

UNIFORM VOIDABLE TRANSACTIONS ACT

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill renames, recodifies, and amends the Uniform Fraudulent Transfer Act and related provisions.

Highlighted Provisions:

This bill:

- ▶ changes the name of the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act;
- ▶ makes changes consistent with the 2014 version of the Uniform Fraudulent Transfer Act;
- ▶ modifies and defines terms;
- ▶ removes provisions relating to limited liability companies;
- ▶ modifies provisions relating to the determination of insolvency;
- ▶ enacts provisions relating to the burden of proof;
- ▶ modifies provisions relating to the transfer and recovery of assets;
- ▶ enacts a governing law provision;
- ▶ addresses the bill's applicability to a series organization;
- ▶ enacts transitional language;
- ▶ addresses the applicability of the Relation to Electronic Signatures in Global and National Commerce Act; and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 **AMENDS:**

- 34 **7-2-12**, as last amended by Laws of Utah 2014, Chapter 189
- 35 **31A-27a-507**, as enacted by Laws of Utah 2007, Chapter 309
- 36 **70A-2-402**, as enacted by Laws of Utah 1965, Chapter 154
- 37 **70A-2a-308**, as enacted by Laws of Utah 1990, Chapter 197
- 38 **75-2-205**, as last amended by Laws of Utah 2003, Second Special Session, Chapter 3
- 39 **75-7-105**, as enacted by Laws of Utah 2004, Chapter 89
- 40 **75-7-107**, as renumbered and amended by Laws of Utah 2004, Chapter 89
- 41 **75-7-301**, as repealed and reenacted by Laws of Utah 2004, Chapter 89
- 42 **75-7-501**, as repealed and reenacted by Laws of Utah 2004, Chapter 89
- 43 **75-7-505**, as enacted by Laws of Utah 2004, Chapter 89
- 44 **75-7-816**, as enacted by Laws of Utah 2004, Chapter 89
- 45 **78B-2-302**, as last amended by Laws of Utah 2016, Chapter 388
- 46 **78B-2-307**, as renumbered and amended by Laws of Utah 2008, Chapter 3

47 **ENACTS:**

- 48 **25-6-201**, Utah Code Annotated 1953
- 49 **25-6-301**, Utah Code Annotated 1953
- 50 **25-6-401**, Utah Code Annotated 1953
- 51 **25-6-402**, Utah Code Annotated 1953
- 52 **25-6-403**, Utah Code Annotated 1953
- 53 **25-6-407**, Utah Code Annotated 1953
- 54 **25-6-501**, Utah Code Annotated 1953

55 **RENUMBERS AND AMENDS:**

- 56 **25-6-101**, (Renumbered from 25-6-1, as enacted by Laws of Utah 1988, Chapter 59)
- 57 **25-6-102**, (Renumbered from 25-6-2, as last amended by Laws of Utah 1992, Chapter
- 58 168)

- 59 **25-6-103**, (Renumbered from 25-6-3, as enacted by Laws of Utah 1988, Chapter 59)
- 60 **25-6-104**, (Renumbered from 25-6-4, as enacted by Laws of Utah 1988, Chapter 59)
- 61 **25-6-202**, (Renumbered from 25-6-5, as enacted by Laws of Utah 1988, Chapter 59)
- 62 **25-6-203**, (Renumbered from 25-6-6, as last amended by Laws of Utah 1989, Chapter
- 63 61)
- 64 **25-6-302**, (Renumbered from 25-6-7, as enacted by Laws of Utah 1988, Chapter 59)
- 65 **25-6-303**, (Renumbered from 25-6-8, as enacted by Laws of Utah 1988, Chapter 59)
- 66 **25-6-304**, (Renumbered from 25-6-9, as last amended by Laws of Utah 2015, Chapter
- 67 459)
- 68 **25-6-305**, (Renumbered from 25-6-10, as enacted by Laws of Utah 1988, Chapter 59)
- 69 **25-6-404**, (Renumbered from 25-6-11, as enacted by Laws of Utah 1988, Chapter 59)
- 70 **25-6-405**, (Renumbered from 25-6-12, as enacted by Laws of Utah 1988, Chapter 59)
- 71 **25-6-406**, (Renumbered from 25-6-13, as enacted by Laws of Utah 1988, Chapter 59)
- 72 **25-6-502**, (Renumbered from 25-6-14, as repealed and reenacted by Laws of Utah
- 73 2013, Chapter 284)

75 *Be it enacted by the Legislature of the state of Utah:*

76 Section 1. Section **7-2-12** is amended to read:

77 **7-2-12. Powers of commissioner in possession -- Sale of assets -- Postpossession**
 78 **financing -- New deposit instruments -- Executory contracts -- Transfer of property --**
 79 **Avoidance of transfers -- Avoidable preferences -- Setoff.**

80 (1) Upon taking possession of the institution, the commissioner may do all things
 81 necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the
 82 affairs of the institution in a manner he determines to be in the best interests of the institution's
 83 depositors and creditors. Any such determination by the commissioner may not be overruled
 84 by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to law.
 85 In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may
 86 compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of
 87 the property of the institution for cash or other consideration. The commissioner shall give
 88 such notice as the court may direct to the institution of the time and place of hearing upon an
 89 application to the court for approval of the sale. The commissioner shall execute and deliver to

90 the purchaser of any property of the institution sold by him those deeds or instruments
91 necessary to evidence the passing of title.

92 (2) With approval of the court and upon terms and with priority determined by the
93 court, the commissioner may borrow money and issue evidence of indebtedness. To secure
94 repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any
95 or all of the property of the institution superior to any charge on the property for expenses of
96 the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of
97 facilitating liquidation, protecting or preserving the assets in the charge of the commissioner,
98 expediting the making of distributions to depositors and other claimants, aiding in the
99 reopening or reorganization of the institution or its merger or consolidation with another
100 institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or
101 other person lawfully in charge of the affairs of the institution is under any personal obligation
102 to repay those loans. The commissioner may take any action necessary or proper to
103 consummate the loan and to provide for its repayment and to give bond when required for the
104 faithful performance of all undertakings in connection with it. The commissioner or special
105 deputy shall make application to the court for approval of any loan proposed under this section.
106 Notice of hearing upon the application shall be given as the court directs. At the hearing upon
107 the application any stockholder or shareholder of the institution or any depositor or other
108 creditor of the institution may appear and be heard on the application. Prior to the obtaining of
109 a court order, the commissioner or special deputy in charge of the affairs of the institution may
110 make application or negotiate for the loan or loans subject to the obtaining of the court order.

111 (3) With the approval of the court pursuant to a plan of reorganization or liquidation
112 under Section 7-2-18, the commissioner may provide for depositors to receive new deposit
113 instruments from a depository institution that purchases or receives some or all of the assets of
114 the institution in the possession of the commissioner. All new deposit instruments issued by
115 the acquiring depository institution may, in accordance with the terms of the plan of
116 reorganization or liquidation, be subject to different amounts, terms, and interest rates than the
117 original deposit instruments of the institution in the possession of the commissioner. All
118 deposit instruments issued by the acquiring institution shall be considered new deposit
119 obligations of the acquiring institution. The original deposit instruments issued by the
120 institution in the possession of the commissioner are not liabilities of the acquiring institution,

121 unless assumed by the acquiring institution. Unpaid claims of depositors against the institution
122 in the possession of the commissioner continue, and may be provided for in the plan of
123 reorganization or liquidation.

124 (4) The commissioner, after taking possession of any institution or other person subject
125 to the jurisdiction of the department, may terminate any executory contract, including standby
126 letters of credit, unexpired leases and unexpired employment contracts, to which the institution
127 or other person is a party. If the termination of an executory contract or unexpired lease
128 constitutes a breach of the contract or lease, the date of the breach is the date on which the
129 commissioner took possession of the institution. Claims for damages for breach of an
130 executory contract shall be filed within 30 days of receipt of notice of the termination, and if
131 allowed, shall be paid in the same manner as all other allowable claims of the same priority out
132 of the assets of the institution available to pay claims.

133 (5) With approval of the court and upon a showing by the commissioner that it is in the
134 best interests of the depositors and creditors, the commissioner may transfer property on
135 account of an indebtedness incurred by the institution prior to the date of the taking.

136 (6) (a) The commissioner may avoid any transfer of any interest of the institution in
137 property or any obligation incurred by the institution that is void or voidable by a creditor under
138 Title 25, Chapter 6, Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act.

