

378A.040 Transfer or obligation voidable as to present or future creditor.

- (1) 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:
 - (a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 1. 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; or
 2. Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
- (2) In determining actual intent under subsection (1)(a) of this section, consideration may be given, among other factors, to whether:
 - (a) The transfer or obligation was to an insider;
 - (b) The debtor retained possession or control of the property transferred after the transfer;
 - (c) The transfer or obligation was disclosed or concealed;
 - (d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
 - (e) The transfer was of substantially all the debtor's assets;
 - (f) The debtor absconded;
 - (g) The debtor removed or concealed assets;
 - (h) 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;
 - (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
 - (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
 - (k) The debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor.
- (3) A creditor making a claim for relief under subsection (1) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Effective: January 1, 2016

History: Created 2015 Ky. Acts ch. 37, sec. 4, effective January 1, 2016.