DEBTOR AND CREDITOR LAW

Laws 1909, Chap. 17.

AN ACT relating to debtors and creditors, constituting chapter twelve of the consolidated laws.

Became a law, February 17, 1909, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 12 OF THE CONSOLIDATED LAWS

DEBTOR AND CREDITOR LAW

ARTICLE 1
Short Title

§ 1. Short title. This chapter shall be known as the "Debtor and Creditor Law."

ARTICLE 2

General Assignments for the Benefit of Creditors

§ 2. Jurisdiction of proceedings. The term "judge" when used in this article shall apply equally to a county judge of the county within which the assignment is recorded and to justices of the supreme court, and the term "court" when used in this article shall, in like manner, apply to the county court of such county and to the supreme court. All applications hereunder made in the supreme court shall be made to the court, or a justice thereof within the judicial district where the assignment is recorded, and all proceedings and hearings under this article had in the supreme court upon the return of a citation or order shall be had at a special term of said court held in the county where the debtor resided at the time of the assignment, or in case of an assignment by copartners, in the county where the principal place of business of such copartners was at the time of such assignment, or in the case of an assignment by a corporation in the county where the principal office of such corporation was at the time of such assignment.

§ 3. Requisites of general assignment. Every conveyance or assignment made by a debtor of his estate, real or personal, or both, to an assignee for the creditors of such debtor, shall be in writing, and shall specifically state therein the residence and kind of business carried on by such debtor at the time of making the assignment, and the place at which such business shall then be conducted, and if such place be in a city, the street and number thereof, and if in a village or town such apt designation as shall reasonably identify such debtor.

Every such conveyance or assignment shall be duly acknowledged before an officer authorized to take the acknowledgment of deeds and shall be recorded in the county clerk's office in the county where such debtor shall reside or carry on his business at the date thereof. An assignment by copartners shall be recorded in the county where the principal place of business of such copartners is situated. An assignment by a corporation shall be recorded in the county where its principal place of business is situated. When real property is a part of the property assigned, and is situated in a county other than the one in which the original assignment is required to be recorded, a certified copy of such assignment shall be filed and recorded in the county where such property is situated.

The assent of the assignee, subscribed and acknowledged by him, shall appear in writing, embraced in or at the end of, or indorsed upon the assignment, before the same is recorded, and, if separate from the assignment, shall be duly acknowledged.

In all cases where an assignment is made by a corporation the right to recover the amount due from stockholders on unpaid capital stock issued to or subscribed for by them shall pass to the assignee whether mentioned in the assignment or not.

The right of any person to payments, including tax refunds, recovery rebates, refundable tax credits, and any advances of any tax credits, under the federal Families First Coronavirus Response Act (FFCRA), Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act), Consolidated Appropriations Act of 2021, and American Rescue Plan Act of 2021 (ARPA) shall not be transferable or assignable, at law or in equity.

§ 4. Debtor's schedule. 1. A debtor making an assignment shall, at the date thereof or within twenty days thereafter, cause to be made, and filed with the county clerk of the county where such assignment is recorded, and file a duplicate thereof with the assignee, an inventory or schedule containing:

(a) The name, occupation, place of residence, and place of business, of such debtor;

(b) The name and place of residence of the assignee;

(c) A full and true account of all the creditors of such debtor, stating the last known place of residence or business of each, if known, if unknown the fact to be stated, the sum owing to each, with the true cause and consideration therefor, and a full statement of any existing security for the payment of the same;

(d) A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law and in equity, with the incumbrances existing thereon, and the actual value of the same according to the best knowledge of such debtor; and a claim for such exemptions as he may be entitled to;

(e) An affidavit made by such debtor, that the same is in all respects just and true.

2. In case such debtor shall omit, neglect or refuse to make and file such inventory or schedule within the twenty days required, the assignee named in such assignment shall, within thirty days after the date thereof, cause to be made, and filed as aforesaid such inventory or schedule as above required, in so far as he can; and for such purpose the judge shall, at any time, upon the application of such assignee, compel by order such delinquent debtor, and any other person to appear before him and disclose, upon oath, any knowledge or information he may possess, necessary to the proper making of such inventory or schedule. The assignee shall verify the inventory and schedule so made by him, to the effect that the same is in all respects just and true to the best of his knowledge and belief.

3. In case the said assignee shall be unable to make and file such inventory or schedule, within said thirty days, the judge may, upon application upon oath, showing such inability, allow him such further time as shall be necessary, not exceeding sixty days. If the assignee fail to make and file such inventory or schedule within said thirty days or such further time as may be allowed, the judge shall require, by order, the assignee forthwith to appear before him, and show cause why he should not be removed. Any person interested in the trust estate may apply for such order and demand such removal. The books and papers of such delinquent debtor shall at all times be subject to the inspection and examination of any creditor. The judge is authorized, by order, to require such debtor or assignee to allow such inspection or examination. Disobedience to such order is a contempt, and obedience to such order may be enforced by attachment.

4. The assignor shall comply with all lawful orders of the judge; examine the correctness of all claims presented against his estate, if ordered by the judge so to do, and if any is incorrect or false notify his assignee thereof immediately; deliver to his assignee all his books, papers and records; execute and deliver such papers as shall be ordered by the judge; and execute and deliver to his assignee transfers of all his property outside the state of New York. When so ordered by the judge, the assignor shall attend before the assignee, a referee or the

court in the county where the assignor resides, and submit to an examination under oath concerning the conducting of his business, the cause of his inability to pay his debts, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and all matters which may affect the administration and settlement of his estate.

5. In any examination of the assignor ordered by the judge pursuant to subdivision four of this section, the court may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law; provided, however, that no immunity shall be conferred except upon twenty-four hours prior written notice to the appropriate district attorney having an official interest therein.

6. The court may allow as an administrative expense one reasonable fee, irrespective of the number of attorneys employed, for legal services rendered to the assignor in preparing the assignment and assisting the assignor to comply with his duties in respect of schedules and inventory. If a debtor, in contemplation of making a general assignment for the benefit of creditors, shall pay money or transfer property, directly or indirectly, to an attorney for services rendered or to be rendered in connection with the assignment, the transaction shall be reexamined by the court on petition of the assignee or any creditor and shall be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the assignee for the benefit of the estate.

§ 5. Notice to creditors to present claims. The judge may, upon the petition of the assignee, authorize him to advertise for creditors to present to him their claims, with the vouchers therefor, duly verified, on or before a day to be specified in such advertisement, not less than ten days from the publication thereof, which advertisement or notice shall be published in one newspaper, to be designated by the judge, as most likely to give notice to the persons to be served, at least once and such additional times as the judge may direct; the last publication shall be at least one week prior to the date specified.

Said verified claim of creditor shall set forth whether any, and, if so, what securities are held for such claim, and whether any, and, if so, what payments have been made thereon.

Whenever a claim is founded upon an instrument in writing, such instrument, unless lost or destroyed, shall be filed with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim.

§ 6. Bond of assignee. The assignee named in any such assignment shall, within thirty days after the date thereof, and before he shall have any power or authority to sell, dispose of or convert to the purposes of the trust any of the assigned property, enter into a bond to the people of the state of New York, in an amount to be ordered and directed by the judge, with sufficient sureties to be approved of by such judge, and conditioned for the faithful discharge of the duties of such assignee, and for the due accounting for all moneys received by him, which bond shall be filed in the clerk's office of the county where such assignment is recorded, but in case the debtor shall fail to present such inventory within the twenty days required, then the assignee, before ten days thereafter shall have elapsed, may apply to said judge by verified petition for leave to file a provisional bond, until such time as he may be able to present the schedule or inventory as hereinbefore provided.

§ 7. Further security. The judge may, upon his own motion or upon the application of any party in interest, and on such notice as he may direct to be given to the assignor, assignee and surety, require further security to be given whenever, in his judgment, the security afforded by the bond on file is not adequate.

§ 8. Discharge or removal of assignee; correction of inventory or schedule; supplemental inventories or schedules. The judge shall, in the case provided in section four, and may also, at any time, on the petition of one or more creditors, showing misconduct or incompetency of the assignee, or on petition of the assignee himself, showing sufficient reason therefor, and after due notice of not less than five days to the assignor, assignee, surety and such other person as the judge may prescribe, remove or discharge the assignee, and appoint one or more in his place, and order an accounting of the assignee so removed or discharged, and may enjoin such assignee from interfering with the assignor's estate, and make provision by order for the safe custody of the same, and enforce obedience to such injunction and orders by attachment; and, upon the discharge of the assignee upon his own application, such assignee's bond shall be canceled and discharged. The new assignee shall give a bond, to be approved as required by section six. The judge shall have power, by order, to require or allow any inventory or schedule filed to be corrected or amended. The judge may also require and compel, from time to time, supplemental inventories or schedules to be made and filed within such time as he shall prescribe, and to enforce obedience to all orders by attachment.

§ 9. Failure to file bond. A failure to file any bond required by or under this article, within the specified time will not deprive the judge of his power over the assignee or the trust estate.

§ 10. Action on bond; application of recovery. Any action brought upon an assignee's bond may be prosecuted by a party in interest by leave of the court; and all moneys realized thereon shall be applied by direction of the judge in satisfaction of the debts of the assignor in the same manner as the same ought to have been applied by such assignee.

§ 11. Proceedings in case of death of assignee. In case an assignee shall die during the pendency of any proceeding under this article, or at any time subsequent to the filing of any bond required herein, his personal representative or successor in office, or both, may be brought in and substituted in such proceeding on such notice, of not less than eight days, as the judge may direct to be given; and any decree made thereafter shall bind the parties thus substituted as well as the property of such deceased assignee, provided, however, that if such assignee dies subsequent to the filing of his bond and before any proceedings may have been had thereunder, then the surety on such bond may apply to the judge for an accounting, who may, on such terms as to him seem just and proper, appoint another assignee and release such surety.

§ 12. Notices to parties interested in the estate as creditors or otherwise. Parties interested in the estate as creditors, or parties otherwise interested, if the judge so directs, shall have at least ten days' notice by mail to their respective addresses as they appear in the schedule filed by the assignor, or at such other addresses as they shall have filed with the assignee, of (a) all proposed sales of property, (b) the declaration and time of payment of dividends, (c) the filing of the interim account and the filing of the final account of the assignee and of the hearing thereon, (d) the proposed compromise of any controversy. Such notice may be published as the judge shall direct and must be returnable in court.