139 (b) The commissioner may avoid any transfer of any interest in real property of the
140 institution that is void as against or voidable by a subsequent purchaser in good faith and for a
141 valuable consideration of the same real property or any portion thereof who has duly recorded
142 his conveyance at the time possession of the institution is taken, whether or not such a
143 purchaser exists.

144 (c) The commissioner may avoid any transfer of any interest in property of the
145 institution or any obligation incurred by the institution that is invalid or void as against, or is
146 voidable by a creditor that extends credit to the institution at the time possession of the
147 institution is taken by the commissioner, and that obtains, at such time and with respect to such
148 credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial
149 lien on the property involved, whether or not such a creditor exists.

150 (d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any
151 transfer of any interest in property of the institution shall be unaffected by and without regard

152 to any knowledge of the commissioner or of any creditor of the institution.

153 (e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary
154 or involuntary, or disposing of or parting with property or with an interest in property,
155 including retention of title as a security interest.

156 (f) The commissioner may avoid and recover any payment or other transfer of any
157 interest in property of the institution to or for the benefit of a creditor, for or on account of an
158 antecedent debt owed by the institution before the transfer was made if the creditor at the time
159 of such transfer had reasonable cause to believe that the institution was insolvent, and if the
160 payment or other transfer will allow the creditor to obtain a greater percentage of his debt than
161 he would be entitled to under the provisions of Section 7-2-15. For the purposes of this
162 subsection:

163 (i) antecedent debt does not include earned wages and salaries and other operating
164 expenses incurred and paid in the normal course of business;

165 (ii) a transfer of any interest in real property is deemed to have been made or suffered
166 when it became so far perfected that a subsequent good faith purchaser of the property from the
167 institution for a valuable consideration could not acquire an interest superior to the transferee;
168 and

169 (iii) a transfer of property other than real property is deemed to have been made or
170 suffered when it became so far perfected that a creditor on a simple contract could not acquire a
171 lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest
172 of the transferee.

173 (g) For purposes of this section, "date of possession" means the earlier of the date the
174 commissioner takes possession of a financial institution under Title 7, Chapter 2, Possession of
175 Depository Institution by Commissioner, or the date when the commissioner enters an order
176 suspending payments to depositors and other creditors under Section 7-2-19.

177 (7) (a) With or without the prior approval of the court, the commissioner or any federal
178 deposit insurance agency appointed by him as receiver or liquidator of a depository institution
179 closed by the commissioner under the provisions of this chapter may setoff against the deposits
180 or other liabilities of the institution any debts or other obligations of the depositor or claimant
181 due and owing to the institution. The amount of any setoff against the liabilities of the
182 institution shall be no greater than the amount the depositor or claimant would receive pursuant

183 to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a
184 depositor's or claimant's claim against the institution will or may be less than the full amount of
185 the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or
186 liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the
187 court, after notice and opportunity for hearing, approves the estimate for purposes of making
188 the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator
189 appointed by him shall give written notice to the depositor or claimant of the amount setoff.

190 (b) The existence and amount of a debtor or creditor relationship or both, between the
191 institution and its depositor or claimant and the right to the proceeds in a deposit account shall
192 be determined solely by the books and records of the institution.

193 (c) Any contract purporting to affect the right of setoff shall be in writing and signed by
194 the depositor-debtor and an authorized officer of the institution and be maintained as a part of
195 the records of the institution.

196 (d) Any claim that a deposit account is a special account not subject to setoff because it
197 was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction
198 of or as security for an indebtedness to the institution or that the right to the deposit actually
199 belongs to a third party does not affect the right to setoff of the commissioner or any receiver or
200 liquidator appointed by him unless the special nature of the account is clearly shown in the
201 books and records of the institution.

202 (e) In the absence of any other instrument in writing, the terms and provisions of the
203 signature card applicable to a particular account in effect at the time the commissioner takes
204 possession of the institution shall be determinative of the right of setoff by the commissioner or
205 any receiver or liquidator appointed by him.

206 (f) Knowledge of the institution or of any director, officer, or employee of the
207 institution that the nature of the account is other than as shown in the books and records of the
208 institution does not affect the right of setoff by the commissioner or any receiver or liquidator
209 appointed by him.

210 (g) The liability of the commissioner or any receiver or liquidator appointed by him for
211 exercising a right of setoff other than as authorized by this section shall be only to a person
212 who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is
213 superior to that of the person whose debt to the institution was setoff against the account. The

214 amount of any such liability shall be no greater than the amount of the setoff and neither the
215 commissioner or any receiver or liquidator appointed by him shall be liable for any action taken
216 under this section unless the action taken is determined by the court to be arbitrary or
217 capricious.

218 Section 2. Section **25-6-101**, which is renumbered from Section 25-6-1 is renumbered
219 and amended to read:

220 **CHAPTER 6. UNIFORM VOIDABLE TRANSACTIONS ACT**

221 **Part 1. General Provisions**

222 ~~[25-6-1]~~. **25-6-101. Title.**

223 (1) This chapter is known as the "Uniform ~~[Fraudulent Transfer]~~ Voidable
224 Transactions Act."

225 (2) This part is known as "General Provisions."

226 Section 3. Section **25-6-102**, which is renumbered from Section 25-6-2 is renumbered
227 and amended to read:

228 ~~[25-6-2]~~. **25-6-102. Definitions.**

229 ~~[In]~~ As used in this chapter:

230 (1) "Affiliate" means:

231 (a) a person ~~[who]~~ that directly or indirectly owns, controls, or holds with power to
232 vote, 20% or more of the outstanding voting securities of the debtor, other than a person ~~[who]~~
233 that holds the securities:

234 (i) as a fiduciary or agent without sole discretionary power to vote the securities; or

235 (ii) solely to secure a debt, if the person has not exercised the power to vote;

236 (b) a corporation 20% or more of whose outstanding voting securities are directly or
237 indirectly owned, controlled, or held with power to vote, by the debtor or a person ~~[who]~~ that
238 directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the
239 outstanding voting securities of the debtor, other than a person ~~[who]~~ that holds the securities:

240 (i) as a fiduciary or agent without sole discretionary power to vote the securities; or

241 (ii) solely to secure a debt, if the person has not exercised the power to vote;

242 (c) a person whose business is operated by the debtor under a lease or other agreement,
243 or a person substantially all of whose assets are controlled by the debtor; or

244 (d) a person ~~[who]~~ that operates the debtor's business under a lease or other agreement

245 or controls substantially all of the debtor's assets.

246 (2) "Asset" means property of a debtor, but does not include:

247 (a) property to the extent it is encumbered by a valid lien;

248 (b) property to the extent it is generally exempt under nonbankruptcy law; or

249 (c) an interest in property held in tenancy by the entireties to the extent it is not subject
250 to process by a creditor holding a claim against only one tenant.

251 (3) "Claim," except as used in "claim for relief," means a right to payment, whether or
252 not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured,
253 unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

254 (4) "Creditor" means a person ~~[who]~~ that has a claim.

255 (5) "Debt" means liability on a claim.

256 (6) "Debtor" means a person ~~[who]~~ that is liable on a claim.

257 (7) "Electronic" means relating to technology having electrical, digital, magnetic,
258 wireless, optical, electromagnetic, or similar capabilities.

259 ~~[(7)]~~ (8) "Insider" includes:

260 (a) if the debtor is an individual:

261 (i) a relative of the debtor or of a general partner of the debtor;

262 (ii) a partnership in which the debtor is a general partner;

263 (iii) a general partner in a partnership described in Subsection ~~[(7)]~~ (8)(a)(ii); or

264 (iv) a corporation of which the debtor is a director, officer, or person in control; ~~[or]~~

265 ~~[(v) a limited liability company of which the debtor is a member or manager;]~~

266 (b) if the debtor is a corporation:

267 (i) a director of the debtor;

268 (ii) an officer of the debtor;

269 (iii) a person in control of the debtor;

270 (iv) a partnership in which the debtor is a general partner;

271 (v) a general partner in a partnership described in Subsection ~~[(7)]~~ (8)(b)(iv); or

272 ~~[(vi) a limited liability company of which the debtor is a member or manager; or]~~

273 ~~[(vii)]~~ (vi) a relative of a general partner, director, officer, or person in control of the
274 debtor;

275 (c) if the debtor is a partnership:

