

2792B UNIFORM VOIDABLE TRANSACTIONS: TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT OR FUTURE CREDITORS – WIS. STAT. § 242.04(1)(b)

The plaintiff claims that (debtor) (made a transfer) (incurred an obligation) to (defendant) and, as a result, was unable to pay the plaintiff money that was owed. [This is called “constructive fraud.”]¹ To establish this claim against (defendant), the plaintiff must prove the following by a preponderance of the evidence:

1. That the plaintiff has a right to payment from (debtor) for (insert amount of claim);
2. That (debtor) (made a transfer) (incurred an obligation)² to (defendant);

[Give Wis JI-Civil 2794A: Transfer – Definition.]

3. That (debtor) did not receive a reasonably equivalent value in exchange for the (transfer) (incurred obligation);

[Give Wis JI-Civil 2796: When Value Is Given]

4. [That (debtor) was in business or about to start a business or enter a transaction when (his) (her) (its) remaining assets were unreasonably small in relation to the business or transaction.]

[That (debtor) intended to incur debts beyond (his) (her) (its) ability to pay as they became due.]

[That (debtor) believed or reasonably should have believed that (he) (she) (it) would incur debts beyond (his) (her) (its) ability to pay as they became due.]

[It does not matter whether the plaintiff's right to payment arose before or after (debtor) (made a transfer) (incurred an obligation).]

The plaintiff bears the burden of proving the elements of the claim by a preponderance of the evidence. This means the plaintiff must prove it is more likely than not that (debtor) (made a transfer) (incurred an obligation) that is voidable under the law.

NOTES

1. Include the bracketed language if the plaintiff asserts claims for both actual and constructive fraud.
2. Wis. Stat. § 242.06(5). An obligation is incurred:
 - (a) If oral, when it becomes effective between the parties.
 - (b) If evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

COMMENT

This instruction and comment were approved in October 2025.

The Uniform Voidable Transactions Law permits a creditor to challenge certain transfers of assets by a debtor that are intended to deprive the creditor of assets that would otherwise be available if the debtor is or were to become insolvent. The UVTL was originally adopted in Wisconsin in 1988 under the title Uniform Fraudulent Transfer Act. The UFTA was amended by 2023 Wisconsin Act 246 [effective date: March 29, 2024].

Federal law does not preclude a labor union from bringing a state action for an alleged fraudulent conveyance by an employer when the claim does not require substantial interpretation of a collective bargaining agreement. International Association of Machinists v. United States Can Co., 150 Wis. 2d 479, 441 N.W.2d 710 (1989)

The Wisconsin Uniform Voidable Transactions Law exists independently from the common law history of the law of fraudulent conveyances and fulfills a purpose quite separate from that of the fraudulent transaction exception to the rule of successor non-liability. Whereas the Act is designed to assist creditors in collecting on claims that may be frustrated by recent asset transfers, the fraudulent transaction exception is a doctrine that prevents successor companies from avoiding obligations incurred by their predecessors. This chapter has not supplanted the common law fraudulent transaction exception to the rule of successor

non-liability. Springer v. Nohl Electric Products Corporation, 2018 WI 48, 381 Wis. 2d 438, 912 N.W.2d 1.

For cases involving an incurred obligation, users may want to include a brief description of the obligation in this instruction, such as “a lien on the property.”

Harm and causation. Harm and causation are not required under Wis. Stat. ch. 242. The statutory framework centers on equitable relief: once a transfer is deemed voidable, the court may set it aside or grant related remedies “to the extent necessary to satisfy the creditor’s claim,” Wis. Stat. § 242.07(1). Thus, a creditor is not required to prove additional monetary loss or establish a causal nexus beyond the transfer itself. Wisconsin case law further confirms that rescission under § 242.07 constitutes equitable, rather than compensatory, relief. As a result, compensatory damages concepts—such as proof that the plaintiff suffered harm or that the transfer caused harm—are unnecessary. Although most tort instructions incorporate separate elements for harm and substantial causation, these familiar tort-based requirements are not imposed by Wis. Stat. §§ 242.04 or 242.07.