The judge may cause such notices to be sent or published on the petition of the assignee at any time after the assignment, or on petition of any other person interested in the estate, at any time after the lapse of sixty days from the filing of such assignment, or where an assignee has been removed and ordered to account as hereinbefore provided on the petition of a creditor, or an assignee's surety, or assignor, and on good cause being shown, the judge may grant an order directing the assignee to show cause at the time specified why a sale of the property should not be had or a dividend should not be paid, or a settlement of his account should not be had, or such other matters as in the opinion of the judge should be disposed of.

Upon the hearing and determination of such order to show cause the judge may make such order in the premises as justice requires.

Whenever the assignee has filed his final account the judge shall fix a date for the final hearing to consider the judicial settlement of the account, which date shall not be less than fifteen days following the filing of the account and notices shall be given to the creditors as provided in this section.

§ 13. Debts which may be proved against the estate. Debts of the assignor may be proved and allowed against his estate which are (a) a fixed liability, as evidenced by a judgment absolutely owing at the time of the assignment, or (b) a claim for taxable costs incurred before the assignment, in good faith, in an action to recover a provable debt; (c) or founded upon an open account, or upon a contract, express or implied whether due or not due; or (d) claims for anticipatory breach of contracts, executory in whole or in part, including unexpired leases of real or personal property; provided, however, that the claim of a landlord for damages for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall in no event be allowed in an amount exceeding the rent reserved by the lease without acceleration, for the year next succeeding the date of the surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the assignment, plus an amount equal to the unpaid rent accrued, without acceleration up to such date.

In allowing the claims against the estate, in all cases of mutual debts or credits between the estate of the assignor and a creditor the amount shall be stated and one debt shall be set off against the other, and the balance only shall be allowed.

A set-off or counterclaim shall not be allowed in favor of any debtor of the assignor which (a) is not provable against the estate; or (b) was purchased by or transferred to him after the filing of the general assignment or with intent to such use and with knowledge or notice, or if he had reasonable cause to believe, that such assignor was insolvent.

A person shall be deemed insolvent whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts.

§ 14. Duties of assignee. It shall be the duty of the assignee to collect and reduce to money the property of the estate, under the direction of the court; report promptly to the court any claims presented to him which are not provable, or are incorrect or false and shall also report promptly for allowance all claims presented to him which are not disputed; close up the estate as expeditiously as possible; furnish such information concerning the estate as may be requested by parties in interest; keep regular accounts; pay dividends as often as is compatible with the best interests of the estate; make appraisals or in his discretion employ an appraiser or appraisers; designate and employ auctioneers; file an interim report within six months of assuming his duites unless excused by the court or unless the estate has been sooner distributed; file a final report and account at least fifteen days before the final hearing to consider the judicial settlement of the account.

§ 15. Power of court. The court shall have power:

1. To allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against the estate.

2. To authorize the business of assignor to be conducted for limited periods by assignee, if necessary in the best interests of the estate, and allow additional compensation for such services.

3. To bring in and substitute additional persons or parties in the proceeding when necessary for the complete determination of a matter in controversy, by issuing a citation directed to such persons or parties and to be served as ordered by the court.

4. To reopen estates whenever it appears they were closed before being fully administered.

5. To determine all claims of assignors to their exemptions.

6. To authorize an assignee to bring an action or special proceeding, which he is hereby empowered to maintain, against any person who has received, taken or in any manner interfered with the estate, property or effects of the debtor in fraud of his creditors and which might have been avoided by a creditor of the assignor and the assignee may recover the property so transferred or its value.

6-a. To authorize an assignee to bring an action, which he is hereby empowered to maintain, against any person, who with reasonable cause to believe the assignor was insolvent as defined in section thirteen of this act, has within four months of the assignment received a voluntary transfer from the assignor of money or property for or on account of an antecedent debt, the effect of which transfer is to enable the creditor to obtain a greater percentage of his debt than some other creditor of the same class, and the assignee may recover the property so transferred or its value. For the purpose of this section a transfer shall be deemed to have been made when it is so far perfected that no creditor having a judgment on a simple contract without special priority (whether or not such a creditor exists) could have obtained an interest superior to that of the transferee therein. A transfer not so perfected prior to the assignment shall be deemed to have been made immediately before the assignment.

7. To direct upon the final settlement of the estate that the assignee pay to the lawful creditors their proportionate dividend notwithstanding their claim has not been presented in accordance with the notice sent out by the assignee. If a final dividend is ordered and paid not less than six months after notice to creditors to present their claims, the assignee shall have no liability to creditors whose claims have not been presented prior to entry of the order directing payment of the final dividend and which were unknown to him at that time. The court shall

have no power to allow claims not presented within one year from the date of the recording of the assignment.

8. To allow secured creditors such sum only as to the court seems to be owing over and above the value of their securities.

9. To examine the parties and witnesses on oath in relation to the assignment and accounting and all matters connected therewith and to compel their attendance for that purpose and their answers to questions, and the production of books and papers;

10. To require the assignee to render and file an interim account of his proceedings within six months of assuming his duties unless the estate is sooner distributed and to require the assignee to render and file a final account of his proceedings, and to enforce the same in the manner provided by law for compelling an executor or administrator to comply with a surrogate's order for an account;

11. To take and state an interim and a final account as submitted by the assignee, or, as to the final account, to appoint a referee to take and state it if demanded, within ten days after the date has been fixed for the final hearing to consider the judicial settlement of the account, by a creditor or creditors whose claim or claims represent one-fourth or more in amount of all claims scheduled or filed. The referee shall be an official referee if such a referee is available and shall have the powers enumerated in subdivision nine of this section;

12. To settle and adjudicate upon the account and the claims presented, and to decree payment of any creditor's just proportional part of the fund, or, in case of a partial accounting, so much thereof as the circumstances of the case render just and proper;

13. To discharge the assignee and his surety at any time, upon performance of the decree, from all further liability upon matters included in the accounting, to creditors appearing and to creditors not having appeared after due citation, or not having presented their claims after due advertisement;

14. On proof of a composition between the assignor and his creditors, to discharge the assignee and his sureties from all further liability to the compounding creditors appearing or duly cited, and to authorize the assignee to release the assets to the assignor; provided, however, that if there be any creditors not assenting to the composition, the court shall determine what proportion of the fund shall be paid to or reserved for creditors not assenting, which shall not be less than the sum or share to which they would be entitled if no composition had been made, and may decree distribution accordingly;

15. To adjourn the proceedings from time to time, grant further orders if necessary, and amend the petition and proceedings thereon before decree in furtherance of justice;

16. To punish as for a contempt any disobedience or violation of any order made or process issued in pursuance of this article, and to restrain by arrest and imprisonment any party or witness when it shall satisfactorily appear that such party or witness is about to leave the jurisdiction of the court, and to take bail to secure the attendance of such party or witness, to be prosecuted under the order of the court in case of forfeiture by and for the benefit of the party in whose interest such examination shall be ordered;

17. To exercise such other or further powers in respect to the proceedings and the accounting therein as a surrogate may by law exercise in reference to an accounting by an executor or administrator.

§ 16. Examination of witnesses. 1. The judge may also, at any time, on petition of the assignee or any party interested, order the examination of witnesses and the production of any books and papers by any party or witness before him or before a referee appointed by him for such purpose, or before the assignee who shall have power to administer oaths, compel the attendance of witnesses, and production of books, records and papers by the issuance of subpoena, and the evidence so taken, together with books and papers, or extracts therefrom, as the case may be, shall be filed in the county clerk's office, and may be used in evidence by any creditor or assignee in any action or proceeding then pending, or which may hereafter be instituted.

2. In any examination ordered pursuant to subdivision one of this section, the court may confer immunity in accordance with the provisions of section 50.20 of the criminal procedure law; provided, however, that no immunity shall be conferred except upon twenty-four hours prior written notice to the appropriate district attorney having an official interest therein.

§ 17. Invalid claims. Claims which for want of record or for other reasons would not have been valid as against the claims of creditors of the assignor shall not be liens against his estate.

§ 18. Effect of orders; power of judge and duties of clerk. All orders or decrees in proceedings under this article shall have the same force and effect, and may be entered, docketed and enforced and appealed from the same as if made in an original action brought in the court in which the proceeding is pending; provided, however, that a final decree, directing the payment of money, may be enforced by serving a certified copy thereof personally upon the assignee for the benefit of creditors, and if said assignee wilfully neglects to obey said decree, by punishing him for a contempt of court. The imprisonment of said assignee, by virtue of proceedings to punish him for contempt, as prescribed in this section, or a levy upon his property by virtue of an action, shall not bar, suspend or otherwise affect an action against the sureties on his final bond. All proceedings under this article shall be deemed to be had in court. The said court shall always be open for proceedings under this article. The judge, when named in this article, shall, in such proceedings, be deemed to be acting as the court. The clerk of the court shall keep a separate book, in which shall be entered, in each case, the date and place of record of the assignment, and a minute of all proceedings therein, under this article, with such particularity as the court shall direct by general order. He shall record therein the orders and decrees of the court, settling, rejecting or adjusting claims, and directing the payment of money, or releasing assets by the assignee, and removing or discharging the assignee and his sureties, and such other orders as the courts shall direct by general order. The said clerk shall securely keep the papers in each case in a file by themselves, and shall be entitled to a fee, except as otherwise provided by law, of one dollar for filing all the papers in each case, and entering the proceedings in the minute-book, and fifty cents to be paid by the assignee, unless otherwise directed, for recording each order or decree required by this article or the general order of the court. The clerk shall not record at length any order except the final order in a proceeding under this article, unless directed to do so by the court.

§ 19. Sale and compromise of claims and property. The judge may, upon the application of the assignee and for good and sufficient cause shown, and upon such terms as he may direct, authorize the assignee to sell, compromise or compound any claim or debt belonging to the estate of the debtor. But such authority shall not prevent any party interested in the trust estate from showing upon the final accounting of such assignee that such debt or claim was fraudulently or negligently sold, compounded or compromised. The sale of any debt or claim heretofore made in good faith by any assignee shall be valid, subject, however, to the approval of the judge, and the assignee shall be charged with and be liable for, as part of the trust fund, any sum which might or ought to have been collected by him.