- 276 (i) a general partner in the debtor;
- 277 (ii) a relative of a general partner in, a general partner of, or a person in control of the
278 debtor;
- 279 (iii) another partnership in which the debtor is a general partner;
- 280 (iv) a general partner in a partnership described in Subsection ~~[(7)]~~ (8)(c)(iii); or
- 281 ~~[(v) a limited liability company of which the debtor is a member or manager; or]~~
- 282 ~~[(vi)]~~ (v) a person in control of the debtor;
- 283 ~~[(d) if the debtor is a limited liability company:]~~
- 284 ~~[(i) a member or manager of the debtor;]~~
- 285 ~~[(ii) another limited liability company in which the debtor is a member or manager;]~~
- 286 ~~[(iii) a partnership in which the debtor is a general partner;]~~
- 287 ~~[(iv) a general partner in a partnership described in Subsection (7)(d)(iii);]~~
- 288 ~~[(v) a person in control of the debtor; or]~~
- 289 ~~[(vi) a relative of a general partner, member, manager, or person in control of the
290 debtor;]~~
- 291 ~~[(e)]~~ (d) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and
- 292 ~~[(f)]~~ (e) a managing agent of the debtor.
- 293 ~~[(8)]~~ (9) "Lien" means a charge against or an interest in property to secure payment of a
294 debt or performance of an obligation, and includes a security interest created by agreement, a
295 judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a
296 statutory lien.
- 297 (10) "Organization" means a person other than an individual.
- 298 ~~[(9)]~~ (11) "Person" means an individual, estate, partnership, ~~[limited liability company,~~
299 ~~corporation;]~~ association, ~~[organization;]~~ trust, business or nonprofit entity, public corporation,
300 government or governmental subdivision ~~[or]~~, agency, ~~[business trust, estate, trust, or any]~~
301 instrumentality, or other legal or commercial entity.
- 302 ~~[(10)]~~ (12) "Property" means anything that may be the subject of ownership.
- 303 (13) "Record" means information that is inscribed on a tangible medium or that is
304 stored in an electronic or other medium that is retrievable in perceivable form.
- 305 ~~[(11)]~~ (14) "Relative" means an individual ~~[or an individual related to a spouse;]~~
306 related by consanguinity within the third degree as determined by the common law, ~~[or]~~ a

307 spouse, or an individual related to a spouse within the third degree as so determined, and
 308 includes an individual in an adoptive relationship within the third degree.

309 (15) "Sign" means, with present intent to authenticate or adopt a record:

310 (a) to execute or adopt a tangible symbol; or

311 (b) to attach to or logically associate with the record an electronic symbol, sound, or
 312 process.

313 [~~(12)~~] (16) "Transfer" means every mode, direct or indirect, absolute or conditional, or
 314 voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and
 315 includes payment of money, release, lease, and creation of a lien or other encumbrance.

316 [~~(13)~~] (17) "Valid lien" means a lien that is effective against the holder of a judicial
 317 lien subsequently obtained by legal or equitable process or proceedings.

318 Section 4. Section **25-6-103**, which is renumbered from Section 25-6-3 is renumbered
 319 and amended to read:

320 ~~[25-6-3].~~ **25-6-103. Insolvency.**

321 (1) A debtor is insolvent if, at fair valuation, the sum of the debtor's debts is greater
 322 than all of the debtor's assets [~~at a fair valuation~~].

323 (2) (a) A debtor [~~who~~] that is generally not paying [~~his~~] the debtor's debts as they
 324 become due other than as a result of a bona fide dispute is presumed to be insolvent.

325 (b) The presumption imposes on the party against which the presumption is directed
 326 the burden of proving that the nonexistence of insolvency is more probable than its existence.

327 [~~(3) A partnership is insolvent under Subsection (1) if the sum of the partnership's~~
 328 ~~debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the~~
 329 ~~sum of the excess of the value of each general partner's nonpartnership assets over the partner's~~
 330 ~~nonpartnership debts.]~~

331 [~~(4)~~] (3) Assets under this section do not include property that has been transferred,
 332 concealed, or removed with intent to hinder, delay, or defraud creditors or that has been
 333 transferred in a manner making the transfer voidable under this chapter.

334 [~~(5)~~] (4) Debts under this section do not include an obligation to the extent it is secured
 335 by a valid lien on property of the debtor not included as an asset.

336 Section 5. Section **25-6-104**, which is renumbered from Section 25-6-4 is renumbered
 337 and amended to read:

338 ~~[25-6-4]~~. **25-6-104. Value -- Transfer.**

339 (1) Value is given for a transfer or an obligation if, in exchange for the transfer or
340 obligation, property is transferred or an antecedent debt is secured or satisfied. However, value
341 does not include an unperformed promise made other than in the ordinary course of the
342 promisor's business to furnish support to the debtor or another person.

343 (2) Under Subsection ~~[25-6-5]~~ 25-6-202(1)(b) and Section ~~[25-6-6]~~ 25-6-203, a person
344 gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset
345 pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale
346 for the acquisition or disposition of the interest of the debtor upon default under a mortgage,
347 deed of trust, or security agreement.

348 (3) A transfer is made for present value if the exchange between the debtor and the
349 transferee is intended by them to be contemporaneous and is ~~[in-fact]~~ substantially
350 contemporaneous.

351 Section 6. Section **25-6-201** is enacted to read:

352 **Part 2. Voidable Transfer or Obligation**

353 **25-6-201. Title.**

354 This part is known as "Voidable Transfer or Obligation."

355 Section 7. Section **25-6-202**, which is renumbered from Section 25-6-5 is renumbered
356 and amended to read:

357 ~~[25-6-5]~~. **25-6-202. Voidable transfer or obligation -- Present or future**
358 **creditor -- Determination of intent -- Burden of proof.**

359 (1) A transfer made or obligation incurred by a debtor is ~~[fraudulent]~~ voidable as to a
360 creditor, whether the creditor's claim arose before or after the transfer was made or the
361 obligation was incurred, if the debtor made the transfer or incurred the obligation:

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

363 (b) without receiving a reasonably equivalent value in exchange for the transfer or
364 obligation~~[;]~~, and the debtor:

365 (i) was engaged or was about to engage in a business or a transaction for which the
366 remaining assets of the debtor were unreasonably small in relation to the business or
367 transaction; or

368 (ii) intended to incur, or believed or reasonably should have believed that ~~[he]~~ the

369 debtor would incur, debts beyond [~~his~~] the debtor's ability to pay as they became due.

370 (2) To determine "actual intent" under Subsection (1)(a), consideration may be given,
371 among other factors, to whether:

372 (a) the transfer or obligation was to an insider;

373 (b) the debtor retained possession or control of the property transferred after the
374 transfer;

375 (c) the transfer or obligation was disclosed or concealed;

376 (d) before the transfer was made or obligation was incurred, the debtor had been sued
377 or threatened with suit;

378 (e) the transfer was of substantially all the debtor's assets;

379 (f) the debtor absconded;

380 (g) the debtor removed or concealed assets;

381 (h) the value of the consideration received by the debtor was reasonably equivalent to
382 the value of the asset transferred or the amount of the obligation incurred;

383 (i) the debtor was insolvent or became insolvent shortly after the transfer was made or
384 the obligation was incurred;

385 (j) the transfer occurred shortly before or shortly after a substantial debt was incurred;
386 and

387 (k) the debtor transferred the essential assets of the business to a lienor [~~who~~] that
388 transferred the assets to an insider of the debtor.

389 (3) A creditor making a claim for relief under Subsection (1) has the burden of proving
390 the elements of the claim for relief by a preponderance of the evidence.

391 Section 8. Section **25-6-203**, which is renumbered from Section 25-6-6 is renumbered
392 and amended to read:

393 ~~[25-6-6]~~. **25-6-203. Transfer or obligation voidable -- Present creditor --**
394 **Burden of proof.**

395 (1) A transfer made or obligation incurred by a debtor is [~~fraudulent~~] voidable as to a
396 creditor whose claim arose before the transfer was made or the obligation was incurred if:

397 (a) the debtor made the transfer or incurred the obligation without receiving a
398 reasonably equivalent value in exchange for the transfer or obligation; and

399 (b) the debtor was insolvent at the time or became insolvent as a result of the transfer

400 or obligation.

401 (2) A transfer made by a debtor is [~~fraudulent~~] voidable as to a creditor whose claim
402 arose before the transfer was made if the transfer was made to an insider for an antecedent debt,
403 the debtor was insolvent at the time, and the insider had reasonable cause to believe that the
404 debtor was insolvent.

405 (3) Subject to Subsection 25-6-103(2), a creditor making a claim for relief under
406 Subsection (1) or (2) has the burden of proving the elements of the claim for relief by a
407 preponderance of the evidence.

