

2793A UNIFORM VOIDABLE TRANSACTIONS: TRANSFER OR OBLIGATION VOIDABLE AS TO PRESENT CREDITOR – Wis. Stat. § 242.05(1)

The plaintiff claims that (debtor) (made a transfer) (incurred an obligation) to (defendant) and 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 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) (obligation);

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

4. That plaintiff’s right to payment from (debtor) arose before (debtor) (made a transfer) (incurred an obligation);
5. That (debtor) was insolvent at that time or became insolvent as a result of the (transfer) (obligation);

[Give Wis JI-Civil 2794C: Insolvency: Definition]

[Give Wis JI-Civil 2795: Presumption of Insolvency]

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.

Wis. Stat. § 242.05 provides two distinct claims. This instruction applies to claims brought under Wis. Stat. § 242.05(1). For claims brought under Wis. Stat. § 242.05(2), see Wis JI-Civil 2793B.

This instruction may be used along with either Wis JI-Civil 2792A or Wis JI-Civil 2792B Uniform Voidable Transactions: Transfer or Obligation Voidable as to Present or Future Creditors, if it is alleged that the plaintiff became a creditor before the transfer was made or the obligation was incurred.

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].

Unlike other provisions of the Uniform Voidable Transactions Law governing transfers made with fraudulent intent, this section deems certain transactions constructively fraudulent based on the circumstances of the transfer. Proving fraudulent intent is not necessary under this section. Beck v. BidRX, LLC, 2018 WI App 61, 384 Wis. 2d 207, 918 N.W.2d 96.

Sub. (2) addresses “preferential transfers,” a novel category of fraudulent transaction based on bankruptcy principles that attacks a transfer by an insolvent debtor to pay an antecedent debt to a preferred insider. The provision is aimed at diminishing the sometimes unfair advantages insiders possess when they are familiar with the debtor’s financial status. A person attacking a transfer under sub. (2) must show that the debtor is improperly preferring insider creditors over others. Beck v. BidRX, LLC, 2018 WI App 61, 384 Wis. 2d 207, 918 N.W.2d 96.

The evidence in this case was insufficient to prove a fraudulent transfer under sub. (2) because no

evidence was introduced showing that the allegedly fraudulent transfers were made to satisfy an antecedent debt. The fact of a transfer to an insider is not enough; it is the preferential payment of prior debts to insiders to which sub. (2) is addressed. Beck v. BidRX, LLC, 2018 WI App 61, 384 Wis. 2d 207, 918 N.W.2d 96.

Intent to defraud need not be proved under this section. DeWitt, Porter v. Kovalic, 991 F.2d 1243 (7th Cir. 1993).

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 avoidance and related remedies under § 242.07 are equitable rather than compensatory. 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. §§ 242.05(1), 242.04, or 242.07.