All sales shall be had at public auction unless otherwise ordered by the judge. Upon application to the judge, and for good cause shown, the assignee may be authorized to sell any portion of the estate at private sale; in which case he shall keep an accurate record of each article sold, and the price received therefor, and to whom sold; which account he shall file at once. Upon application by the assignee or a creditor setting forth that a part or the whole of the estate is perishable, the nature and location of such perishable property, and that there will be loss if the same is not sold immediately, the judge, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold with or without notice to creditors.

§ 20. General powers of court. Any proceeding under this article shall be deemed for all purposes, including review by appeal or otherwise, to be a proceeding had in the court as a court of general jurisdiction, and the court shall have full jurisdiction to do all and every act relating to the assigned estate, the assignees, assignors and creditors, and jurisdiction shall be presumed in support of the orders and decrees therein unless the contrary be shown; and after the filing or recording of an assignment under this article, the court may exercise the powers of a court of equity in reference to the trust and any matters involved therein.

§ 21. Trial, costs and commissions. The court, in its discretion, may order a trial by jury or before a referee, of any disputed claim or matter arising under the provisions of this article. It may in its discretion award reasonable counsel fees and costs, determine which party shall pay the same, and make all necessary rules to govern the practice under this article. The assignee or assignees named in any assignment shall receive for his or their services a commission of not to exceed five per centum on the whole sum which will have come into his or their hands, except in a case where such percentage shall not equal two hundred dollars in which case the court may grant such a sum which with such percentage shall equal two hundred dollars. If the assignee continues the business the court may allow him additional compensation equal to what he might be allowed as hereinabove provided.

The actual and necessary expenses incurred by the assignee in the administration of the estate shall be reported in detail, under oath, and examined and approved or disapproved by the court. If approved they shall be paid out of the estate.

§ 21-a. Company pension plans; deductions from wages trust moneys;

preference. Moneys contributed from wages or salary by an employee or former employee under any retirement system or plan maintained or operated by a domestic corporation, association, co-partnership or joint-stock company, together with all accumulations of interest, shall belong to the employee making the contributions and be deemed to be held in trust by the employer for the benefit of the employee. In all distribution of assets of such an employer or former employer, whether insolvent or otherwise, the amount so contributed, together with such accumulations of interest, shall first be paid to the employee or former employee, his executors, administrators or assigns, before payment of unsecured creditors.

§ 22. Wages and commissions and preferred claims. 1. In all distribution of assets under all assignments made in pursuance of this article, the wages or salaries actually owing to the employees of the assignor or assignors at the time of the execution of the assignment for services rendered within three months prior to the execution of the assignment, not exceeding one thousand dollars to each employee, and after payment of the foregoing, all claims for cash deposits not exceeding three hundred dollars made and left with an assignor or assignors on account of purchases at retail of merchandise or services, where such deposits were made within six months before the execution of the assignment and such merchandise has not been delivered or the services performed, shall be preferred before any other debt except wages or salaries as aforesaid; and should the assets of the assignor or assignors not be sufficient to pay in full all the claims preferred, pursuant to this section, they shall be applied to the payment first of wages or salaries to the full amount of each such wage or salary, and thereafter pro rata to payment of such cash deposits.

2. For the purposes of this section, wages or salaries shall mean; (a) all compensation and benefits payable by an employer to or for the account of the employee for personal services rendered by such employee. These shall specifically include but not be limited to salaries, overtime, vacation, holiday and severance pay; employer contributions to or payments of insurance or welfare benefits; employer contributions to

pension or annuity funds; and any other moneys properly due or payable for services rendered by such employee. Vacation and severance pay due and owing at the time of the filing of an assignment, or which became due and owing after the filing of an assignment, but prior to the closing of the estate, shall be considered as wages or salaries owed for services rendered within three months prior to the execution of the assignment, or (b) commissions due traveling or city salesmen on salaries or commission basis, whole or part-time, whether or not selling exclusively for the assignor or assignors, and for the purpose of this section, traveling or city salesmen, shall include all such salesmen whether or not they are independent contractors selling products or services of the bankrupt with or without a drawing account or formal contract.

§ 23. Limitation of preferences. In all general assignments of the estates of debtors for the benefit of creditors no preference created therein, other than for the wages or salaries of or moneys held in trust for employees under section twenty-one-a and section twenty-two or cash deposits upon purchases for future delivery of merchandise or services under section twenty-two, shall be valid.

§ 24. Appraisal of estate in the hands of assignee. Whenever it shall become necessary to appraise in whole or in part any estate in the hands of any assignee for the benefit of creditors, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

ARTICLE 2-A
SECURED CREDITORS

§ 30. Definitions. As used in this article, unless the context or subject matter requires otherwise:

(a) "Liquidation proceeding" includes all assignments for the benefit of creditors, whether voluntary or by operation of law; equity receiverships where the subject under receivership is insolvent; and any other proceedings for distribution of assets of any insolvent debtor, whether a person, partnership, corporation or business association except proceedings under article seventy-four of the insurance law and article thirteen of the banking law.

(b) "Liquidator" means any person administering assets in any liquidation proceedings.

(c) "Insolvent debtor" means any insolvent person, partnership, corporation or business association involved in a liquidation proceeding.

(d) "Secured creditor" means a creditor who has either legal or equitable security for his debt upon any property of the insolvent debtor of a nature to be liquidated and distributed in a liquidation proceeding, or a creditor to whom is owed a debt for which such security is possessed by some endorser, surety, or other person secondarily liable.

(e) "Creditor's sale" includes any sale effected by the secured creditor by judicial process or otherwise under the terms of his contract or the applicable law for the purpose of realizing upon his security.

§ 31. Secured creditor's claim to disclose security. In a liquidation proceeding every secured creditor's claim against the general assets shall disclose the nature of the security. When in an equity receivership it is determined that the subject under receivership is insolvent, secured creditors having claims on file which do not comply with this section shall make disclosure within a time to be fixed by the court.

§ 32. Effect of concealment. Any secured creditor who with intent to evade the provisions of this article fails to disclose the existence of the security shall not be entitled to receive or retain dividends out of the general assets, unless he thereafter releases or surrenders to the liquidator the security which he has failed to disclose, or unless he procures such release or surrender if the security is in the possession of an indorser, surety, or other person secondarily liable for the insolvent debtor.

§ 33. Value of security credited upon claims. Dividends paid to secured creditors shall be computed only upon the balance due after the value of all security not exempt from the claims of unsecured creditors and not released or surrendered to the liquidator, is determined and credited upon the claim secured by it.

§ 34. Determination of value by secured creditor. The value of assets constituting the security may be determined by one of the following methods by the secured creditor:

(1) By collection. When the asset constituting the security is an obligation for the payment of money, the secured creditor may determine its value by collection or by exhausting his remedies thereon and then surrendering the obligation to the liquidator.

(2) By creditor's sale. When the asset constituting the security is something other than an obligation for the payment of money, the secured

creditor may determine its value by creditor's sale.

§ 35. Alternative determinations of value. Where valuation under the provisions of section thirty-four is impracticable or would cause undue delay, the court, upon petition by either the secured creditor or the liquidator, may order the value of the security determined by any of the following methods:

(1) By compromise, if the secured creditor and the liquidator agree upon a value. The liquidator may redeem such assets by payment of the agreed value, if authorized by the court.

(2) By litigation, through proceedings in the liquidation proceeding. The liquidator may redeem such assets by paying the value so determined, if authorized by the court.

(3) By liquidator's sale of the assets which, when completed and approved by the court, shall pass to the purchaser good title, free and clear of all liens of the secured creditor, such liens to be transferred to the proceeds of the sale. The order of the sale may be either

(a) Conditional, requiring the sale to be made by the liquidator only if the secured creditor does not complete a determination by collection or creditor's sale as set forth in section thirty-four of this article within a time fixed by the court; or

(b) Absolute, requiring the sale to be made by the liquidator within the time fixed by the court.

§ 36. Exempt security not credited. When any creditor has legal or equitable security upon assets which are exempt from process for the satisfaction of unsecured debts and are duly claimed as exempt by the insolvent debtor, the value of such security shall not be credited upon the claim. Amounts realized by the creditor from such security after liquidation proceedings are begun shall be disregarded in computing dividends, unless the dividend so computed exceeds the sum actually owing upon the claim, in which event only the amount owing shall be paid.

§ 37. Constitutionality. If any provision of this article or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

§ 38. Uniformity of interpretation. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

ARTICLE 3

Insolvent's Discharge from Debts

§ 50. Who may be discharged. An insolvent debtor, who is a resident of the state at the time of presenting his petition, may be discharged from his debts, as prescribed in this article.

§ 51. To what court application to be made. Application for such a discharge must be made, by the petition of the insolvent, addressed to the county court of the county in which he resides; or, if he resides in the city of New York, to the supreme court.

§ 52. Contents of petition. The petition must be in writing; it must be signed by the insolvent, and specify his residence; it must set forth, in substance, that he is unable to pay all his debts in full;

that he is willing to assign his property for the benefit of all his creditors, and, in all other respects, to comply with the provisions of this article, for the purpose of being discharged from his debts; and it must pray that, upon his so doing, he may be discharged accordingly. It must be verified by the affidavit of the insolvent, annexed thereto, taken on the day of the presentation thereof, to the effect, that the petition is in all respects true, in matter of fact.

§ 53. Consent of creditors to be annexed. The petitioner must annex to his petition one or more written instruments, executed by one or more of his creditors, residing in the United States, having debts owing to him or them in good faith, then due or thereafter to become due, which amount to not less than two-thirds of all the debts, owing by the petitioner to creditors residing within the United States. Each instrument must be to the effect, that the person or corporation, executing it, consents to the discharge of the petitioner from his debts, upon his complying with the provisions of this article.

§ 54. Consent of executor, administrator, receiver, or trustee. An executor or administrator may become a consenting creditor, under the order of the surrogate's court from which his letters issued. A trustee, official assignee, or receiver of the property of a creditor of the petitioner, whether created by operation of law or by the act of parties, may become a consenting creditor, under the order of a justice of the supreme court. A person who becomes a consenting creditor, as prescribed in this section, is chargeable only for the sum which he actually receives, as a dividend of the insolvent's property.

§ 55. Consent of corporation or joint-stock association. Where a corporation or joint-stock association becomes a consenting creditor, its consent must be executed under its common seal, and may be attested by any director or other officer thereof, duly authorized for that purpose; who may make any affidavit, required of a creditor in the proceedings.