408 Section 9. Section 25-6-301 is enacted to read:

409 **Part 3. Transfers and Remedies**

410 **25-6-301. Title.**

411 This part is known as "Transfers and Remedies."

412 Section 10. Section 25-6-302, which is renumbered from Section 25-6-7 is renumbered
413 and amended to read:

414 [~~25-6-7~~]. **25-6-302. Transfer -- When made.**

415 In this chapter:

416 (1) [~~A~~] a transfer is made:

417 (a) with respect to an asset that is real property other than a fixture, but including the
418 interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so
419 far perfected that a good faith purchaser of the asset from the debtor against [~~whom~~] which
420 applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is
421 superior to the interest of the transferee; and

422 (b) with respect to an asset that is not real property or that is a fixture, when the
423 transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien
424 other than under this chapter that is superior to the interest of the transferee[-];

425 (2) [~~H~~] if applicable law permits the transfer to be perfected as provided in Subsection
426 (1) and the transfer is not so perfected before the commencement of an action for relief under
427 this chapter, the transfer is deemed made immediately before the commencement of the
428 action[-];

429 (3) [~~H~~] if applicable law does not permit the transfer to be perfected as provided in
430 Subsection (1), the transfer is made when it becomes effective between the debtor and the

431 transferee[-];

432 (4) [~~A~~] a transfer is not made until the debtor has acquired rights in the asset

433 transferred[-]; and

434 (5) [~~An~~] an obligation is incurred:

435 (a) if oral, when it becomes effective between the parties; or

436 (b) if evidenced by a [~~writing~~] record, when the [~~writing-executed~~] record signed by the
437 obligor is delivered to or for the benefit of the obligee.

438 Section 11. Section **25-6-303**, which is renumbered from Section 25-6-8 is renumbered
439 and amended to read:

440 [~~25-6-8~~]. **25-6-303. Remedies of creditors.**

441 (1) In an action for relief against a transfer or obligation under this chapter, a creditor,
442 subject to the limitations in Section [~~25-6-9~~] 25-6-304, may obtain:

443 (a) avoidance of the transfer or obligation to the extent necessary to satisfy the
444 creditor's claim;

445 (b) an attachment or other provisional remedy against the asset transferred or other
446 property of the transferee [~~in accordance with the procedure prescribed by the Utah Rules of~~
447 Civil Procedure] if available under applicable law;

448 (c) subject to applicable principles of equity and in accordance with applicable rules of
449 civil procedure:

450 (i) an injunction against further disposition by the debtor or a transferee, or both, of the
451 asset transferred or of other property;

452 (ii) appointment of a receiver to take charge of the asset transferred or of other property
453 of the transferee; or

454 (iii) any other relief the circumstances may require.

455 (2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if
456 the court orders, may levy execution on the asset transferred or its proceeds.

457 Section 12. Section **25-6-304**, which is renumbered from Section 25-6-9 is renumbered
458 and amended to read:

459 [~~25-6-9~~]. **25-6-304. Good faith transfer.**

460 (1) Except as otherwise provided in this section, a transfer or obligation is not voidable
461 under Subsection [~~25-6-5~~] 25-6-202(1)(a) against a person [~~who~~] that took in good faith and for

462 a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

463 (2) Except as otherwise provided in this section, to the extent a transfer is [~~voidable~~]
464 avoidable in an action by a creditor under Subsection [~~25-6-8~~] 25-6-303(1)(a), the following
465 rules apply:

466 (a) the creditor may recover judgment for the value of the asset transferred, as adjusted
467 under Subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is
468 less[:]; and

469 (b) the judgment may be entered against:

470 [~~(a)~~] (i) the first transferee of the asset or the person for whose benefit the transfer was
471 made; or

472 [~~(b) any subsequent transferee other than~~]

473 (ii) an immediate or mediate transferee of the first transferee, other than:

474 (A) a good faith transferee [~~who~~] that took for value; or [~~from any subsequent~~
475 ~~transferee.~~]

476 (B) an immediate or mediate good faith transferee of a person described in Subsection
477 (2)(a)(ii)(A); and

478 (c) recovery under Subsection 25-6-303(1)(a) or (2) of or from the asset transferred or
479 its proceeds, by levy or otherwise, is available only against a person described in Subsection
480 (2)(b)(i) or (ii).

481 (3) If the judgment under Subsection (2) is based upon the value of the asset
482 transferred, the judgment shall be for an amount equal to the value of the asset at the time of
483 the transfer, subject to an adjustment as equities may require.

484 (4) Except as otherwise provided in this section, notwithstanding the voidability of a
485 transfer or an obligation under this chapter, a [~~good-faith~~] good faith transferee or obligee is
486 entitled, to the extent of the value given the debtor for the transfer or obligation, to:

487 (a) a lien on or a right to retain [~~any~~] an interest in the asset transferred;

488 (b) enforcement of [~~any~~] an obligation incurred; or

489 (c) a reduction in the amount of the liability on the judgment.

490 (5) A transfer is not voidable under Subsection [~~25-6-5~~] 25-6-202(1)(b) or Section
491 [~~25-6-6~~] 25-6-203 if the transfer results from:

492 (a) termination of a lease upon default by the debtor when the termination is pursuant

493 to the lease and applicable law; or

494 (b) enforcement of a security interest in compliance with Title 70A, Chapter 9a,
495 Uniform Commercial Code - Secured Transactions, other than acceptance of collateral in full
496 or partial satisfaction of the obligation it secures.

497 (6) Except as otherwise provided in this section, a transfer is not voidable under
498 Subsection [~~25-6-6~~] 25-6-203(2):

499 (a) to the extent the insider gave new value to or for the benefit of the debtor after the
500 transfer was made [~~unless~~], except to the extent the new value was secured by a valid lien;

501 (b) if made in the ordinary course of business or financial affairs of the debtor and the
502 insider; or

503 (c) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer
504 secured present value given for that purpose as well as an antecedent debt of the debtor.

505 (7) [~~Notwithstanding the foregoing, a~~] A transfer is not voidable under Section
506 [~~25-6-5~~] 25-6-202 or Subsection [~~25-6-6~~] 25-6-203(1) if:

507 (a) the transfer was made by the debtor:

508 (i) in payment of or in exchange for goods, services, or other consideration obtained by
509 the debtor or a third party from a merchant in the ordinary course of the merchant's business; or

510 (ii) in payment of amounts loaned or advanced by a merchant or a credit or financing
511 company to pay for the goods, services, or other consideration obtained by the debtor or a third
512 party from a merchant in the ordinary course of the merchant's business;

513 (b) the goods, services, or other consideration obtained from the merchant or the
514 amounts loaned or advanced by the merchant or the credit or financing company in payment of
515 the goods, services, or other consideration obtained from the merchant in the ordinary course of
516 the merchant's business was of a reasonably equivalent value to the transfer, as provided in
517 Subsection (8); and

518 (c) the transferee received the transfer in good faith, in the ordinary course of the
519 transferee's business, and without actual knowledge that:

520 (i) the transfer was made by the debtor with actual intent to hinder, delay, or defraud
521 any creditor of the debtor; or

522 (ii) that the debtor was insolvent at the time the transfer was made.

523 (8) For purposes of Subsection (7):

524 (a) the term "merchant" means the same as that term is defined in Section 70A-2-104;

525 (b) where the value of the goods, services, or other consideration obtained from the
526 merchant, or where the value of the amounts loaned or advanced by a merchant or a credit or
527 financing company in payment of the goods, services, or other consideration obtained from the
528 merchant, was reasonably equivalent to the value of the transfer, the "reasonably equivalent
529 value" requirement in Subsection (7)(b) will be satisfied regardless of whether the debtor or a
530 third party received the reasonably equivalent value for the transfer; and

531 (c) a transferee's receipt of payment from a debtor is not, and may not be used as,
532 evidence that:

533 (i) the transferee did not act in good faith;

534 (ii) the goods, services, or other consideration were not provided by the merchant in the
535 ordinary course of the merchant's business;

536 (iii) the transferee had actual knowledge that the transfer was made by the debtor with
537 actual intent to hinder, delay, or defraud any creditor of the debtor; or

538 (iv) the debtor was insolvent at the time the transfer was made.

