

West Virginia Bankruptcy and Commercial Law Seminar

Sponsored by the
Bankruptcy Courts for the Northern and Southern Districts of West Virginia
&
Bankruptcy Law Section of the West Virginia State Bar

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Practical WV Bankruptcy Resource Guide

Presented by the
Bankruptcy Law Section of the West Virginia State Bar

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Practical WV Bankruptcy Resource Guide

This panel discussion will focus on providing practical tips and resources that are helpful in running a successful bankruptcy practice.

Todd Johnson is an attorney in Morgantown, WV, where he practices bankruptcy law and litigates consumer issues. He is also a trained arbitrator and mediator, served as a judge for four municipalities in West Virginia, and is co-chair of the Bankruptcy Law Committee of the West Virginia State Bar.

Aaron Amore is an attorney in Charles Town, WV, where he practices bankruptcy and litigates consumer issues. He is also a Chapter 7 trustee for the State of West Virginia and co-chair of the Bankruptcy Law Committee of the West Virginia State Bar.

Practical WV Bankruptcy Resource Guide

Clients provide incorrect information... to say the least. They don't accurately disclose:

what they own;

what it's worth;

how it's titled;

what they owe;

what they have transferred;

Roles in corporations, businesses, and limited liability companies.

Attorney obligations:

WVRPC:

Rule 1.1 Competence- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 Diligence- A lawyer shall act with reasonable diligence and promptness in representing a client.

11 U.S. Code § 526(a)(2)- A debt relief agency (including attorneys) shall not make any statement that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

11 U.S. Code § 707(b)(4)(D)- The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

Federal Rules of Bankruptcy Procedure Rule 9011(b)(3)- By presenting to the court a petition, an attorney is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the facts have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

Bankruptcy Crimes:

18 U.S. Code § 152 - It is a crime for a person to:

- knowingly and fraudulently conceal any property;
- knowingly and fraudulently make a false oath;
- knowingly and fraudulently make a false declaration, certificate, verification, or statement under penalty of perjury;
- knowingly and fraudulently transfer or conceal any property.

18 U.S. Code § 157 - Bankruptcy fraud

It is a crime for a person to make a false or fraudulent representation.

State Related Issues

UFTA West Virginia Code 40-1A-1, et seq. 4 Year SOL, 1 year from date reasonably discoverable 40-1A-9), 10 years for outright fraud.

Fraudulent Transfers See Attached relevant code sections.

SB6 West Virginia Code 31B-3-303 Piercing Veil of LLC, Any debtor(s) who are members of LLCs own an interest that is an asset of their bankruptcy estate. Funds shifted from the debtor to an LLC are subject to claims by the Trustee. The new clawback provisions of may provide ample authority to scrutinize and recover funds and assets transferred out of LLCs. See Attached.

Ways to satisfy your obligations and keep your clients out of jail

Debtor(s)- Question, question, question! The more times and multiple ways you ask the same questions on the same topics can provide a rich resource of responses. Remember, everyone communicates differently, levels of intelligence, understanding and confidence all affect how a debtor responds to questions posed by an attorney, his staff, the Trustee/U.S. Trustee and/or the Judge.

Client Information:

Documents- Bank Statements, Credit Card Statements, Loan documents, Tax Returns, Credit Reports.

Social Media- Facebook, Twitter, Instagram, TikTok, YouTube, Snapchat.
Don't be like Young Buck (David Darnell Brown).

Client Accounts- Beyond financial accounts, make sure to ask about Venmo, Zelle, Apple Pay, Paypal, crypto currency.