§ 56. Consent of partnership. Where a partnership becomes a consenting creditor, the consent may be executed in its behalf, and any affidavit, required of a creditor in the proceedings, may be made, by either of the partners.

§ 57. Effect of consent where petitioner is a joint debtor. A creditor's consent does not affect his remedy against any person or persons indebted jointly with the petitioner; and the petitioner's discharge has the effect, as between the creditor and the other joint debtors, of a composition between the petitioner and the creditor, made as prescribed in title one of article fifteen of the general obligations law.

§ 58. Consent of purchaser or assignee of debt. Where a consenting creditor is the purchaser or assignee of a debt against the petitioner, or the executor, administrator, trustee, or receiver of such a purchaser or assignee, he is deemed, for all the purposes of this article, except as to the declaration and receipt of dividends, a creditor only to the amount, actually and in good faith paid for the debt, by him, or by the decedent or other person, from whom he derives title, and remaining uncollected. This section is not affected by the recovery of a judgment for the debt, after the purchase or assignment; but in that case, the consenting creditor may include the uncollected costs, as if they were part of the sum paid for the debt.

§ 59. Consenting creditor must relinquish security. A creditor who has, in his own name, or in trust for him, a mortgage, judgment, or other security, for the payment of a sum of money, which is a lien upon, or otherwise affects, real or personal property belonging to the petitioner, or transferred by him since the lien was created, cannot become a consenting creditor, with respect to the debt so secured, unless he adds to or includes in his consent, a written declaration, under his hand, to the effect, that he relinquishes the mortgage, judgment, or other security, so far as it affects that property, to the trustee to be appointed pursuant to the petition, for the benefit of all the creditors. Such a declaration operates, to that extent, as an assignment to the trustee, of the mortgage, judgment, or other security; and vests in him accordingly all the right and interest of the consenting creditor therein.

§ 60. Penalty if creditor swears falsely. If a creditor knowingly swears, in any proceedings authorized by this article, that the petitioner is, or will become, indebted to him, in a sum of money, which is not really due, or thereafter to become due; or in more than the true amount; or that more was paid for a debt, which was purchased or assigned, than the sum, actually and in good faith paid therefor; he forfeits to the trustee, to be recovered in an action, twice the sum, so falsely sworn to.

§ 61. Affidavit of consenting creditor. The consent of a creditor must be accompanied with his affidavit, stating as follows:

1. That the petitioner is justly indebted to him, or will become indebted to him, at a future day specified therein, in a sum therein specified; and, if he, or the person from whom he derives title, is or was the purchaser or assignee of the debt, he must also specify the sum, actually and in good faith paid for the debt, as prescribed in section fifty-eight of this chapter.

2. The nature of the demand, and whether it arose upon written security, or otherwise, with the general ground or consideration of the indebtedness.

3. That neither he, nor any person to his use, has received from the petitioner, or from any other person, payment of a demand, or any part thereof, in money or in any other way, or any gift or reward of any kind, upon an express or implied trust, confidence, or understanding,

that he should consent to the discharge of the petitioner.

Where a consenting creditor is an executor, administrator, trustee, receiver, or assignee, he may state the necessary facts, in his affidavit, upon information and belief, setting forth therein the grounds of his belief; but in that case, the consent must also be accompanied with the affidavit of the insolvent, to the effect, that all the matters of fact stated in the affidavit of the consenting creditor, are true.

§ 62. When non-resident creditor to annex accounts and securities. A consenting creditor, residing without the state, and within the United States, must annex to his consent the original accounts, or sworn copies thereof, and the original specialties or other written securities, if any, upon which his demand arose or depends. Provided, however, that when such original specialties, or other written securities, are lost, such fact must be stated as a reason for not annexing thereto the consent, and the fact of the loss, and the manner of the loss thereof must be stated in the affidavit of the creditor to the best of his knowledge, or must be otherwise proved by affidavit to the satisfaction of the court; and the court may thereupon, in such case or proceeding, by its order, dispense with the annexing to such consent of the original specialties or other written securities.

§ 63. Petitioner's schedule. The petitioner must annex to his petition a schedule, containing:

1. A full and true account of all his creditors.

2. A statement of the place of residence of each creditor, if it is known; or, if it is not known, a statement of that fact.

3. A statement of the sum which he owes to each creditor, and the nature of each debt or demand, whether arising on written security, on account, or otherwise.

4. A statement of the true cause and consideration of his indebtedness to each creditor, and the place where the indebtedness accrued.

5. A statement of any existing judgment, mortgage, or collateral or other security, for the payment of the debt.

6. A full and true inventory of all his property, in law or in equity, of the incumbrances existing thereon, and of all the books, vouchers, and securities, relating thereto.

§ 64. Petitioner's affidavit. An affidavit, in the following form, subscribed and taken by the petitioner before the county judge, or, in the city of New York, before the judge holding the term of the court, at which the order specified in the next section is made, must be annexed to the schedule:

"I, __________ , do swear" (or "affirm," as the case may be), "that the matters of fact stated in the schedule hereto annexed, are, in all respects, just and true; that I have not, in contemplation of my becoming insolvent, or within two years before presenting the petition herein, disposed of or made over any part of my property, not exempt by express provision of law from levy and sale by virtue of an execution, for the future benefit of myself or my family, or disposed of or made over any part of my property, in order to defraud any of my creditors; that I have not, in any instance, created or acknowledged a debt for a greater sum than I honestly and truly owed; and that I have not paid, secured to be paid, or in any way compounded with, any of my creditors, with a view fraudulently to obtain the prayer of my petition; that I have not done, suffered or been privy to any act, matter or thing which, if accomplished, would be ground for withholding my discharge under the provisions of this act, or invalidate such discharge if granted."

§ 65. Order to show cause. The petition and other papers, specified in the foregoing sections of this article, must be presented to the court, and filed with the clerk. The court must thereupon make an order, requiring all the creditors of the petitioner to show cause before it, at a time and place therein specified, why an assignment of the insolvent's property should not be made, and he be thereupon discharged from his debt, as prescribed in this article; and directing that the order be published and served, as prescribed in the next section.

§ 66. How order published and served. The order must be published and served in the following manner:

1. The petitioner must cause a copy thereof to be published in a newspaper, designated in the order, published in the county; and also, if one-fourth part of the insolvent's debts accrued or are due to creditors residing in the city of New York, in a newspaper published in that city, designated in the order. The publication must be made at least once in each of four weeks, immediately preceding the day in which cause is to be shown.

2. The petitioner must also serve upon each creditor, residing within the United States, whose place of residence is known to him, a copy of the order to show cause, either personally, at least twenty days before the day when cause is to be shown, or by depositing it, at least forty days before that day, in the post-office, inclosed in a post-paid wrapper, addressed to the creditor at his usual place of residence.

Where the state is a creditor of the petitioner, a copy of the order must be served upon the attorney-general, who must represent the state in the subsequent proceedings.

§ 67. Hearing. On the day specified in the order, and before any other proceedings are taken in the matter, the petitioner must present to the court, and file with the clerk, proof, to the satisfaction of the court, that the order has been published and served, as prescribed in the last section; and thereupon, on the same day, or upon the day to which the hearing is adjourned, the court must hear the allegations and proofs of the parties appearing. Proof of personal service of a copy of the order upon any person, must be made, in like manner as proof of the personal service of a summons, in an action brought in the supreme court.

§ 68. Putting cause on calendar. Where the insolvent's discharge is opposed, the court may direct the special proceeding to be placed upon the calendar for trial. In that case, the parties must appear, and the proceedings are the same, as in an action, except as otherwise prescribed in this article; and costs, as in an action, except for proceedings before notice of trial, may be awarded to either party, in the discretion of the court.

§ 69. Opposing creditor to file specifications, and may demand jury trial. In order to entitle a creditor to oppose the discharge of the insolvent, he must, on the day fixed to show cause, or at such other time as the court may direct, file with the clerk a specification of his objections; and he may then, but not afterwards, demand a trial, by a jury, of the questions of fact arising thereupon. If a trial by a jury is not then demanded, the questions of fact must be tried by the court, without a jury. Where one of two or more opposing creditors demands a trial by a jury, all the material questions of fact, arising upon the objections of all the creditors, must be tried in like manner, and at the same time.

§ 70. Opposing creditor to file proofs, if not named in schedule. Where the name of an opposing creditor does not appear in the schedule, he must file, with the specification of his objections, proof, by affidavit, that he is a creditor; and, if his debt is not set forth in the schedule, he must also file his affidavit, to the effect specified in subdivisions first and second of section sixty-one of this chapter.

§ 71. Proceedings if jurors do not agree. There shall be but one trial by jury. If the jurors cannot agree, after being kept together for such a time as the court deems reasonable, the court must discharge them, and determine the questions of fact, or those questions as to which the jurors have not agreed, upon the evidence taken before the jury, as if a jury had not been demanded.

§ 72. When insolvent required to produce his non-resident wife. Where the petitioner's wife resides without the state, the court, or a judge thereof out of court, may, upon the application of any creditor, make an order, requiring the petitioner to bring his wife before the court, at the hearing or trial, to the end that she may be examined as a witness. A copy of the order must be personally served upon the petitioner, at least three weeks before the hearing. If it appears, upon the hearing, that service could not, with due diligence, be so made, in consequence of the petitioner's sickness or absence, the court may, in its discretion, adjourn the hearing or trial, and prescribe the time and manner of service of the order for the adjourned day. If, after due service, the petitioner's wife does not attend at the time and place appointed, the petitioner is not entitled to his discharge, unless he proves, to the satisfaction of the court, by his affidavit, or upon his oral examination, or otherwise, that he was unable to procure her attendance.

§ 73. Examination of insolvent. At the hearing or trial, the petitioner must be examined under oath, at the instance of any creditor, touching his property or debts, or any other matter stated in his schedule, or any changes that have occurred in the situation of his property, since the making of the schedule; and particularly whether he has collected any debts or demands, or made any transfers of, or otherwise affected, his real or personal property. Any creditor may contradict or impeach, by other competent evidence, the testimony of the insolvent or of his wife.

§ 74. When insolvent cannot be discharged. In either of the following cases, the petitioner is not entitled to a discharge:

1. Where it appears, upon the hearing or trial, that, after making the schedule annexed to his petition, he has collected a debt or demand, or transferred, absolutely, conditionally, or otherwise, any of his property, not exempt by law from levy and sale by virtue of an execution, and he neglects or refuses forthwith to pay over to the clerk, the full amount of all debts and demands so collected, and the full value of all property so transferred, except so much of the money, and of the value of the property, as appears to have been necessarily expended by him for the support of himself or his family.