539 (9) The following rules determine the burden of proving matters referred to in this
540 section:

541 (a) a party that seeks to invoke Subsection (1), (4), (5), or (6) has the burden of proving
542 the applicability of that subsection;

543 (b) except as otherwise provided in Subsections (9)(c) and (d), the creditor has the
544 burden of proving each applicable element of Subsection (2) or (3);

545 (c) the transferee has the burden of proving the applicability to the transferee of
546 Subsection (2)(a)(ii)(A) or (B); and

547 (d) a party that seeks adjustment under Subsection (3) has the burden of proving the
548 adjustment.

549 (10) The standard of proof required to establish matters referred to in this section is a
550 preponderance of the evidence.

551 Section 13. Section **25-6-305**, which is renumbered from Section 25-6-10 is
552 renumbered and amended to read:

553 **[25-6-10]. 25-6-305. Claim for relief -- Time limits.**

554 A claim for relief [~~or cause of action~~] regarding a [~~fraudulent~~] transfer or obligation

555 under this chapter is extinguished unless action is brought:

556 (1) under Subsection [~~25-6-5~~] 25-6-202(1)(a), [~~within~~] no later than four years after the
557 transfer was made or the obligation was incurred or, if later, [~~within~~] no later than one year
558 after the transfer or obligation was or could reasonably have been discovered by the claimant;

559 (2) under Subsection [~~25-6-5~~] 25-6-202(1)(b) or [~~25-6-6~~] 25-6-203(1), [~~within~~] no later
560 than four years after the transfer was made or the obligation was incurred; or

561 (3) under Subsection [~~25-6-6~~] 25-6-203(2), [~~within~~] no later than one year after the
562 transfer was made [~~or the obligation was incurred~~].

563 Section 14. Section **25-6-401** is enacted to read:

564 **Part 4. Applicability and Construction**

565 **25-6-401. Title.**

566 This part is known as "Applicability and Construction."

567 Section 15. Section **25-6-402** is enacted to read:

568 **25-6-402. Governing law.**

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

570 (a) a debtor who is an individual is located at the individual's principal residence;

571 (b) a debtor that is an organization and has only one place of business is located at its
572 place of business; and

573 (c) a debtor that is an organization and has more than one place of business is located
574 at its chief executive office.

575 (2) A claim for relief in the nature of a claim for relief under this chapter is governed
576 by the local law of the jurisdiction in which the debtor is located when the transfer is made or
577 the obligation is incurred.

578 Section 16. Section **25-6-403** is enacted to read:

579 **25-6-403. Application to series organization.**

580 (1) As used in this section:

581 (a) "Protected series" means an arrangement, however denominated, created by a series
582 organization that, pursuant to the law under which the series organization is organized, has the
583 characteristics described in Subsection (1)(b).

584 (b) "Series organization" means an organization that, pursuant to the law under which
585 it is organized, has the following characteristics:

586 (i) the organic record of the organization provides for creation by the organization of
587 one or more protected series, however denominated, with respect to specified property of the
588 organization, and for records to be maintained for each protected series that identify the
589 property of or associated with the protected series;

590 (ii) debt incurred or existing with respect to the activities of, or property of or
591 associated with, a particular protected series is enforceable against the property of or associated
592 with the protected series only, and not against the property of or associated with the
593 organization or other protected series of the organization; and

594 (iii) debt incurred or existing with respect to the activities or property of the
595 organization is enforceable against the property of the organization only, and not against the
596 property of or associated with a protected series of the organization.

597 (2) A series organization and each protected series of the organization is a separate
598 person for purposes of this chapter, even if for other purposes a protected series is not a person
599 separate from the organization or other protected series of the organization.

600 Section 17. Section **25-6-404**, which is renumbered from Section 25-6-11 is
601 renumbered and amended to read:

602 **[25-6-11]. 25-6-404. Legal principles applicable to chapter.**

603 Unless displaced by this chapter, the principles of law and equity, including merchant
604 law and the law relating to principal and agent, equitable subordination, estoppel, laches, fraud,
605 misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating
606 cause, supplement this chapter's provisions.

607 Section 18. Section **25-6-405**, which is renumbered from Section 25-6-12 is
608 renumbered and amended to read:

609 **[25-6-12]. 25-6-405. Construction of chapter.**

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

612 Section 19. Section **25-6-406**, which is renumbered from Section 25-6-13 is
613 renumbered and amended to read:

614 **[25-6-13]. 25-6-406. Applicability of chapter.**

615 (1) This [act] chapter applies when any transfer occurs after the effective date of this
616 act.

- 617 (2) The amendments to this chapter that take effect on May 9, 2017:
618 (a) apply to a transfer made or obligation incurred on or after May 9, 2017;
619 (b) do not apply to a transfer made or obligation incurred before May 9, 2017; and
620 (c) do not apply to a right of action that has accrued before May 9, 2017.
621 (3) For purposes of Subsection (2), a transfer is made and an obligation is incurred at
622 the time provided in Section [25-6-302](#).

623 Section 20. Section **25-6-407** is enacted to read:

624 **25-6-407. Relation to Electronic Signatures in Global and National Commerce**

625 **Act.**

626 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
627 National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or supersede
628 Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the
629 notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

630 Section 21. Section **25-6-501** is enacted to read:

631 **Part 5. Asset Protection Trust**

632 **25-6-501. Title.**

633 This part is known as "Asset Protection Trust."

634 Section 22. Section **25-6-502**, which is renumbered from Section 25-6-14 is
635 renumbered and amended to read:

636 **[25-6-14]. 25-6-502. Asset protection trust.**

637 (1) As used in this section:

638 (a) "Creditor" means:

- 639 (i) a creditor or other claimant of the settlor existing when the trust is created; or
640 (ii) a person who subsequently becomes a creditor, including, whether or not reduced
641 to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
642 undisputed, legal, equitable, secured, or unsecured:

643 (A) one holding or seeking to enforce a judgment entered by a court or other body
644 having adjudicative authority; or

645 (B) one with a right to payment.

646 (b) "Property" means real property, personal property, and interests in real or personal
647 property.

648 (c) "Settlor" means a person who transfers property in trust.

649 (d) "Transfer" means any form of transfer of property, including gratuitous transfers,
650 whether by deed, conveyance, or assignment.

651 (e) "Trust" has the same meaning as in Section 75-1-201.

652 (2) "Paid and delivered" to the settlor, as beneficiary, does not include the settlor's use
653 or occupancy of real property or tangible personal property owned by the trust if the use or
654 occupancy is in accordance with the trustee's discretionary authority under the trust instrument.

655 (3) If the settlor of an irrevocable trust is also a beneficiary of the trust, and if the
656 requirements of Subsection (5) are satisfied, a creditor of the settlor may not:

657 (a) satisfy a claim or liability of the settlor in either law or equity out of the settlor's
658 transfer to the trust or the settlor's beneficial interest in the trust;

659 (b) force or require the trustee to make a distribution to the settlor, as beneficiary; or

660 (c) require the trustee to pay any distribution directly to the creditor, or otherwise
661 attach the distribution before it has been paid or delivered by the trustee to the settlor, as
662 beneficiary.

663 (4) Notwithstanding Subsection (3), nothing in this section prohibits a creditor from
664 satisfying a claim or liability from the distribution once it has been paid or delivered by the
665 trustee to the settlor, as beneficiary.

666 (5) In order for Subsection (3) to apply, the conditions in this Subsection (5) shall be
667 satisfied. Where this Subsection (5) requires that a provision be included in the trust
668 instrument, no particular language need be used in the trust instrument if the meaning of the
669 trust provision otherwise complies with this Subsection (5).

670 (a) The trust instrument shall provide that the trust is governed by Utah law and is
671 established pursuant to this section.

672 (b) The trust instrument shall require that at all times at least one trustee shall be a
673 Utah resident or Utah trust company, as the term "trust company" is defined in Section 7-5-1.

674 (c) The trust instrument shall provide that neither the interest of the settlor, as
675 beneficiary, nor the income or principal of the trust may be voluntarily or involuntarily
676 transferred by the settlor, as beneficiary. The provision shall be considered to be a restriction
677 on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable
678 nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code.

679 (d) The settlor may not have the ability under the trust instrument to revoke, amend, or
680 terminate all or any part of the trust, or to withdraw property from the trust, without the consent
681 of a person who has a substantial beneficial interest in the trust, which interest would be
682 adversely affected by the exercise of the power held by the settlor.

683 (e) The trust instrument may not provide for any mandatory distributions of either
684 income or principal to the settlor, as beneficiary, except as provided in Subsection (7)(f).

