



WHY STATES SHOULD ADOPT THE UNIFORM ASSET-PRESERVATION ORDERS ACT

Asset-preservation orders are *in personam* orders issued to preserve the assets of a defendant to prevent that defendant from dissipating its assets to defeat satisfaction of an existing or future judgment. An asset-preservation order is different from other types of pre-judgment orders such as a writ of attachment or a writ of garnishment (*in rem* orders) because an asset-preservation order attaches to the defendant and not the property. If the defendant fails to comply with the order, the remedy is that the defendant may be held in contempt of court. The Uniform Asset-Preservation Order Act (UAPOA), for the first time in this area of law, provides state legislatures with a uniform process for the issuance of asset-preservation orders. States should adopt the UAPOA for the following reasons:

- *The UAPOA provides a uniform process to issue asset-preservation orders.* The Act provides a uniform rigorous process for the issuance of the orders, including a court finding of substantial likelihood of success on the merits of the underlying case.
- *The UAPOA provides procedural protections.* The UAPOA provides significant procedural protections for the parties against whom such an order is issued. The Act sets out, with specificity, the obligations of and protections for nonparties, who may be affected by the order. Specifically, the Act does not apply in actions against an individual for consumer debt or in family law or domestic relations cases.
- *The UAPOA applies to third party holders of assets.* Under the UAPOA, an asset-preservation order may be enforced against a third party holder of the defendant's assets.
- *The UAPOA creates uniformity in recognition and enforcement.* The UAPOA remedies lack of uniformity in the recognition and enforcement of asset-preservation orders issued by courts of other states and courts outside the United States. Presently, there are differing approaches to the recognition of these types of asset-preservation orders. Some courts recognize asset-preservation orders issued by other courts under the doctrine of comity. Some courts refuse to recognize asset-preservation orders issued by other courts because they are not final orders. This Act eliminates that uncertainty by providing a mechanism for recognition and enforcement. The process for recognition and enforcement draws heavily from the widely adopted Uniform Foreign-Country Money Judgments Recognition Act.
- *The Act allows reciprocity.* The Act also, by codifying the rules on recognition and enforcement of asset-preservation orders, satisfies reciprocity concerns of foreign courts and makes it more likely that asset-preservation orders entered by a court in a state in our country would be recognized in other countries.
- *The Act provides for enforcement of asset-preservation orders.* An asset-preservation order issued or recognized by a court in a state which has adopted this Act is entitled to full faith and credit in the same manner as a judgment.