2. Where it appears, in like manner, that the petitioner, within two years before presenting the petition, has, in contemplation of his becoming insolvent, or of his petitioning for his discharge, or knowing of his insolvency, made an assignment, sale, or transfer, either absolute or conditional, of any of his property, or of any interest therein, or confessed a judgment, or given any security, with a view of giving a preference to a creditor for an antecedent debt.

§ 75. When assignment to be directed. An order, directing the execution of an assignment, must be made by the court, where it appears, by the verdict of the jury; or, if a jury has not been demanded, or the jurors have been discharged by reason of their inability to agree, where it satisfactorily appears to the court; as follows:

1. That the petitioner is justly and truly indebted to the consenting creditors, in sums which amount, in the aggregate, to two-thirds of all the debts, which the petitioner owed, at the time of presenting his petition, to creditors residing within the United States.

2. That he has honestly and fairly given a true account of his property.

3. That he has, in all things, conformed to the matters required of him by this article.

§ 76. Assignment; contents, and to whom made. The order must designate one or more trustees, residents of the state; and must direct the petitioner to execute, to him or them, an assignment of all his property, at law or in equity, in possession, reversion, or remainder, excepting only so much thereof, as is exempt by law from levy and sale, by virtue of an execution. The assignment must be acknowledged or proved, and certified, in like manner as a deed to be recorded in the county, and must be recorded in the clerk's office of the county. Where it appears, from the schedule or otherwise, that real property will pass thereby, it must be also recorded as a deed, in the proper office for recording deeds, of each county where the real property is situated.

§ 77. Trustees, how designated. The trustee or trustees may be nominated by a majority in amount of the consenting creditors. If no person is so nominated, one or more persons must be appointed by the court for the purpose. The nomination may be included in the consent, or made in a separate paper, or orally upon the hearing or trial, and entered in the minutes.

§ 78. Effect of assignment. The assignment vests in the trustee or trustees all the petitioner's interest, legal or equitable, at the time of its execution, in any real or personal property, not exempt by law from levy and sale by virtue of an execution; and any contingent interest which may vest within three years thereafter. When a contingent interest so vests, it passes to the trustee, in the same manner as it would have vested in the petitioner, if he had not made an assignment.

§ 79. When discharge to be granted. Upon the production by the petitioner of a certificate of the trustee or trustees, duly acknowledged or proved, and certified, in like manner as a deed to be recorded in the county, to the effect, that the insolvent has assigned, for the benefit of all his creditors, all his property so directed to be assigned, and all the books, vouchers, and papers relating thereto, and that he has delivered so much thereof as is capable of delivery; and also of a certificate of the county clerk, that the assignment has been duly recorded in his office; the court must grant to the insolvent a discharge from his debts, which has the effect declared in the following sections of this article.

§ 80. Order to show cause where trustee refuses to give certificate. If a trustee refuses or neglects, upon payment or tender by the petitioner of the expense of so doing, to execute or acknowledge a certificate, as prescribed in the last section, or to cause the assignment to be recorded, as therein prescribed, the court, upon proof by affidavit of the facts, must make an order, requiring the trustee to show cause, at a time and place therein specified, why the petitioner should not be discharged, notwithstanding his neglect or refusal; and why the trustee's appointment should not be revoked.

§ 81. Proceedings upon return of order. If, upon the return of the order, it appears that the assignment has been duly executed, and that the petitioner has duly delivered all his property directed to be assigned, and all the books, vouchers, and papers relating thereto, which are capable of delivery, the court may, either

1. Grant a discharge of the petitioner, notwithstanding the neglect or refusal of the trustee; or

2. Make an order, revoking the appointment of the trustee. Upon the entry of such an order, the powers of the trustee, and his interest in the assigned property, cease. If there is no other trustee, the court must, by the same or another order, appoint one or more new trustees. Such an appointment has the same effect, as if the person or persons so appointed were named as trustees in the original assignment.

§ 82. Discharge and other papers to be recorded. The discharge, and the petition, affidavits, orders, schedule, and other papers, upon which the discharge is granted, exclusive of the minutes of testimony, must be recorded in the clerk's office of the county, within three months after the discharge is granted. In default thereof, the discharge becomes inoperative, from and after that time. The original discharge, the record thereof, or a transcript of the record duly authenticated, is conclusive evidence of the proceedings and facts therein contained. The other papers specified in this section, the record thereof, or a transcript of the record duly authenticated, are presumptive evidence of the proceedings and facts therein contained.

§ 83. Effect of discharge. Except as prescribed in the next two sections, a discharge granted as prescribed in this article, exonerates and discharges the petitioner from every debt, due at the time when he executed his assignment, including a debt contracted before that time, though payable afterwards; and from every liability incurred by him, by making or indorsing a promissory note, or by accepting, drawing, or indorsing a bill of exchange, before the execution of his assignment; or incurred by him, in consequence of the payment, by any party to such a note or bill, of the whole or any part of the money secured thereby, whether the payment is made before or after the execution of the assignment. At any time after one year has elapsed, since the recording of the discharge, and the petition, affidavits, orders, schedule and other papers upon which the discharge was granted, as prescribed in section eighty-two of this chapter, the petitioner may apply, upon proof of his discharge, to the court in which a judgment shall have been rendered against him, for an order directing the judgment to be canceled and discharged of record. If it appears that he has been discharged from the payment of that judgment, an order must be made accordingly, and thereupon the clerk must cancel and discharge the docket thereof, as if the proper satisfaction-piece of the judgment was filed. Notice of the application, accompanied with copies of the papers upon which it is made, must be given to the judgment creditor, unless his written consent to the granting of the order, with satisfactory proof of the execution thereof, and if he is not the party in whose favor the judgment was rendered, that he is the owner thereof, is presented to the court upon the application.

§ 84. Effect of discharge as to foreign contracts or creditors. In either of the following cases, such a discharge does not affect a debt or liability, founded upon a contract, unless it was owing, when the petition was presented, to a resident of the state; or the creditor has executed a consent to the discharge; or has appeared in the proceedings; or has received a dividend from the trustee:

1. Where the contract was made with a person, not a resident of the state.

2. Where it was made and to be performed without the state.

3. Where the creditor was not, at the time of the discharge, a resident of the state.

§ 85. Effect of discharge as to debts to the United States and the state. Such a discharge does not affect:

1. A debt or duty to the United States; or

2. A debt or duty to the state, for taxes or for money received or collected by any person as a public officer, or in a fiduciary capacity, or a cause of action specified in section sixty-three-c of the executive law or a judgment recovered upon such a cause of action.

Except as prescribed in this section, the discharge exonerates the petitioner from a debt or other liability to the state, in like manner and to the same extent, as from a debt or liability to an individual.

§ 86. Insolvent to be released from imprisonment. If, at the time when the discharge is granted, the petitioner is under arrest, by virtue of an execution against his person issued, or an order of arrest made, in an action or special proceeding, founded upon a debt or liability from which he is discharged, as prescribed in the foregoing sections of this article, he must be released from the arrest, upon producing to the officer his discharge, or a certified copy of the record thereof. If the adverse party wishes to test the validity of the discharge, he may procure a new order of arrest, or cause a new execution to be issued, as the case requires.

§ 87. Discharge, when void. A discharge, granted as prescribed in this article, is void, in either of the following cases:

1. Where the petitioner wilfully swears falsely, in the affidavit annexed to his petition or schedule, or upon his examination, in relation to any material fact, concerning his property or his debts, or to any other material fact.

2. Where, after presenting his petition, he sells, or in any way transfers or assigns, any of his property, or collects any debt or demand owing to him, and does not give a just and true account thereof, upon the hearing or trial, and does not pay the money so collected, or the value of the property so sold, transferred, or assigned, as prescribed in this article.

3. Where he secretes any part of his property, or a book, voucher, or paper relating thereto, with intent to defraud his creditors.

4. Where he fraudulently conceals the name of any creditor, or the sum owing to any creditor, or fraudulently misstates such a sum.

5. Where, in order to obtain his discharge, he procures any person to become a consenting creditor, wilfully, intentionally, and knowingly, for a sum not due from him to that person in good faith, or for a sum greater than that for which the holder of a demand, purchased or assigned, is deemed a creditor, as prescribed in this article.

6. Where he pays, or consents to the payment of, any portion of the debt or demand of a creditor, or grants or consents to the granting of any gift or reward to a creditor, upon an express or implied contract,

trust, or understanding, that the creditor so paid or rewarded should be a consenting creditor, or should abstain or desist from opposing the discharge.

7. Where he is guilty of any fraud whatsoever, contrary to the true intent of this article.

§ 88. Invalidity may be proved on motion to vacate order of arrest or execution. Where a person, who has been discharged as prescribed in this article, is afterwards arrested by virtue of an order of arrest made, or an execution issued, in an action founded upon a debt or liability from which he is so discharged, the adverse party may oppose his application to be released from the arrest, by proof, by affidavit, of any cause for avoiding the discharge, for want of jurisdiction, or as specified in the last section. If such a cause is established, the application must be denied.

ARTICLE 4

Insolvent's Exemption from Arrest and Imprisonment

§ 100. Who may be exempted, and by what court. An insolvent debtor may be exempted from arrest, or discharged from imprisonment, as prescribed in this article. For that purpose, he must apply, by petition, to the county court of the county in which he resides, or is imprisoned; or, if he resides or is imprisoned in the city of New York, to the supreme court. A person, who has been admitted to the jail liberties, is deemed to be imprisoned, within the meaning of this article.

§ 101. Contents of petition. The petition must be in writing; it must be signed by the insolvent, and specify his residence, and also, if he is in prison, the county in which he is imprisoned, and the cause of his imprisonment. It must set forth, in substance, that he is unable to pay all his debts in full; that he is willing to assign his property for the benefit of all his creditors, and in all other respects to comply with the provisions of this article, for the purpose of being exempted from arrest and imprisonment, as prescribed therein; and it must pray, that upon his so doing, he may thereafter be exempted from arrest, by reason of a debt, arising upon a contract previously made; and also, if he is imprisoned, that he may be discharged from his imprisonment. It must be verified by the affidavit of the insolvent, annexed thereto, taken on the day of the presentation thereof, to the effect, that the petition is in all respects true in matter of fact.