685 (f) The settlor may not benefit from, direct a distribution of, or use trust property
686 except as stated in the trust instrument. An agreement or understanding, express or implied,
687 between the settlor and the trustee that attempts to grant or permit the retention of greater rights
688 or authority than is stated in the trust instrument is void.

689 (g) The trust instrument shall require that, at least 30 days before making any
690 distribution to the settlor, as beneficiary, the trustee notify in writing every person who has a
691 child support judgment or order against the settlor. The trust instrument shall require that the
692 notice state the date the distribution will be made and the amount of the distribution.

693 (h) At the time that the settlor transfers any assets to the trust, the settlor may not be in
694 default of making a payment due under any child support judgment or order.

695 (i) A transfer of assets to the trust may not render the settlor insolvent.

696 (j) At the time the settlor transfers any assets to the trust, the settlor may not intend to
697 hinder, delay, or defraud a known creditor by transferring the assets to the trust. A settlor's
698 expressed intention to protect trust assets from the settlor's potential future creditors is not
699 evidence of an intent to hinder, delay, or defraud a known creditor.

700 (k) At the time that the settlor transfers any assets to the trust, the settlor may not be
701 contemplating filing for relief under the provisions of the Bankruptcy Code.

702 (l) Assets transferred to the trust may not be derived from unlawful activities.

703 (m) At the time the settlor transfers any assets to the trust, the settlor shall sign a sworn
704 affidavit stating that:

705 (i) the settlor has full right, title, and authority to transfer the assets to the trust;

706 (ii) the transfer of the assets to the trust will not render the settlor insolvent;

707 (iii) the settlor does not intend to hinder, delay, or defraud a known creditor by
708 transferring the assets to the trust;

709 (iv) there are no pending or threatened court actions against the settlor, except for those

710 court actions identified by the settlor on an attachment to the affidavit;

711 (v) the settlor is not involved in any administrative proceedings, except those
712 administrative proceedings identified on an attachment to the affidavit;

713 (vi) at the time of the transfer of the assets to the trust, the settlor is not in default of a
714 child support obligation;

715 (vii) the settlor does not contemplate filing for relief under the provisions of the
716 Bankruptcy Code; and

717 (viii) the assets being transferred to the trust were not derived from unlawful activities.

718 (6) Failure to satisfy the requirements of Subsection (5) shall result in the
719 consequences described in this Subsection (6).

720 (a) If any requirement of Subsections (5)(a) through (g) is not satisfied, none of the
721 property held in the trust will at any time have the benefit of the protections described in
722 Subsection (3).

723 (b) If the trustee does not send the notice required under Subsection (5)(g), the court
724 may authorize any person with a child support judgment or order against the settlor to whom
725 notice was not sent to attach the distribution or future distributions, but the person may not:

726 (i) satisfy a claim or liability in either law or equity out of the settlor's transfer to the
727 trust or the settlor's beneficial interest in the trust; or

728 (ii) force or require the trustee to make a distribution to the settlor, as beneficiary.

729 (c) If any requirement set forth in Subsections (5)(h) through (m) is not satisfied, the
730 property transferred to the trust that does not satisfy the requirement may not have the benefit
731 of the protections described in Subsection (3).

732 (7) The provisions of Subsection (3) may apply to a trust even if:

733 (a) the settlor serves as a cotrustee or as an advisor to the trustee, provided that the
734 settlor may not participate in the determination as to whether a discretionary distribution will
735 be made;

736 (b) the settlor has the authority under the terms of the trust instrument to appoint
737 nonsubordinate advisors or trust protectors who can remove and appoint trustees and who can
738 direct, consent to, or disapprove distributions;

739 (c) the settlor has the power under the terms of the trust instrument to serve as an
740 investment director or to appoint an investment director under Section [75-7-906](#);

741 (d) the trust instrument gives the settlor the power to veto a distribution from the trust;

742 (e) the trust instrument gives the settlor a testamentary nongeneral power of

743 appointment or similar power;

744 (f) the trust instrument gives the settlor the right to receive the following types of

745 distributions:

746 (i) income, principal, or both in the discretion of a person, including a trustee, other

747 than the settlor;

748 (ii) principal, subject to an ascertainable standard set forth in the trust;

749 (iii) income or principal from a charitable remainder annuity trust or charitable

750 remainder unitrust, as defined in 26 U.S.C. 664;

751 (iv) a percentage of the value of the trust each year as determined under the trust

752 instrument, but not exceeding the amount that may be defined as income under 26 U.S.C.

753 643(b);

754 (v) the transferor's potential or actual use of real property held under a qualified

755 personal residence trust, or potential or actual possession of a qualified annuity interest, within

756 the meaning of 26 U.S.C. 2702 and the accompanying regulations; and

757 (vi) income or principal from a grantor retained annuity trust or grantor retained

758 unitrust that is allowed under 26 U.S.C. 2702; or

759 (g) the trust instrument authorizes the settlor to use real or personal property owned by

760 the trust.

761 (8) If a trust instrument contains the provisions described in Subsections (5)(a) through

762 (g), the transfer restrictions prevent a creditor or other person from asserting any cause of

763 action or claim for relief against a trustee of the trust or against others involved in the

764 counseling, drafting, preparation, execution, or funding of the trust for conspiracy to commit

765 fraudulent conveyance, aiding and abetting a fraudulent conveyance, participation in the trust

766 transaction, or similar cause of action or claim for relief. For purposes of this subsection,

767 counseling, drafting, preparation, execution, or funding of the trust includes the preparation and

768 funding of a limited partnership, a limited liability company, or other entity if interests in the

769 entity are subsequently transferred to the trust. The creditor and other person prevented from

770 asserting a cause of action or claim for relief may assert a cause of action against, and are

771 limited to recourse against, only:

772 (a) the trust and the trust assets; and
773 (b) the settlor, to the extent otherwise allowed in this section.
774 (9) A cause of action or claim for relief regarding a fraudulent transfer of a settlor's
775 assets under Subsection (5)(j) is extinguished unless the action under Subsection (5)(j) is
776 brought by a creditor of the settlor who was a creditor of the settlor before the assets referred to
777 in Subsection (5)(j) were transferred to the trust and the action under Subsection (5)(j) is
778 brought within the earlier of:
779 (a) the later of:
780 (i) two years after the transfer is made; or
781 (ii) one year after the transfer is or reasonably could have been discovered by the
782 creditor if the creditor:
783 (A) can demonstrate, by a preponderance of the evidence, that the creditor asserted a
784 specific claim against the settlor before the transfer; or
785 (B) files another action, other than an action under Subsection (5)(j), against the settlor
786 that asserts a claim based on an act or omission of the settlor that occurred before the transfer,
787 and the action described in this Subsection (9) is filed within two years after the transfer.
788 (b) (i) with respect to a creditor known to the settlor, 120 days after the date on which
789 notice of the transfer is mailed to the creditor, which notice shall state the name and address of
790 the settlor, the name and address of the trustee, and also describe the assets that were
791 transferred, but does not need to state the value of those assets if the assets are other than cash,
792 and which shall inform the creditor that he is required to present his claim to both the settlor
793 and the trustee within 120 days from the mailing of the notice or be forever barred; or
794 (ii) with respect to a creditor not known to the settlor, 120 days after the date on which
795 notice of the transfer is first published in a newspaper of general circulation in the county in
796 which the settlor then resides, which notice shall state the name and address of the settlor, the
797 name and address of the trustee, and also describe the assets that were transferred, but does not
798 need to state the value of those assets if the assets are other than cash.
799 (10) The notice required in Subsection (9)(b) shall be published in accordance with the
800 provisions of Section 45-1-101 for three consecutive weeks and inform creditors that they are
801 required to present claims within 120 days from the first publication of the notice or be forever
802 barred.

803 (11) (a) A trust is subject to this section if it is governed by Utah law, as provided in
804 Section 75-7-107, and if it otherwise meets the requirements of this section.

805 (b) A court of this state has exclusive jurisdiction over an action or claim for relief that
806 is based on a transfer of property to a trust that is the subject of this section.

807 Section 23. Section 31A-27a-507 is amended to read:

808 **31A-27a-507. Receiver as lien creditor.**

809 (1) The receiver may avoid a transfer of or lien on the property of, or obligation
810 incurred by, an insurer that the insurer or a policyholder, creditor, member, or stockholder of
811 the insurer:

812 (a) may have avoided without regard to any knowledge of:

813 (i) the receiver;

814 (ii) the commissioner;

815 (iii) the insurer; or

816 (iv) a policyholder, creditor, member, or stockholder of the insurer; and

817 (b) whether or not a policyholder, creditor, member, or stockholder described in this
818 Subsection (1) exists.