County Clerk

Liens (tax, judgment, deed of trust)

How property is titled

Purchase price / date

Forgotten assets

Forgotten sales

Forgotten gifts

Marriage records

Death/probate records

Northern District

Barbour	http://129.71.117.241/
Berkeley	http://records.berkeleywv.org/Login.aspx
Braxton	X
Brooke	http://129.71.117.252/
Calhoun	http://www.gilmercountywv.gov/idxsearch/
Doddridge	http://129.71.205.241/
Gilmer	http://www.gilmercountywv.gov/idxsearch/
Grant	http://129.71.112.124/
Hampshire	129.71.205.207/idxsearch
Hancock	https://countyfusion12.kofiletech.us/countyweb/disclaimer.do
Hardy	http://72.15.246.186/hardywvnmw/application.asp
Harrison	http://countyclerk.harrisoncountywv.com/
Jefferson	http://documents.jeffersoncountywv.org/
Lewis	http://inquiry.lewiscountywv.org/
Marion	www.uslandrecords.com
Marshall	http://129.71.117.225/
Mineral	http://129.71.112.118/
Monongalia	http://searchrecords.monongaliacountyclerk.com/
Morgan	http://129.71.205.187/
Ohio	http://129.71.117.182/
Pendleton	http://129.71.118.1/
Pleasants	X
Pocahontas	http://129.71.203.38/
Preston	http://129.71.117.37/
Randolph	http://129.71.117.90/
Ritchie	http://www.ritchiecountyclerk.com/idxsearch/default.aspx
Taylor	X
Tucker	https://tuckerwv.net/
Tyler	http://129.71.117.165/Default.aspx
Upshur	http://inquiry.upshurcounty.org/
Webster	X
Wetzel	http://www.wetzelcountywv.us/WEBInquiry/

Southern District

Boone	http://129.71.203.53/Default.aspx
Cabell	http://recordscabellcountyclerk.org/
Clay	X
Fayette	http://129.71.202.7/
Greenbrier	http://129.71.205.208/
Jackson	X
Kanawha	X
Lincoln	http://129.71.206.62/Default.aspx

Logan	https://cotthosting.com/WVPortal/LandRecords/protected/v4/SrchName.aspx
Mason	http://129.71.206.28/
McDowell	http://mcdowellcountyclerk.com/
Mercer	X
Mingo	X
Monroe	http://76.9.231.6/
Nicholas	https://cotthosting.com/wvnicholas/LandRecords/protected/SrchQuickName.aspx
Putnam	https://cotthosting.com/WVPortal/LandRecords/protected/v4/SrchName.aspx
Raleigh	email tfernatt@raleighcounty.com for access
Roane	http://129.71.205.30/
Summers	http://129.71.206.41/Default.aspx
Wayne	http://www.waynecountywv.us/IDXSearch/Default.aspx
Wirt	http://records.wirtcountywv.net/
Wood	https://inquiries.woodcountywv.com/legacywebinquiry/default.aspx
Wyoming	http://129.71.205.79/

County Sheriff Tax – Review Real Property as well as personal property going back two years for potential transfers. Many Debtors fail to disclose assets transferred even when directly questioned.

Assessed value

How property is titled

Forgotten assets

Forgotten sales

Forgotten gifts

Property tax expenses

Past due property taxes

Credit Reports

Find debts

Payment amounts

Arrearages

Codebtors

Collateral

Recent/past addresses-

Many Debtors fail to disclose and attorneys fail to list past addresses which can turn up assets they owned in those locations that are still owned or were transferred in a preference period.

NADA & KBB

<https://www.nadaguides.com/>

<https://www.kbb.com/>

Real estate sites

Zillow <https://www.zillow.com/>

Realtor <https://www.realtor.com/>

Movoto <https://www.movoto.com/>

Trulia <https://www.trulia.com/>

Redfin <https://www.redfin.com/>

Assessor Data & GIS maps- Most County Assessors have data related to tax assessments, ownership information and other embedded information related to parcels, sales history and other pertinent information. For Example:

