or obligation incurred by a debtor is	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
<p>when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hands after the conveyance is an unreasonably small capital, is fraudulent as to creditors and as to other persons who become creditors during the continuance of such business or transaction without regard to his actual intent. (§ 274)</p>	<p>voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:</p> <p>***</p> <p>(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:</p> <p>(i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; (§ 4(a)(2)(i))</p> <p>(c) A creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence. (§ 4(c))</p>	
<p>Every conveyance made and every obligation incurred without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature, is fraudulent as to both present and future creditors. (§ 275)</p>	<p>(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:</p> <p>***</p> <p>(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:</p> <p>***</p> <p>(ii) intended to incur, or believed or reasonably believed that the debtor would incur, debts beyond the debtor's ability to pay as they become due. (§ 4(a)(2)(ii))</p>	<p>Same as UVTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	A creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence. (§ 4(c))	
None.	<p>A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent. (§ 5(b))</p> <p>(c) Subject to Section 2(b), a creditor making a claim for relief under subsection (a) or (b) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.</p> <p>A transfer is not voidable under Section 5(b):</p> <p>(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;</p> <p>(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or</p> <p>(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. (§ 8(f))</p> <p>(4) A party that seeks to invoke subsection (a), (d), or (f) has the burden of proving the applicability of that subsection</p>	Same as UVTA.
Every conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors. (§ 276)	<p>(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:</p> <p>(1) with actual intent to hinder, delay, or defraud any</p>	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>creditor of the debtor;</p> <p>***</p> <p>(b) In determining actual intent under subsection (a)(1), consideration may be given, among other factors, to whether:</p> <p>(1) the transfer or obligation was to an insider;</p> <p>(2) the debtor retained possession or control of the property transferred after the transfer;</p> <p>(3) the transfer or obligation was disclosed or concealed;</p> <p>(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;</p> <p>(5) the transfer was of substantially all the debtor's assets;</p> <p>(6) the debtor absconded;</p> <p>(7) the debtor removed or concealed assets;</p> <p>(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;</p> <p>(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;</p> <p>(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and</p> <p>(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.(§ 4(a)(1), (b))</p> <p>A creditor making a claim for relief under subsection (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence. (§ 4(c))</p>	
Every conveyance of partnership property and every partnership obligation incurred when the partnership is or will be thereby rendered insolvent, is fraudulent as to partnership creditors, if the conveyance is ; made or obligation is	None.	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
<p>incurred,</p> <p>a. To a partner, whether with or without a promise by him to pay partnership debts, or</p> <p>b. To a person not a partner without fair consideration to the partnership as distinguished from consideration to the individual partners. (§ 277)</p>		
<p>Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or immediately from such a purchaser,</p> <p>a. I have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or</p> <p>b. Disregard the conveyance and attach or levy execution upon the property conveyed. § 278(1)</p> <p>Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may,</p> <p>a. Restrain the defendant from disposing of his property.</p> <p>b. Appoint a receiver to take charge of the property,</p>	<p>(a) In an action for relief against a transfer or obligation under this [Act], a creditor, subject to the limitations in Section 8, may obtain:</p> <p>(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;</p> <p>(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law;</p> <p>(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure,</p> <p>(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;</p> <p>(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or</p> <p>(iii) any other relief the circumstances may require.</p> <p>(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds; (§ 7)</p> <p>(a) A transfer or obligation is not voidable under Section 4(a)(1) against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.</p>	<p>Same as UVTA. Subsections (a)(2) and (a)(3)'s references to "applicable law" and "applicable rules of civil procedure", respectively, to refer to the CPLR.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
<p>c. Set aside the conveyance or annul the obligation, or</p> <p>d. Make any order which the circumstances of the case may require. (§ 279)</p>	<p>(b) To the extent a transfer is avoidable in an action by a creditor under Section 7(a)(1), the following rules apply:</p> <p>(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:</p> <p>(i) the first transferee of the asset or the person for whose benefit the transfer was made; or</p> <p>(ii) an immediate or mediate transferee of the first transferee, other than:</p> <p>(A) a good-faith transferee that took for value; or</p> <p>(B) an immediate or mediate good-faith transferee of a person described in clause (A).</p> <p>(2) Recovery pursuant to Section 7(a)(1) or (b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in paragraph (1)(i) or (ii).</p> <p>(d) If the judgment under subsection (b) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require. (§ 8(a), (b), (c)).</p> <p>(g) The following rules determine the burden of proving matters referred to in this section:</p> <p>(1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.</p> <p>(2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).</p> <p>(3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).</p>	