819 (2) The receiver is considered a creditor without knowledge for purposes of pursuing
820 claims under:

821 (a) Title 25, Chapter 6, Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act; or

822 (b) similar provisions of state or federal law.

823 Section 24. Section 70A-2-402 is amended to read:

824 **70A-2-402. Rights of seller's creditors against sold goods.**

825 (1) Except as provided in Subsections (2) and (3), rights of unsecured creditors of the
826 seller with respect to goods which have been identified to a contract for sale are subject to the
827 buyer's rights to recover the goods under this chapter (Sections 70A-2-502 and 70A-2-716).

828 (2) A creditor of the seller may treat a sale or an identification of goods to a contract
829 for sale as void if as against him a retention of possession by the seller is fraudulent under any
830 rule of law of the state where the goods are situated, except that retention of possession in good
831 faith and current course of trade by a merchant-seller for a commercially reasonable time after
832 a sale or identification is not fraudulent.

833 (3) Nothing in this chapter shall be deemed to impair the rights of creditors of the

834 seller:

835 (a) under the provisions of the chapter on Secured Transactions (Chapter 9a, Uniform
836 Commercial Code - Secured Transactions); or

837 (b) where identification to the contract or delivery is made not in current course of
838 trade but in satisfaction of or as security for a preexisting claim for money, security or the like
839 and is made under circumstances which under any rule of law of the state where the goods are
840 situated would apart from this chapter constitute the transaction a [~~fraudulent transfer~~] voidable
841 transaction or voidable preference.

842 Section 25. Section **70A-2a-308** is amended to read:

843 **70A-2a-308. Special rights of creditors.**

844 (1) A creditor of a lessor in possession of goods subject to a lease contract may treat
845 the lease contract as void if as against the creditor retention of possession by the lessor is
846 fraudulent or voids the lease contract under any statute or rule of law, but retention of
847 possession in good faith and current course of trade by the lessor for a commercially reasonable
848 time after the lease contract becomes enforceable is not fraudulent and does not void the lease
849 contract.

850 (2) Nothing in this chapter impairs the rights of creditors of a lessor if the lease
851 contract is made under circumstances which under any statute or rule of law apart from the
852 chapter would constitute the transaction a [~~fraudulent transfer~~] voidable transaction or voidable
853 preference.

854 (3) A creditor of a seller may treat a sale or an identification of goods to a contract for
855 sale as void if as against the creditor retention of possession by the seller is fraudulent under
856 any statute or rule of law, but retention of possession of the goods pursuant to a lease contract
857 entered into by the seller as lessee and the buyer as lessor in connection with the sale or
858 identification of the goods is not fraudulent if the buyer bought for value and in good faith.

859 Section 26. Section **75-2-205** is amended to read:

860 **75-2-205. Decedent's nonprobate transfers to others.**

861 Unless excluded under Section [75-2-208](#), the value of the augmented estate includes the
862 value of the decedent's nonprobate transfers to others, not included under Section [75-2-204](#), of
863 any of the types described in this section, in the amount provided respectively for each type of
864 transfer:

865 (1) Property owned or owned in substance by the decedent immediately before death
866 that passed outside probate at the decedent's death. Property included under this category
867 consists of the property described in this Subsection (1).

868 (a) (i) Property over which the decedent alone, immediately before death, held a
869 presently exercisable general power of appointment.

870 (ii) The amount included is the value of the property subject to the power, to the extent
871 the property passed at the decedent's death, by exercise, release, lapse, in default, or otherwise,
872 to or for the benefit of any person other than the decedent's estate or surviving spouse.

873 (b) (i) The decedent's fractional interest in property held by the decedent in joint
874 tenancy with the right of survivorship.

875 (ii) The amount included is the value of the decedent's fractional interest, to the extent
876 the fractional interest passed by right of survivorship at the decedent's death to a surviving joint
877 tenant other than the decedent's surviving spouse.

878 (c) (i) The decedent's ownership interest in property or accounts held in POD, TOD, or
879 co-ownership registration with the right of survivorship.

880 (ii) The amount included is the value of the decedent's ownership interest, to the extent
881 the decedent's ownership interest passed at the decedent's death to or for the benefit of any
882 person other than the decedent's estate or surviving spouse.

883 (d) (i) Proceeds of insurance, including accidental death benefits, on the life of the
884 decedent, if the decedent owned the insurance policy immediately before death or if and to the
885 extent the decedent alone and immediately before death held a presently exercisable general
886 power of appointment over the policy or its proceeds.

887 (ii) The amount included:

888 (A) is the value of the proceeds, to the extent they were payable at the decedent's death
889 to or for the benefit of any person other than the decedent's estate or surviving spouse; and

890 (B) may not exceed the greater of the cash surrender value of the policy immediately
891 prior to the death of the decedent or the amount of premiums paid on the policy during the
892 decedent's life.

893 (2) Property transferred in any of the forms described in this Subsection (2) by the
894 decedent during marriage:

895 (a) (i) Any irrevocable transfer in which the decedent retained the right to the

896 possession or enjoyment of, or to the income from, the property if and to the extent the
897 decedent's right terminated at or continued beyond the decedent's death.

898 (ii) An irrevocable transfer in trust which includes a restriction on transfer of the
899 decedent's interest as settlor and beneficiary as described in Section [~~25-6-14~~] [25-6-502](#).

900 (iii) The amount included is the value of the fraction of the property to which the right
901 or restriction related, to the extent the fraction of the property passed outside probate to or for
902 the benefit of any person other than the decedent's estate or surviving spouse.

903 (b) (i) Any transfer in which the decedent created a power over income or property,
904 exercisable by the decedent alone or in conjunction with any other person, or exercisable by a
905 nonadverse party, to or for the benefit of the decedent, creditors of the decedent, the decedent's
906 estate, or creditors of the decedent's estate.

907 (ii) The amount included with respect to a power over property is the value of the
908 property subject to the power, and the amount included with respect to a power over income is
909 the value of the property that produces or produced the income, to the extent the power in
910 either case was exercisable at the decedent's death to or for the benefit of any person other than
911 the decedent's surviving spouse or to the extent the property passed at the decedent's death, by
912 exercise, release, lapse, in default, or otherwise, to or for the benefit of any person other than
913 the decedent's estate or surviving spouse.

914 (iii) If the power is a power over both income and property and Subsection (2)(b)(ii)
915 produces different amounts, the amount included is the greater amount.

916 (3) Property that passed during marriage and during the two-year period next preceding
917 the decedent's death as a result of a transfer by the decedent if the transfer was of any of the
918 types described in this Subsection (3).

919 (a) (i) Any property that passed as a result of the termination of a right or interest in, or
920 power over, property that would have been included in the augmented estate under Subsection
921 (1)(a), (b), or (c), or under Subsection (2), if the right, interest, or power had not terminated
922 until the decedent's death.

923 (ii) The amount included is the value of the property that would have been included
924 under Subsection (1)(a), (b), (c), or Subsection (2) if the property were valued at the time the
925 right, interest, or power terminated, and is included only to the extent the property passed upon
926 termination to or for the benefit of any person other than the decedent or the decedent's estate,

927 spouse, or surviving spouse.

928 (iii) (A) As used in this Subsection (3)(a), "termination," with respect to a right or
929 interest in property, occurs when the right or interest terminated by the terms of the governing
930 instrument or the decedent transferred or relinquished the right or interest, and, with respect to
931 a power over property, occurs when the power terminated by exercise, release, lapse, default, or
932 otherwise.

933 (B) With respect to a power described in Subsection (1)(a), "termination" occurs when
934 the power terminated by exercise or release, but not otherwise.

935 (b) (i) Any transfer of or relating to an insurance policy on the life of the decedent if
936 the proceeds would have been included in the augmented estate under Subsection (1)(d) had
937 the transfer not occurred.

938 (ii) The amount included:

939 (A) is the value of the insurance proceeds to the extent the proceeds were payable at
940 the decedent's death to or for the benefit of any person other than the decedent's estate or
941 surviving spouse; and

942 (B) may not exceed the greater of the cash surrender value of the policy immediately
943 prior to the death of the decedent or the amount of premiums paid on the policy during the
944 decedent's life.

945 (c) (i) Any transfer of property, to the extent not otherwise included in the augmented
946 estate, made to or for the benefit of a person other than the decedent's surviving spouse.