Jefferson <https://jefferson.wvassessor.com/>

Monongalia <https://ags.agdmaps.com/wv/mon/>

WV SOS

<https://apps.sos.wv.gov/business/corporations/>

search under business name

search under owner name

use % as a variable search parameter

WV UCC- Search for liens against personal property

<https://apps.wv.gov/SOS/UCC/Search>

WV State Auditor-Tax/redemption Issues

<https://www.wvsao.gov/CountyCollections/Default>

<https://www.wvsao.gov/>

1900 Kanawha Blvd. East, Building 1, Room W-100

Charleston, WV 25305

Toll Free 877.982.9148 : Phone 304.558.2251 : Fax 304.558.5200

Fastcase

Access via WV State Bar website. <https://wvbar.org/members/fastcase/>

Helpful people and agencies for everyday issues

Tax Issues (state and federal)

WV STATE TAX DEPARTMENT

Eric M. Wilson, Esquire

1001 Lee Street, East

P.O. Box 766

Charleston, WV 25323-0766

(304) 558-0740

Eric.M.Wilson@wv.gov

Lora L. Rutledge, Paralegal

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304-382-3343

IRS Related Legal Matters in Bankruptcy

US Attorney Morgan McKee, Assistant United States Attorney

Direct 304-234-7703 Morgan.McKee@usdoj.gov

Susan M. Collins, Paralegal Specialist, Susan.Collins@usdoj.gov

Financial Litigation Unit

Practical WV Bankruptcy Resource Guide-2022

U. S. Attorney's Office
Northern District of West Virginia
1125 Chapline Street, Suite 3000
P. O. Box 591
Wheeling, WV 26003
Phone: 304-234-0100

US Trustee:

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Gary.O.Kinder@usdoj.gov
Connie S. Caldwell, Paralegal Specialist
Connie.S.Caldwell@usdoj.gov
Office of United States Trustee
300 Virginia Street, East, Room 2025
Charleston, WV 25301
(304) 347-3413
(304) 347-3402 (fax)

WV AG

Patrick Morrissey, West Virginia Attorney General
<https://ago.wv.gov/Pages/default.aspx>

State Capitol Complex, Bldg. 1, Rm E-26
1900 Kanawha Blvd. E
Charleston, WV 25305
Phone: 304-558-2021
Fax: 304-558-0140

CH 13 Trustee- Helen M. Morris- 304-744-6730
<https://www.13network.com/trustees/cwv/cwvhome.aspx>

Review of your ch 13 cases and status <https://www.ndc.org/login>
Ch 13 Document Upload - <https://bkdocs.us/login.php?t=1650381848>

panel trustees-

police departments

WV Division of Financial Institutions- Regulates state-chartered banks
and licensed financial institutions
<https://dfi.wv.gov/Pages/default.aspx>

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West Virginia Division of Financial Institutions
900 Pennsylvania Avenue
Suite 306
Charleston, WV 25302
Phone: (304) 558-2294 | Fax: (304) 558-0442

Bankruptcy Court Clerk-

NDWV Clerk Ryan Johnson Ryan- 304-233-1655

Ryan.Johnson@WVNB.USCOURTS.GOV

SDWV Clerk Lesley Hoops 304-347-3003

Lesley.Hoops@WVSB.USCOURTS.GOV

Judge's office

NDWV <https://www.wvnb.uscourts.gov/>

Courtroom Deputy Lisa McNeil 304-233-4003

lisa.mcneil@wvnb.uscourts.gov

SWWV- <https://www.wvsb.uscourts.gov/court-info>

Courtroom Deputy Jennifer Grimes- 304-347-3003

Jennifer.Simes@wvsb.uscourts.gov

State and federal databases

FDIC Bank search- <https://banks.data.fdic.gov/bankfind-suite/bankfind>

NCUA (find a credit union) <https://mapping.ncua.gov/ResearchCreditUnion.aspx>

CFPB (find my mortgage) <https://www.consumerfinance.gov/ask-cfpb/how-can-i-tell-who-owns-my-mortgage-en-214/>

CFPB (Credit Card Agreements) <https://www.consumerfinance.gov/credit-cards/agreements/>

CFPB (Consumer Complaint Database) <https://www.consumerfinance.gov/data-research/consumer-complaints/>

Better Business Bureau-Research on businesses and consumer complaints
<https://www.bbb.org/search>

WikiCorp- Great resource for finding who owns what companies and people who are tied from one entity to another. <https://www.corporationwiki.com/>

USPS Certified Mail- Invaluable site for certified mail envelopes for serving APs, motions to value & other pleadings. <https://www.certifiedmaillabels.com/>

Google- Amazing the information a simple Google search can pull up. Date can be suspect so confirm information.