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>(4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.</p> <p>(e) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.</p>	
<p>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. (§ 278 (2))</p>	<p>Notwithstanding voidability of a transfer or an obligation under this [Act], a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to</p> <p>(1) a lien on or a right to retain any interest in the asset transferred;</p> <p>(2) enforcement of any obligation incurred; or</p> <p>(3) a reduction in the amount of the liability on the judgment. (§ 8(d))</p> <p>(g) The following rules determine the burden of proving matters referred to in this section:</p> <p>(1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.</p> <p>(2) Except as otherwise provided in paragraphs (3) and (4), the creditor has the burden of proving each applicable element of subsection (b) or (c).</p> <p>(3) The transferee has the burden of proving the applicability to the transferee of subsection (b)(1)(ii)(A) or (B).</p> <p>(4) A party that seeks adjustment under subsection (c) has the burden of proving the adjustment.</p> <p>(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.</p>	<p>Same as UVTA.</p>
<p>None.</p>	<p>(e) A transfer is not voidable under Section 4(a)(2) or Section 5 if the transfer results from:</p>	<p>Same as UVTA. See also UVTA § 3(b):</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or</p> <p>(2) enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.</p> <p>(f) For the purposes of Section 4(a)(2) and Section 5, a 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 or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.</p> <p>(g) A transfer is not voidable under Section 5(b):</p> <p>(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;</p> <p>(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or</p> <p>(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. (§ 8(e), (f))</p> <p>(1) A party that seeks to invoke subsection (a), (d), (e), or (f) has the burden of proving the applicability of that subsection.</p>	<p>(b) For the purposes of Section 4(a)(2) and Section 5, a 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 or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.</p>
<p>In any case not provided for in this article the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake,</p>	<p>Unless displaced by the provisions of this [Act], the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating</p>	<p>Same as UVTA.</p>

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
bankruptcy or other invalidating cause shall govern. (§ 280)	cause, supplement its provisions. (§ 12)	
This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the laws of those states which enact it. (§ 281)	This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it. (§ 13)	Same as UVTA.
None.	<p>A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent. (§ 5(b))</p> <p>(c) Subject to Section 2(b), a creditor making a claim for relief under subsection (a) or (b) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.</p> <p>A transfer is not voidable under Section 5(b):</p> <p>(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;</p> <p>(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or</p> <p>(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor. (§ 8(f))</p> <p>(4) A party that seeks to invoke subsection (a), (d), or (f) has the burden of proving the applicability of that subsection</p>	Same as UVTA.
None.	For the purposes of this [Act]: (1) a transfer is made: (i) with respect to an asset that is real property other than a	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and</p> <p>(ii) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this [Act] that is superior to the interest of the transferee;</p> <p>(2) if applicable law permits the transfer to be perfected as provided in paragraph (1) and the transfer is not so perfected before the commencement of an action for relief under this [Act], the transfer is deemed made immediately before the commencement of the action;</p> <p>(3) if applicable law does not permit the transfer to be perfected as provided in paragraph (1), the transfer is made when it becomes effective between the debtor and the transferee;</p> <p>(4) a transfer is not made until the debtor has acquired rights in the asset transferred;</p> <p>(5) an obligation is incurred:</p> <p>(i) if oral, when it becomes effective between the parties;</p> <p>or</p> <p>(ii) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.</p> <p>(§ 6)</p>	
None	<p>(a) In this section, the following rules determine a debtor's location:</p> <p>(1) A debtor who is an individual is located at the individual's principal residence.</p> <p>(2) A debtor that is an organization and has only one place of business is located at its place of business.</p> <p>(3) A debtor that is an organization and has more than one</p>	Same as UVTA.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	<p>place of business is located at its chief executive office.</p> <p>(b) A claim for relief in the nature of a claim for relief under this [Act] is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. (§ 10)</p>	
None	<p>(a) In this section:</p> <p>(1) "Protected series" means an arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in paragraph (2).</p> <p>(2) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:</p> <p>(i) The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.</p> <p>(ii) Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.</p> <p>(iii) Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.</p> <p>(b) A series organization and each protected series of the organization is a separate person for purposes of this [Act], even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. § (11)</p>	Omitted.