947 (ii) The amount included is the value of the transferred property to the extent the
948 aggregate transfers to any one donee in either of the two years exceeded \$10,000.

949 Section 27. Section **75-7-105** is amended to read:

950 **75-7-105. Default and mandatory rules.**

951 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
952 duties and powers of a trustee, relations among trustees, and the rights and interests of a
953 beneficiary.

954 (2) Except as specifically provided in this chapter, the terms of a trust prevail over any
955 provision of this chapter except:

956 (a) the requirements for creating a trust;

957 (b) the duty of a trustee to act in good faith and in accordance with the purposes of the

958 trust;

959 (c) the requirement that a trust and its terms be for the benefit of its beneficiaries;

960 (d) the power of the court to modify or terminate a trust under Sections 75-7-410
961 through 75-7-416;

962 (e) the effect of a spendthrift provision, Section ~~[25-6-14]~~ 25-6-502, and the rights of
963 certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims -
964 Spendthrift and Discretionary Trusts;

965 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify
966 or terminate a bond;

967 (g) the effect of an exculpatory term under Section 75-7-1008;

968 (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a
969 trustee or beneficiary;

970 (i) periods of limitation for commencing a judicial proceeding; and

971 (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding
972 as provided in Sections 75-7-203 and 75-7-205.

973 Section 28. Section 75-7-107 is amended to read:

974 **75-7-107. Governing law.**

975 (1) For purposes of this section:

976 (a) "Foreign trust" means a trust that is created in another state or country and valid in
977 the state or country in which the trust is created.

978 (b) "State law provision" means a provision that the laws of a named state govern the
979 validity, construction, and administration of a trust.

980 (2) If a trust has a state law provision specifying this state, the validity, construction,
981 and administration of the trust are to be governed by the laws of this state if any administration
982 of the trust is done in this state.

983 (3) For all trusts created on or after December 31, 2003, if a trust does not have a state
984 law provision, the validity, construction, and administration of the trust are to be governed by
985 the laws of this state if the trust is administered in this state.

986 (4) A trust shall be considered to be administered in this state if:

987 (a) the trust states that this state is the place of administration, and any administration
988 of the trust is done in this state; or

989 (b) the place of business where the fiduciary transacts a major portion of its
990 administration of the trust is in this state.

991 (5) If a foreign trust is administered in this state as provided in this section, the
992 following provisions are effective and enforceable under the laws of this state:

993 (a) a provision in the trust that restricts the transfer of trust assets in a manner similar
994 to Section [~~25-6-14~~] [25-6-502](#);

995 (b) a provision that allows the trust to be perpetual; or

996 (c) a provision that is not expressly prohibited by the law of this state.

997 (6) A foreign trust that moves its administration to this state is valid whether or not the
998 trust complied with the laws of this state at the time of the trust's creation or after the trust's
999 creation.

1000 (7) Unless otherwise designated in the trust instrument, a trust is administered in this
1001 state if it meets the requirements of Subsection (4).

1002 Section 29. Section **75-7-301** is amended to read:

1003 **75-7-301. Basic effect.**

1004 (1) Notice to a person who may represent and bind another person under this part has
1005 the same effect as if notice were given directly to the other person.

1006 (2) The consent of a person who may represent and bind another person under this part
1007 is binding on the person represented unless the person represented objects to the representation
1008 before the consent would otherwise have become effective.

1009 (3) Except as otherwise provided in Sections [75-7-411](#) and [~~25-6-14~~] [25-6-502](#), a
1010 person who under this part may represent a settlor who lacks capacity may receive notice and
1011 give a binding consent on the settlor's behalf.

1012 Section 30. Section **75-7-501** is amended to read:

1013 **75-7-501. Rights of beneficiary's creditor or assignee.**

1014 To the extent a beneficiary's interest is not protected by a spendthrift provision or
1015 Section [~~25-6-14~~] [25-6-502](#), the court may authorize a creditor or assignee of the beneficiary to
1016 reach the beneficiary's interest by attachment of present or future distributions to or for the
1017 benefit of the beneficiary or other means. The court may limit the award to relief as is
1018 appropriate under the circumstances.

1019 Section 31. Section **75-7-505** is amended to read:

1020 **75-7-505. Creditor's claim against settlor.**

1021 (1) Whether or not the terms of a trust contain a spendthrift provision, the following
1022 rules apply:

1023 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the
1024 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or
1025 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of
1026 the trust attributable to that settlor's contribution.

1027 (b) With respect to an irrevocable trust other than an irrevocable trust that meets the
1028 requirements of Section ~~[25-6-14]~~ 25-6-502, a creditor or assignee of the settlor may reach the
1029 maximum amount that can be distributed to or for the settlor's benefit. If the trust has more
1030 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not
1031 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

1032 (c) After the death of a settlor, and subject to the settlor's right to direct the source from
1033 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
1034 not property received by the trust as a result of the death of the settlor which is otherwise
1035 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
1036 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
1037 of remains, and statutory allowances to a surviving spouse and children to the extent the
1038 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1039 (2) For purposes of this section:

1040 (a) during the period the power may be exercised, the holder of a power of withdrawal
1041 is treated in the same manner as the settlor of a revocable trust to the extent of the property
1042 subject to the power; and

1043 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
1044 the trust only to the extent the value of the property affected by the lapse, release, or waiver
1045 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section
1046 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

1047 Section 32. Section **75-7-816** is amended to read:

1048 **75-7-816. Recitals when title to real property is in trust -- Failure.**

1049 (1) When title to real property is granted to a person as trustee, the terms of the trust
1050 may be given either:

- 1051 (a) in the deed of transfer; or
1052 (b) in an instrument signed by the grantor and recorded in the same office as the grant
1053 to the trustee.
- 1054 (2) If the terms of the trust are not made public as required in Subsection (1), a
1055 conveyance from the trustee is absolute in favor of purchasers for value who take the property
1056 without notice of the terms of the trust.
- 1057 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
1058 under Subsection (1)(b) shall include:
- 1059 (a) the name of the trustee;
1060 (b) the address of the trustee; and
1061 (c) the name and date of the trust.
- 1062 (4) Any real property titled in a trust which has a restriction on transfer described in
1063 Section ~~[25-6-14]~~ [25-6-502](#) shall include in the title the words "asset protection trust."
1064 Section 33. Section **78B-2-302** is amended to read:
- 1065 **78B-2-302. Within one year.**
1066 An action may be brought within one year:
- 1067 (1) for liability created by the statutes of a foreign state;
1068 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,
1069 or to an individual and the state, except when the statute imposing it prescribes a different
1070 limitation;
- 1071 (3) except as provided in Section [78B-2-307.5](#), upon a statute, or upon an undertaking
1072 in a criminal action, for a forfeiture or penalty to the state;
- 1073 (4) for libel, slander, false imprisonment, or seduction;
1074 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned
1075 upon either civil or criminal process;
- 1076 (6) against a municipal corporation for damages or injuries to property caused by a
1077 mob or riot;
- 1078 (7) except as otherwise expressly provided by statute, against a county legislative body
1079 or a county executive to challenge a decision of the county legislative body or county
1080 executive, respectively; ~~[or]~~
- 1081 (8) on a claim for relief or a cause of action under Title 63L, Chapter 5, Utah Religious

1082 Land Use Act[;]; or
1083 (9) for a claim for relief or a cause of action under Subsection [25-6-203](#)(2).
1084 Section 34. Section **78B-2-307** is amended to read:
1085 **78B-2-307. Within four years.**
1086 An action may be brought within four years:
1087 (1) after the last charge is made or the last payment is received:
1088 (a) upon a contract, obligation, or liability not founded upon an instrument in writing;
1089 (b) on an open store account for any goods, wares, or merchandise; or
1090 (c) on an open account for work, labor or services rendered, or materials furnished;
1091 (2) for a claim for relief or a cause of action under the following sections of Title 25,
1092 Chapter 6, Uniform [~~Fraudulent Transfer~~] Voidable Transactions Act:
1093 (a) Subsection [~~25-6-5~~] [25-6-202](#)(1)(a), [~~which~~] except in specific situations [~~limits~~]
1094 where the time for action is limited to one year[;] under Section [~~25-6-10~~] [25-6-305](#);
1095 (b) Subsection [~~25-6-5~~] [25-6-202](#)(1)(b); or
1096 (c) Subsection [~~25-6-6~~] [25-6-203](#)(1); and
1097 (3) for relief not otherwise provided for by law.

Legislative Review Note
Office of Legislative Research and General Counsel