Key: **Green** = existing Code. **Red** = new code to be enacted

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 6

BY SENATORS TRUMP, NELSON, TAKUBO, AND AZINGER

[Passed March 12, 2022; in effect 90 days from passage]

AN ACT to amend and reenact **§31B-3-303** of the Code of West Virginia, 1931, as amended, relating to the applicability of “corporate veil piercing” analysis to impose personal liability on a member or manager of a limited liability company; clarifying that members or managers of a limited liability company are not personally liable for fines, fees, or penalties individually assessed against another member or manager for unrelated acts; establishing the intent and policy of the Legislature to modify the applicability of “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) with respect to certain claims against a limited liability company; clarifying circumstances in which members of a limited liability company may be held liable in their capacity as members for debts, obligations, or liabilities of the company; establishing criteria required for court to apply “corporate veil piercing analysis” in certain claims asserted against a limited liability company; providing for liability of non-human members of a limited liability company under doctrine of joint enterprise liability; providing for liability of a member of a limited liability company as a tortfeasor; authorizing a creditor of a limited liability company to seek “clawback” from a member of limited liability company under certain circumstances; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY.

§31B-3-303. Liability of members and managers.

(a) Except as otherwise provided in subsection (c) of this section, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager nor for fines, fees or penalties individually assessed against another member or manager for acts unrelated to the business of the limited liability company. It is the intent and policy of the Legislature to modify the

applicability of the “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) with respect to any claim against a limited liability company arising after the effective date of the reenactment of this section during the regular session of the Legislature, 2022.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) A provision to that effect is contained in the articles of organization, and a member so liable has consented in writing to the adoption of the provision or to be bound by the provision;

(2) The member against whom liability is asserted has personally guaranteed the liability or obligation of the limited liability company in writing;

(3) There is any tax liability of the limited liability company, which the law of the state or of the United States imposes liability upon the member;

(4) The member commits actual or constructive fraud which causes injury to an individual or entity.

(d) The “corporate veil piercing” analysis adopted in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268, 752 S.E.2d 299 (2013) shall apply to a claim asserted against a limited liability company for the purpose of determining personal liability of all or specified members or managers only if (1) the company is not adequately capitalized for the reasonable risks of the corporate undertaking and (2) the company does not carry liability insurance coverage for the primary risks of the business, with minimum limits of \$100,000 liability insurance, or such higher amount as may be specifically required by law.

(e) *Enterprise liability.* - In circumstances where the members of a limited liability company are, in whole or in part, corporations, limited liability companies, or other entities which are not human beings, then, if a jury shall determine that the liability of a limited liability company sounding in tort arose as part of the activities of a joint enterprise, those entities which are part of the joint enterprise with the limited liability company may be liable for the liability of the limited liability company which arose as part of the business operations of the joint enterprise, not as a “piercing of the veil”, but instead under the doctrine of joint enterprise liability.

(f) *Member as tortfeasor.* - Nothing in this section may immunize or shield a member of a limited liability company, solely because he or she is a member of a limited liability company, from liability for his or her own tortious conduct that proximately causes injury to another party while the member is acting on behalf of the limited liability company. In such circumstance, the liability of a member is not through “veil piercing”, but rather primary, as against any tortfeasor.