§ 102. Petitioner's schedule. The petitioner must annex to his petition, a schedule, in all respects similar to that required of an insolvent, as prescribed in section sixty-three of this chapter.

§ 103. Petitioner's affidavit. An affidavit, in the following form, subscribed and taken by the petitioner, before the county judge, or, in the city of New York, before a justice of the supreme court, must be annexed to the schedule:

"I, ---------, do swear" (or "affirm," as the case may be,) "that the matters of fact, stated in the schedule hereto annexed, are, in all respects, just and true; that I have not, at any time, or in any manner whatsoever, disposed of or made over any part of my property, not exempt by express provision of law from levy and sale by virtue of an execution, for the future benefit of myself or my family, or disposed of or made over any part of my property, in order to defraud any of my creditors; and that I have not paid, secured to be paid, or in any way compounded with, any of my creditors, with a view that they or any of them should abstain from opposing my discharge."

§ 104. Order to show cause. The petition, and the papers annexed thereto, must be presented to the court, and filed with the clerk. The court must thereupon make an order, requiring all the creditors of the petitioner to show cause before it, at a time and place therein specified, why the prayer of the petitioner should not be granted; and directing that the order be published and served, in the manner prescribed in section sixty-six of this chapter for the publication and service of an order, made as therein prescribed.

§ 105. Proceedings on return of order. The provisions of sections sixty-seven, sixty-eight, sixty-nine, seventy, seventy-one, seventy-three, and seventy-four of this chapter apply to a special proceeding, taken as prescribed in this article.

§ 106. Order directing assignment; assignment pursuant thereto. An order, directing the execution of an assignment, must be made by the court, where it appears, by the verdict of the jury, or, if a jury has not been demanded, or the jurors have been discharged by reason of their inability to agree, where it satisfactorily appears to the court, as follows:

1. That the petitioner is unable to pay his debts.

2. That the schedule annexed to his petition is true.

3. That he has not been guilty of any fraud or concealment, in violation of the provisions of this article.

4. That he has, in all things, conformed to the matters required of him by this article.

The provisions of sections seventy-six, seventy-seven, and seventy-eight of this chapter apply to the order prescribed in this section, and to the assignment made in pursuance thereof, except that the trustee or trustees must be nominated, as well as appointed, by the court.

§ 107. When discharge to be granted; effect thereof. Upon the production by the petitioner, of the certificates of the trustee or trustees, and the county clerk, to the effect prescribed in section seventy-nine of this chapter, the court must grant to the petitioner a discharge, declaring that the petitioner is forever thereafter exempted from arrest or imprisonment, by reason of any debt due at the time of making the assignment, or contracted before that time, though payable afterwards; or by reason of any liability incurred by him, by making or indorsing a promissory note, or by accepting, drawing, or indorsing a bill of exchange, before the execution of the assignment; or in consequence of the payment, by any party to such a note or bill, of the whole or any part of the money secured thereby, whether the payment is made before or after the execution of the assignment, with the exceptions specified in section one hundred and thirty-eight of this chapter. The discharge shall have the effect therein declared, as prescribed in this section.

§ 108. Discharge and other papers to be recorded. The provisions of section eighty-two of this chapter apply to the discharge, and to the petition and other papers upon which it was granted.

§ 109. Petitioner to be released from imprisonment. If, at the time the discharge is granted, the petitioner is imprisoned, by virtue of an execution against his person issued, or of an order of arrest made, in an action or special proceeding founded upon a debt, liability, or judgment, as to which he is exempted from arrest or imprisonment, as prescribed in the last section but one, the officer must forthwith release him, on production of the discharge, or a certified copy of the record thereof.

§ 110. Debts and demands not affected. A debt, demand, judgment, or decree, against an insolvent, discharged as prescribed in this article, is not affected or impaired by the discharge; but it remains valid and effectual, against all his property, acquired after the execution of the assignment. The lien, acquired by or under a judgment or decree, upon any property of the insolvent, is not affected by the discharge.

§ 111. Discharge, when void. A discharge, granted to an insolvent as prescribed in this article, is void, in the same cases, so far as they are applicable, in which a discharge, granted as prescribed in article third of this chapter, is therein declared to be void; and the validity of such a discharge may be tested in the same manner.

ARTICLE 5
Judgment Debtor's Discharge from Imprisonment

§ 120. Who may be discharged. A person, imprisoned by virtue of an execution to collect a sum of money, issued in a civil action or special proceeding, may be discharged from the imprisonment, as prescribed in this article. A person who has been admitted to the jail liberties, is deemed to be imprisoned, within the meaning of this article.

§ 121. To what court application to be made. Application for such a discharge must be made by petition, addressed to the court from which the execution issued; or to the county court of the county in which he is imprisoned; or, if he is imprisoned in the city of New York, to the supreme court.

§ 122. When petition may be presented. A person so imprisoned may apply for such a discharge, at any time; unless the sum, or, where he is imprisoned by virtue of two or more executions, the aggregate of the sums, for which he is imprisoned, exceeds five hundred dollars; in which case, he cannot present such a petition, until he has been imprisoned, by virtue of the execution or executions, for at least three months.

§ 123. Contents of petition; schedule. The petition must be in writing; it must be signed by the petitioner; and it must state the cause of his imprisonment, by setting forth a copy, or the substance of the execution, or, if there are two or more executions, of each of them. The petitioner must annex thereto, and present therewith, a schedule, containing a just and true account of all his property, and of all charges affecting the same; as the property and charges existed at the time when he was first imprisoned, and also as they exist at the time when the petition is prepared; together with a just and true account of all deeds, securities, books, vouchers, and papers, relating to the property, and to the charges thereupon.

§ 124. Affidavit of petitioner. An affidavit, in the following form, subscribed and taken by the petitioner, on the day of the presentation of the petition, must be annexed to the petition and schedule:

"I, ----------, do swear" (or "affirm," as the case may be), "that the matters of fact, stated in the petition and schedule hereto annexed, are, in all respects, just and true; and that I have not, at any time or in any manner whatsoever, disposed of or made over any part of my property, not exempt by express provision of law from levy and sale by virtue of an execution, for the future benefit of myself or my family, or disposed of or made over any part of my property, with intent to injure or defraud any of my creditors."

§ 125. Notice to creditors. At least fourteen days before the petition is presented, the petitioner must serve, upon the creditor in each execution, by virtue of which he is imprisoned, a copy of the petition, and of the schedule; together with a written notice of the time when, and place where, they will be presented. If, by reason of changes occurring after the service, it is necessary, before presenting the petition and schedule, to correct any statement contained in the schedule, the correction may be made by a supplemental schedule, a copy of which need not be served, unless the court so directs.

§ 126. Notice to creditors; when service cannot be made. The papers, specified in the last section, may be served, either upon the creditor or his representative, or upon the attorney whose name is subscribed to the execution; and, in either case, in the manner prescribed in the civil practice law and rules for the service of a paper upon an attorney, in an action in the supreme court. Where it is made to appear by affidavit, to the satisfaction of the court, that service cannot, with due diligence, be so made within the state, upon either, the court may make an order, prescribing the mode of service, or directing the publication of a notice in lieu of service, in such manner and for such a length of time, as it thinks proper; and thereupon, it may direct an adjournment of the hearing to such a time as it thinks proper.

§ 127. Notice to creditors; when state a creditor. Where the state is a creditor, the papers must be served upon the attorney-general, who must represent the state in the proceedings.

§ 128. Proceedings on presentation of petition. Upon the presentation of the petition, schedule, and affidavit, with due proof of service or publication, as prescribed in the last three sections, the court must make an order, directing the petitioner to be brought before it, on a day designated therein; and on that day, or on such other days as it appoints, the court must, in a summary way, hear the allegations and proofs of the parties. If the court is satisfied that the petition and schedule are correct, and that the petitioner's proceedings are just and fair, it must make an order, directing the petitioner to execute, to one or more trustees, designated in the order, an assignment of all his property, not expressly exempt by law from levy and sale by virtue of an execution; or of so much thereof as is sufficient to satisfy the execution or executions, by virtue of which he is imprisoned.

§ 129. Adjournment. Upon sufficient cause being shown by a creditor, the court may, from time to time, adjourn the hearing; but not to a day later than three months after the presentation of the petition.

§ 130. Proceedings on adjourned day. An objection to a matter of form shall not be received upon an adjourned day; and, unless the opposing creditor satisfies the court that the proceedings on the part of the petitioner are not just and fair, the court must direct an assignment, as prescribed in the last section but one, and must grant a discharge, as prescribed in the following sections of this article.

§ 131. Assignment; effect thereof. The assignment must be acknowledged or proved, and certified, in like manner as a deed to be recorded in the county, and must be recorded in the clerk's office of the county where the petitioner is imprisoned. Where it appears, from the schedule or otherwise, that real property will pass thereby, the assignment must also be recorded as a deed, in the proper office for recording deeds, of each county where the real property is situated. The assignment vests in the trustee or trustees, for the benefit of the judgment creditors in the executions, by virtue of which the petitioner is imprisoned, all the estate, right, title, and interest of the petitioner in and to the property, so directed to be assigned.

§ 132. Discharge; when to be granted. Upon the production, by the petitioner, of satisfactory evidence, that the petitioner has actually delivered to the trustee or trustees all the property so directed to be assigned, which is capable of delivery; or upon the petitioner's giving security, approved by the court, for the future delivery thereof; the court must make an order, discharging the petitioner from imprisonment, by virtue of each execution, specified in his petition. The sheriff, upon being served with a certified copy of the order, must discharge the petitioner as directed therein, without any detention on account of fees.

§ 133. Petitioner's property still liable. Notwithstanding such a discharge, the judgment creditor in the execution has the same remedies, against the property of the petitioner, for any sum due upon his judgment, which he had before the execution was issued; but the petitioner shall not, except as is otherwise specially prescribed in the next section, be again imprisoned by virtue of an execution upon the same judgment, or arrested in an action thereupon.

§ 134. When creditor may issue new execution against person. If the petitioner is convicted of perjury, committed in any of the proceedings upon his petition, any judgment creditor, by virtue of whose execution he was imprisoned, may issue a new execution against his person.

