

DRAFT
FOR DISCUSSION ONLY

ASSET FREEZING ORDERS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

November 19 – 20, 2010 Committee Meeting Draft

Without Prefatory Note or Comments

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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November 4, 2010

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(1) “Asset” means property of a party but the term does not include:

- subject to process by a creditor holding a claim against only one tenant.

(3) “Party” means any entity who brings a suit (action) or against whom a suit (action) is brought to Freeze Assets, whether or not service has been made or notice has been given.

(1) There is a substantial likelihood that the party seeking the asset freezing order will prevail on the merits of the underlying claim.

(3) Any damages the party against whom the order is sought may suffer through having to comply with the order is clearly outweighed by the risk of injustice to the moving party of the order is not issued.

(4) The order if issued would not be adverse to the Public Policy.

1 **SECTION 3. ASSET FREEZING ORDER ISSUED WITHOUT NOTICE.**

2 (1) An order freezing the assets of a party may be issued without notice but only if the
3 specific facts in an affidavit or a verified complaint offered in support of the motion to freeze
4 assets clearly show that the moving party is entitled to the order under the provisions of Section
5 2(1)-(4).

6 (2) Counsel for the moving party, must disclose all material facts in the affidavit or
7 verified complaint presented in support of a motion to have an asset freezing order issued
8 without notice, including any known facts favorable to the non-moving party.

9 (3) If the asset freezing order is issued without notice, the order will expire at the date set
10 by the court, not to exceed 14 days, unless before that time the court, for good cause, extends it
11 for a like period or the non-moving party consents to a longer extension. The reason for the
12 extension must be entered in the order.

13 (4) If an asset freezing order is issued without notice, the party against whom the order is
14 issued may appear and move to dissolve or modify the order with two days notice on the party
15 who obtained the order without notice. The court shall then hear and decide the motion as
16 promptly as justice requires.

17 (5) If the court issues an asset freezing order, the court shall require that the order be
18 served on non-parties who hold assets of the party against whom the order is issued. The party
19 who has obtained the order shall provide the court with a list of all known the non-parties on
20 whom the order is to be served.

21 **SECTION 4. MOTION FOR AN ASSET FREEZING ORDER TO APPLY TO**
22 **ASSETS IN SISTER STATES.**

23 (1) A party may move for an asset freezing order to apply to assets located in Sister

1 States.

2 (2) A party who obtains an order freezing assets in a sister state shall not, without the
3 permission of the court issuing the order, begin proceedings in any other jurisdiction, involving
4 the party against whom the order is issued except as provided in Section 6.

5 **SECTION 5. MOTION FOR AN ASSET FREEZING ORDER TO APPLY TO**
6 **ASSETS OUTSIDE THE UNITED STATES.**

7 (1) A party may move for an asset freezing order to apply to assets outside of the United
8 States.

9 (2) A party who obtains an order freezing assets outside of the United States shall not,
10 without the permission of the court issuing the order, begin proceedings in any other jurisdiction,
11 involving the party against whom the order is issued, nor seek to enforce the order in any country
12 outside the United States.

13 **SECTION 6. SECURITY.**

14 (1) The party on whose behalf an asset freezing order has been entered shall give security
15 in an amount the court considers proper to pay for costs and damages sustained by the party
16 against whom the order has been issued if the order is later found to have been wrongfully
17 issued.

18 (2) The party on whose behalf an asset freezing order has been issued shall indemnify a
19 non-party for the reasonable costs of compliance with the order or compensate for any loss
20 caused by the order whether or not the motion for the asset freezing order is properly granted.

21 **SECTION 7. ENFORCEMENT.**

22 (1) An asset freezing order issued by a court in a sister state is presumed to be valid and
23 is enforceable and entitled to full faith and credit in the same manner as a judgment of that court.

1 **Alternative 1**

2 (1) An asset freezing order issued by a court in a sister state is presumed to be valid and
3 is enforceable and entitled to full faith and credit in the same manner as a judgment of that court
4 which is entitled to full faith and credit, unless it would violate the public policy of this state.

5 (2) An asset freezing order issued by a court in a foreign state is presumed valid and is
6 enforceable in the same manner as a judgment of a sister state which is entitled to full faith and
7 credit unless:

8 (a) the judgment was issued under a system, which does not provide for impartial
9 tribunals or procedures compatible with the requirements of due process of law; or

10 (b) the foreign court did not have jurisdiction over the subject matter.

11 **Alternative 2**

12 Same language in (a) and (b) but with the addition of:

13 (c) Enforcement of the order does not violate any principle of public policy.

14 **End of Alternatives**

15 **SECTION 8.** This Act does not apply to actions against consumer debtors or in
16 domestic relations cases or other similar matters.