(g) *Clawback authority.* - If a member is proved to have committed any of the following acts, then a creditor of the limited liability company whose judgment the limited liability company cannot satisfy may seek clawback from the member under this subsection: *Provided*, That the limited liability company’s judgment creditor may proceed in the shoes of the limited liability company to clawback funds from the member in order to reimburse the limited liability company for either the amount of the judgment against the limited liability company or the amount transferred from the limited liability company to the member in bad faith, whichever is less. The wrongful acts which will justify clawback, but not “veil piercing”, are:

(1) Conflicted exchange;

(2) Insolvency distribution; or

(3) Siphoning of funds.

(h) *Definitions.* - As used in this section:

(1) “Conflicted exchange” means a transfer of money or other property from a limited liability company to a member of the limited liability company, or to any other organization in which the member has a material financial interest, in exchange

for services, goods, or other tangible or intangible property of less than reasonable equivalent value.

(2) “Insolvency distribution” means a transfer of money or other property from a limited liability company to a member of that limited liability company, or to any other organization in which the member has a material financial interest, in respect of the member’s ownership interest, that renders the limited liability company insolvent.

(3) “Insolvent” means, with respect to a limited liability company, that the limited liability company is unable to pay its debts in the ordinary course of business. Claims that are unusual in nature or amount, including tort claims in claims for consequential damages, are not to be considered claims in the ordinary course of business for the purposes of this section.

(4) “Siphoning of funds” means whether the manager or majority member has siphoned funds from the limited liability company in violation of the articles of organization, the operating agreement, or this article.

CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.

ARTICLE 1A. UNIFORM FRAUDULENT TRANSFERS ACT.

§40-1A-4. Transfers fraudulent as to present and future creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

(b) In determining actual intent under subdivision (1), subsection (a) of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the

elements of the claim for relief by a preponderance of the evidence.

CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.

ARTICLE 1A. UNIFORM FRAUDULENT TRANSFERS ACT.

§40-1A-5. Transfers fraudulent as to present creditors.

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to the provisions of §40-1A-2(b) of this code, a creditor making a claim for relief under subsection (a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.

ARTICLE 1A. UNIFORM FRAUDULENT TRANSFERS ACT.

§40-1A-6. When transfer is made or obligation is incurred.

For the purposes of this article:

(a) A transfer is made:

(1) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(2) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this article that is superior to the interest of the transferee;

(b) If applicable law permits the transfer to be perfected as provided in subdivision (a) of this subsection and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is considered made immediately before the commencement of this action;

(c) If applicable law does not permit the transfer to be perfected as provided in subdivision (a) of this subsection, the transfer is made when it becomes effective between the debtor and the transferee; and

(d) A transfer is not made until the debtor has acquired rights in the asset transferred and an obligation is incurred.

(e) If the obligation incurred is oral, a transfer is made when the obligation becomes effective. If the obligation incurred is evidenced by a writing, the obligation becomes effective when the writing is delivered to or for the benefit of the obligee.

CHAPTER 40. ACTS VOID AS TO CREDITORS AND PURCHASERS.

ARTICLE 1A. UNIFORM FRAUDULENT TRANSFERS ACT.

§40-1A-8. Defenses, liability and protection of transferee.

(a) A transfer or obligation is not voidable under §40-1A-4(a)(1) of this code, against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under §40-1A-7(a)(1) of this code, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) The first transferee of the asset or the person for whose benefit the transfer was made; or

(2) Any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(1) A lien on or a right to retain any interest in the asset transferred;

(2) Enforcement of any obligation incurred; or

(3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under §40-1A-4(a)(2) or §40-1A-5(a)(2) of this code if the transfer results from:

(1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) Enforcement of a security interest in compliance with §46-9-1 et seq. of this code.

(f) A transfer is not voidable under §40-1A-5(b) of this code:

(1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) If made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

(1) A party that seeks to invoke subsection (a), (d), (e) or (f) of this section has the burden of proving the applicability of that subsection.

(2) Except as otherwise provided by this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of subdivision (1) or (2), subsection (b) of this section.

(4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.