

# WEST VIRGINIA CODE: §40-1A-4

## **§40-1A-4. Transfers fraudulent as to present and future creditors.**

(a) A transfer made or obligation incurred by a debtor is fraudulent 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:

- (1) With actual intent to hinder, delay or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:
  - (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; or
  - (ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.
- (b) In determining actual intent under subdivision (1), subsection (a) of this section, consideration may be given, among other factors, to whether:
  - (1) The transfer or obligation was to an insider;
  - (2) The debtor retained possession or control of the property transferred after the transfer;
  - (3) The transfer or obligation was disclosed or concealed;
  - (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
  - (5) The transfer was of substantially all the debtor's assets;
  - (6) The debtor absconded;
  - (7) The debtor removed or concealed assets;
  - (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;
  - (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
  - (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;

and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.