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
	This [Act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b). (§ 14)	
None. (Actions under the DCL are governed by CPLR §213 (six years).)	A [claim for relief][cause of action] with respect to a fraudulent transfer or obligation under this [Act] is extinguished unless action is brought: (a) under Section 4(a)(1), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant; (b) under Section 4(a)(2) or 5(a) not later than four years after the transfer was made or the obligation was incurred; or (c) Section 5(b), not later than one year after the transfer was made or the obligation was incurred. (§ 9)	Same as UVTA except that - "cause of action," rather than "claim for relief," is used because that is the standard language used in the CPLR. (<i>see, e.g.</i> , Rule 3211(a)). This provision, alternatively, may be incorporated into the CPLR with conforming changes.
None.	This [Act], which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable Transactions Act. (§ 15)	Omit [reference to Uniform Fraudulent Transfer Act].
None.	The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed: (§ 13)	Sections 270 through 281 of the Debtor and Creditor Law are repealed as of the effective date of this Act, provided that such Sections shall remain in effect thereafter as to transfers made and obligations incurred <u>or a cause of action that accrued</u> prior to such date. [Underlined text inserted conforms to provision below on effective date]

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
<p>In an action or special proceeding brought by a creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors to set aside a conveyance by a debtor, where such conveyance is found to have been made by the debtor and received by the transferee with actual intent, as distinguished from intent presumed in law, to hinder, delay or defraud either present or future creditors, in which action or special proceeding the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors shall recover judgment, the justice or surrogate presiding at the trial shall fix the reasonable attorney's fees of the creditor, receiver, trustee in bankruptcy, or assignee the benefit of creditors in such action or special proceeding, and the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors shall have judgment therefor against the debtor and the transferee who are defendants in addition to the other relief granted by the judgment.</p> <p>The fee so fixed shall be without prejudice to any agreement, express or implied, between the creditor, receiver, trustee in bankruptcy, or assignee for the benefit of creditors and his attorney with respect to the compensation of such attorney. (§ 276-a)</p>	None.	Same as UVTA.
None.	None.	This [Act] shall take effect on existing Article 10 is repealed and this Article shall take effect [_____] , 2016 and (i) shall apply to a transfer made or obligation incurred on or after the effective date, (ii) shall not apply to a transfer made or obligation incurred or to a cause of action that accrued before the effective date. For the foregoing purposes, a transfer is made and an obligation is incurred at

New York Debtor and Creditor Law ("DCL") §§ 270-281 and Other Existing Statutes	Uniform Voidable Transfer Act ("UVTA") (Citations to Sections of the Uniform Act)	Proposed Statutory Language
Estates, Powers and Trust Law §§ 13-3.1, 13-3.2(b); Insurance Law §3212(e)(1) and Social Service Law § 461-f, all of which refer to DCL Article 10, the article in which §§ 270-281 are contained.		the time provided in Section 276. [UVTA § 6] No change if the UVTA is contained in Article 10—otherwise, conforming changes.