



WHY YOUR STATE SHOULD ADOPT THE MODEL ASSET-PRESERVATION ORDERS ACT

The Model Asset-Preservation Orders Act (MAPOA) provides consistency and clarity to states regarding how to issue asset-preservation orders. Asset-preservation orders are issued by a court to prevent the dissipation of a defendant's assets to defeat satisfaction of an existing or future judgment. Asset-preservation orders differ from *in rem* pre-judgment orders, such as a writ of attachment or a writ of garnishment, because an asset-preservation order is an *in personam* order that attaches to the defendant and not the property. If the defendant fails to comply with the order, the defendant may be held in contempt of court. Some highlights of the Act include:

- ***MAPOA provides a uniform process to issue asset-preservation orders.*** The Act provides a rigorous process for the issuance of orders, including a court finding of substantial likelihood of success on the merits of the underlying case.
- ***MAPOA establishes procedural protections.*** MAPOA 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.
- ***MAPOA applies to third-party asset holders.*** Under the MAPOA, an asset-preservation order may be enforced against a third-party holder of the defendant's assets.
- ***MAPOA creates uniformity in recognition and enforcement.*** The MAPOA 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 the 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.

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