§ 135. Powers and duties of trustee. The trustee must collect the demands, and sell the other property assigned to him. He must apply the proceeds thereof, after deducting his commissions and expenses allowed by law, as follows:

1. To the payment of the jail fees, upon the imprisonment and discharge of the petitioner.

2. If any surplus remains, to the payment of the creditors, by virtue of whose executions the petitioner was imprisoned, when he presented his petition; or, if there is not enough to pay them in full, to the payment, to each, of a proportionate part of the sum due upon his execution.

3. If any surplus remains, he must pay it over to the petitioner, or his executor or administrator.

Personal service upon a creditor, or his attorney, of written notice of the time and place of making a distribution, as prescribed in subdivision second of this section, has the same effect as publishing a notice thereof, in a case prescribed by law.

§ 136. Creditor may notify debtor to apply for discharge. Where a person has been imprisoned by virtue of an execution, for the space of three months after he was entitled, by the provisions of this article, to apply for a discharge; and has neither made such an application, nor applied for his discharge under the provisions of article third of this chapter; the judgment creditor, by virtue of whose execution he is imprisoned, may serve upon the prisoner a written notice, requiring him to apply for his discharge, according to the provisions of this article.

§ 137. Effect of failure so to apply. If the prisoner does not, within thirty days after personal service of such a notice, either present a petition to the proper court, as prescribed in article third of this chapter, or serve, upon the creditor giving the notice, a copy of a petition and schedule, with a notice of his intention to apply for his discharge, as prescribed in this article; or if, after such a presentation or service, he does not diligently proceed thereupon to a decision, he shall be forever barred from obtaining his discharge under the provisions of this article, or of article third of this chapter.

§ 138. Debtors to state or United States not to be discharged. Neither of the following named persons shall be discharged from imprisonment, under the provisions of this article:

1. A person owing a debt or duty to the United States.

2. A person owing a debt or duty to the state, for taxes or for money received or collected by any person, as a public officer or in a fiduciary capacity, or a cause of action specified in section sixty-three-c of the executive law or a judgment recovered upon such a cause of action.

§ 139. Discharge on application of taxpayer. Where a person has been arrested by virtue of an execution issued upon a judgment of fifty dollars or under, and has been kept imprisoned at the expense of the county for six months or over, the court out of which the execution issued may, on the application of a taxpayer of the county to which the support is chargeable, and upon due proof of the service upon the person in whose favor such execution was issued, of a notice in writing of the time when and the place where such application is to be made, at least eight days before the making thereof discharge the prisoner, and it shall be the duty of the sheriff to forthwith release him from custody.

ARTICLE 6

Discharge of Bankrupt from Judgment

Section 150. Cancellation of record of judgment discharged in bankruptcy.

§ 150. Cancellation of record of judgment discharged in bankruptcy. 1. At any time after one year has elapsed since a bankrupt or debtor was discharged from his debts, pursuant to the acts of congress relating to bankruptcy, the bankrupt or debtor, his receiver, trustee or any other interested person or corporation, may apply, upon proof of the bankrupt's or debtor's discharge, to the court in which a judgment was rendered against him, or if rendered in a court not of record, to the court of which it has become a judgment by docketing it therein, for an order, directing that a discharge or a qualified discharge of record be marked upon the docket of the judgment.

2. If it appears upon the hearing that the bankrupt or debtor has been discharged from the payment of that judgment or the debt upon which it was recovered, an order must be made directing that a discharge or qualified discharge be marked on the docket of the judgment.

3. If it appears that any lien of the judgment upon real property owned by the bankrupt or debtor prior to the commencement of the bankruptcy proceedings was invalidated or surrendered in the bankruptcy proceedings or set aside in an action brought by the receiver or trustee, the order shall direct that a discharge be marked on the docket of the judgment.

4. If (a) it does not appear whether the judgment was a lien on real property owned by the bankrupt or debtor prior to the commencement of the bankruptcy proceedings, or (b) if it appears that the judgment was a lien on such real property and it is not established to the satisfaction of the court that the lien was invalidated or surrendered in the bankruptcy proceedings or set aside in an action brought by the receiver or trustee, the order shall direct that a qualified discharge be marked

on the docket of the judgment. If the court directs that a qualified discharge be marked on the docket of the judgment it shall specify in its order which of the two grounds stated above was the basis of its order.

5. Upon presentation of the order for entry, or of a certified copy thereof for filing, as the case may be, and upon payment of the fees to which he is entitled, the clerk of the court where the order was made, or the clerk of any court where a transcript of the judgment has been filed and docketed, shall mark on the docket thereof an entry substantially as follows: In the case of a discharge, "Discharged by order of the court; see order entered (or filed) .... (stating the date of entry or filing of the order)"; in the case of a qualified discharge, "Qualified discharge by order of the court; see order entered (or filed) .... (stating the date of the entry or filing of the order)."

6. Notice of the application, accompanied by copies of the papers upon which it is made, must be served upon the judgment creditor, or his attorney of record in the action in which the judgment was rendered, in the manner as prescribed for service of a notice in an action, if the residence or place of business of the judgment creditor, or of his attorney, is known. Upon proof by affidavit that the address of neither the judgment creditor nor his attorney is known, and that the address of neither can be ascertained after due diligence, or that the judgment creditor is a non-resident of this state, and his attorney is dead, or removed from the state, or cannot be found within the state, a judge or justice of the court may, by order, direct that the notice of the application be published in a newspaper designated in the order, once a week for not more than three weeks. Such publication, shown by the affidavit of the publisher, shall be sufficient service upon the judgment creditor, of the application.

ARTICLE SIX-A
RIGHT OF SET OFF AGAINST UNMATURED DEBTS

Section 151. Right of set off against unmatured debts.

§ 151. Right of set off against unmatured debts. Every debtor shall have the right upon:

(a) the filing of a petition under any of the provisions of the federal bankruptcy act or amendments thereto or the commencement of any proceeding under any foreign bankruptcy, insolvency, debtor relief or other similar statute or body of law, by or against a creditor;

(b) the making of an assignment by a creditor for the benefit of its creditors;

(c) the application for the appointment, or the appointment, of any receiver of, or of any of the property of a creditor;

(d) the issuance of any execution against any of the property of a creditor;

(e) the issuance of a subpoena or order, in supplementary proceedings, against or with respect to any of the property of a creditor; or

(f) the issuance of a warrant of attachment against any of the property of a creditor,

to set off and apply against any indebtedness, whether matured or unmatured, of such creditor to such debtor, any amount owing from such debtor to such creditor, at or at any time after, the happening of any of the above mentioned events, and the aforesaid right of set off may be exercised by such debtor against such creditor or against any trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, receiver or execution, judgment or attachment creditor of such creditor, or against anyone else claiming through or against such creditor or such trustee in bankruptcy, debtor in possession, assignee for the benefit of creditors, receivers, or execution, judgment or attachment creditor, notwithstanding the fact that such right of set off shall not have been exercised by such debtor prior to the making, filing or issuance, or service upon such debtor of, or of notice of, any such petition; assignment for the benefit of creditors; appointment or application for the appointment of a receiver; or issuance of execution, subpoena or order or warrant.

ARTICLE 7

Trustees for Insolvent and Imprisoned Debtors

§ 160. Trustees for creditors. All trustees, appointed under any authority, conferred by articles three, four and five of this chapter, in the several cases therein contemplated, are hereby declared to be trustees of the estate of the debtor, in relation to whose property they shall be appointed, for the benefit of his creditors; and shall be vested with all the powers and authority hereinafter specified, and shall be subject to the control, obligations and responsibilities hereinafter declared.

§ 161. Sole trustee. When one trustee only shall be appointed, all the provisions herein contained, in reference to several trustees, shall apply to him.

§ 162. Two or more trustees. When there are more trustees than one appointed, the debts and property of the debtor may be collected and received by any one of them; and when there are more than two trustees appointed, every power and authority conferred by this chapter on the trustees, may be exercised by any two of them.

§ 163. Death of trustee; survivor or successor. The survivor or survivors of any trustee, shall have all the powers and rights given by this chapter to trustees. All property in the hands of any trustee at the time of his death, removal or incapacity, shall be delivered to the remaining trustee or trustees, if there be any; or to the successor of the one so dying, removed or incapacitated; who may demand and sue for the same.

§ 164. Trustees' oath. Before proceeding to the discharge of any of their duties, all such trustees shall take and subscribe an oath, that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding; which oath shall be filed with the court that appointed them.

§ 165. Vesting of property in trustees. The trustees taking such oath, shall be deemed vested with all the estate, real and personal, of such debtor, except such as is exempted by articles three, four and five from the execution of the assignment, in said articles directed.

§ 166. Powers of trustees. The said trustees shall have power:

1. To sue in their own names or otherwise, and recover all the estate,

debts and things in action, belonging or due to such debtor, in the same manner and with the like effect as such debtor might or could have done if no trustees had been appointed, and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor, by such debtor, before presenting the petition of the insolvent under said articles. But no suit in equity shall be brought by assignees of insolvents under the third or fourth articles, without the consent of the creditors having a major part of the debts which shall have been exhibited and allowed, unless the sum in controversy exceeds five hundred dollars;

2. To take into their hands, all the estate of such debtor, whether delivered to them, or afterwards discovered; and all books, vouchers and securities relating to the same;

3. From time to time, to sell at public auction, all the estate, real and personal, vested in them, which shall come to their hands, after giving at least fourteen days' public notice of the time and place of sale, and also publishing the same for two weeks in a newspaper, printed in the county, where the sale shall be made, if there be one;

4. To allow such credit on the sale of real property by them, as they shall deem reasonable, not exceeding eighteen months, for not more than three-fourths of the purchase money; which credit shall be secured by a bond or note of the purchaser, and a mortgage on the property sold;

5. On such sales, to execute the necessary conveyances and bills of sale;

6. To redeem all real or personal property subject to a security interest or mortgage, and to satisfy any judgments which may be an incumbrance on any property so sold by them; or to sell such property subject to such mortgages, security interests or judgments;

7. To settle all matters and accounts between such debtor, and his debtors, or creditors, and to examine any person touching such matters and accounts, on oath, to be administered by either of them;

8. Under the order of the court appointing them, to compound with any person indebted to such debtor, and thereupon to discharge all demands against such person.

§ 167. Notice to debtors, bailees and creditors. The trustees, immediately upon their appointment, shall give notice thereof for at least three weeks in a newspaper published in the county where application was made and therein shall require:

1. All persons indebted to such debtor, by a day and at a place therein to be specified, to render an account of all debts and sums of money owing by them respectively, to such trustees, and to pay the same;

2. All persons having in their possession any property or effects of such debtor, to deliver the same to the said trustees by the day so appointed;

3. All the creditors of such debtor to deliver their respective accounts and demands to the trustees or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice.

§ 168. Power to sue notwithstanding notice. Notwithstanding any such notice, the trustees may sue for and recover, any property or effects of the debtor, and any debts due to him, at any time, before the day appointed for the delivery or payment thereof.

§ 169. Forfeiture for failure to comply with notice. Every person indebted to such debtor, or having the possession or custody of any property or thing in action, belonging to him, who shall conceal the same, and not deliver a just and true account of such indebtedness, or not deliver such property or thing in action, to the trustees or one of them, by the day for that purpose appointed, shall forfeit double the amount of such debt, or double the value of such property so concealed; which penalties may be recovered by the trustees.

§ 170. Warrant on withholding account or property. Whenever the trustees shall show by their own oath, or other competent proof, to the satisfaction of any judge of a county court, or in the county of New York any justice of the supreme court, that there is good reason to believe that the debtor, the spouse of the debtor, or any other person has concealed or embezzled any part of the estate of such debtor vested in the said trustees; or that any person can testify concerning the concealment or embezzlement thereof; or that any person who shall not have rendered an account as above required, is indebted to such debtor, or has property in his or her custody or possession, belonging to such debtor; such judge or justice shall issue a warrant, commanding any sheriff or constable, to cause such debtor, the spouse of the debtor, or other person, to be brought before him at such time and place as he shall appoint, for the purpose of being examined.

§ 171. Examination of person arrested. The judge or justice issuing such warrant, shall examine every person so brought before him, on oath, in the presence of the trustees or any of them, touching all matters relative to the debtor, his dealings and estate, and touching the detention or concealment of any part of his property, and touching the indebtedness of any person to such debtor; and shall reduce the examination to writing; which the person so examined is hereby required to sign, and which shall be attested by the judge or justice.

§ 172. Imprisonment for contumacy. If any person so brought before such judge or justice, shall refuse to be sworn, or to answer satisfactorily, all lawful questions put to him, or shall refuse to sign the examination, not having a reasonable objection thereto, to be allowed by such judge or justice, the judge or justice shall by warrant commit such person to prison, there to remain without bail, until he shall submit to be sworn or to answer as required, or to sign such examination; in which warrant the particular default of the person committed shall be specified; and if it be in not answering any question, such question shall also be specified therein.

§ 173. No discharge for defects of form. If any person so committed, shall bring a writ of habeas corpus, he shall not be discharged by reason of any insufficiency in the form of the warrant of commitment; but the court before whom such person shall be brought, shall re-commit such person, unless it shall be made to appear that he has answered all lawful questions put to him, or had sufficient reason for refusing to sign the examination, as the case may be; or unless such person shall then answer, on oath, the questions so put to him.

§ 174. Penalties for connivance at escape. Any sheriff, constable or jailer wilfully suffering any person so committed or re-committed, pursuant to the foregoing sections, to escape, on conviction thereof, in addition to any other punishment the court may inflict, shall forfeit to the trustees a sum equal to the whole amount of debts due to the creditors of such debtor, not exceeding two thousand five hundred dollars.

§ 175. Effect of answers on examination. The person so examined, and answering to the satisfaction of the court, shall not be liable to any penalty imposed for concealing and not delivering any property, or paying any debt; but his answers on such examination, may be given in evidence in the same manner, and with the like effect, as if he had been examined by such trustees in an action brought by them against him for the recovery of such property or debt.

§ 176. Reward to informers. Any person who shall discover to the trustees any secreted effects, property or things in action, belonging to such debtor, so that they shall be recovered by them, shall be entitled to ten dollars on the hundred dollars, and at that rate, on the value of the effects so discovered, to be paid by the trustees, out of the estate of such debtor; but this section shall not extend to persons who have such property, effects or things, in their own possession.

§ 177. Reference of disputed claims. If any controversy shall arise between the trustees and any other person in the settlement of any demands against such debtor, or of debts due his estate, the same may be referred to one or more indifferent persons, who may be agreed upon by the trustees and the party with whom such controversy shall exist, by a writing to that effect signed by them.

§ 178. Application for appointment of referee. If such referee or referees be not selected by agreement, then the trustees or the other party to the controversy, provided no action at law is pending arising out of any such debts or demands, may serve a notice of their intention to apply to a judge of the court which appointed said trustees, or to any justice of the supreme court at chambers, residing in the same district with said trustees, for the appointment of one or more referees, specifying the time and place when such application will be made, which notice shall be served at least ten days before the time so therein specified.

§ 179. Appointment of referee. On the day so specified, upon due proof of the service of such notice, the judge or justice before whom the application is made may in his discretion proceed to select one or more referees, the same in all respects as they are now selected according to the rules and practice of the supreme court.

§ 180. Entry of order of reference. The judge or justice by whom they shall be selected, shall certify such selection in writing. Such certificate, or the written agreement of the parties, shall be filed by the trustees in the office of the clerk where the order appointing the trustees is entered; and an order shall thereupon be entered by such clerk appointing the persons so selected referees to determine the controversy.

§ 181. Powers, duties and compensation of referees. Such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the supreme court, in actions pending therein.

§ 182. Filing and effect of referees' report. The report of the referees shall be filed in the same office where the order for their appointment was entered, and shall be conclusive on the rights of the parties, if not set aside by the court.

§ 183. Commission to take testimony out of county. When any witness to such controversy shall reside out of the county where the said trustees resided at the time of their appointment, the referee or referees appointed to hear said controversy shall have power to issue a commission or commissions in like manner as justices of the peace are now authorized to issue the same, and the testimony so taken shall be returned to said referee or referees in the same manner, and be read before them on a hearing, in like manner as testimony taken on commission before justices of the peace.

§ 184. Sale of property and accounts of trustees. The trustees shall, as speedily as possible, convert the estate, real and personal, of such debtor, into money. They shall keep a regular account of all moneys received by them as trustees; to which, every creditor, or other person interested therein, shall be at liberty, at all reasonable times, to have recourse.

§ 185. Meeting of creditors and notice thereof. The trustees, within fifteen months from the time of their appointment, shall call a general meeting of the creditors of such debtor, by a notice to be published in the same manner, as hereinbefore directed respecting the publication of the notice of their appointment; in which notice, they shall specify the place and time of such meeting, which time shall not be more than three months, nor less than two months after the first publication of such notice. Every such notice shall be published at least once in each week, until the time of such meeting.

§ 186. Proceedings at creditors' meetings. At such meeting, or other adjourned meeting thereafter, all accounts and demands, for and against the estate of such debtor, shall be fairly adjusted, as far as the same can be ascertained, and the amount of moneys in the hands of the trustees declared.

§ 187. Payment of disbursements and commissions of trustees. Out of the moneys in their hands, the trustees may first deduct all the necessary disbursements made by them in the discharge of their duty, and a commission at the rate of five per centum on the whole sum which shall have come into their hands.

§ 188. Preferred debts. They shall pay all debts due by such debtor to the United States, and all debts due by him to persons who, by the laws of the United States, have a preference in consequence of having paid money as sureties of such debtor.

§ 189. Distribution of moneys. They shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, in proportion to their respective demands, and without giving any preference to debts due on specialties, as follows:

1. In proceedings under the third and fourth articles of this chapter, among those who were creditors at the time of the execution of the

assignment by the insolvent;

2. In proceedings under the fifth article, among those creditors, at whose suit the debtor was imprisoned on execution at the time of his discharge.

§ 190. Preference of debts owing by debtor as trustee. In making such distribution, the trustees shall first pay all debts that may be owing by the debtor as guardian, executor, administrator or trustee; and if there be not sufficient to pay all debts of the character above specified, then a distribution shall be made among them, in proportion to their amounts respectively.

§ 191. Payment of debts before maturity. Every person to whom a debtor, except one proceeding under the fifth article, shall be indebted on a valuable consideration, for any sum of money not due at the time of such distribution, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum distributed, for the time unexpired of such credit.

§ 192. Set-off of mutual debts or credits. Where mutual credit has been given by any debtor, except a debtor proceeding under the fifth article of this chapter, and any other person, or mutual debts have subsisted between such debtor and any other person, the trustees may set off such credits or debts, and pay the proportion or receive the balance due. But no set-off shall be allowed of any claim or debt, which would not have been entitled to a dividend as hereinbefore directed.

§ 193. No set-off in certain cases. No set-off shall be allowed by such trustees, of any claim or debt, which shall have been purchased by, or transferred to, the person claiming its allowance, which could not have been set off by him, according to the provisions of this article, in a suit brought by such trustees.

§ 194. Provision for pending actions. If, at the time any dividend is made, any action or proceeding be pending against the trustees, in which a demand against such debtor may be established, the trustees may retain in their hands, the proportion which would belong to such demand if established, and the necessary costs and expenses of such action or proceeding, to be applied according to the event of such proceeding or action, or to be distributed in a second or other dividend.

§ 194-a. Provision for contingent or unliquidated liabilities. If, at the time any dividend is made, there shall be a contingent or unliquidated claim against the debtor or an outstanding bond, recognizance or undertaking upon which the debtor shall have been principal, surety or indemnitor, the trustees must retain in their hands for such period or periods as the court having jurisdiction of the matter may by order direct a sum of money sufficient to pay a due or equal proportion of said dividend upon such contingent or unliquidated claim or liability if and when the same shall be established and liquidated.

§ 195. Penalties recovered. All penalties which shall be recovered by any trustees, pursuant to the provisions of this article, shall be deemed a part of the estate of the debtor, and shall be distributed as such among his creditors.

§ 196. Subsequent dividends. If the whole of such debtor's estate be not distributed on the first dividend, the trustees shall, within one year thereafter, make a second dividend of all the moneys belonging to the estate of the debtor, then in their hands, among the creditors entitled thereto as hereinbefore specified; and in the same manner from year to year, so long as any moneys belonging to the estate of such debtor shall remain in the hands of the trustees, they shall make a dividend thereof among the creditors entitled thereto.

§ 197. Provision for neglectful creditors. Any creditor who shall have neglected to deliver to the trustees an account of his demand, before the first, second, third or other dividend, and who shall deliver his account to them before the second, or other subsequent dividend, shall receive the sum he would have been entitled to, on any former dividend, before any distribution be made to other creditors.

§ 198. Unclaimed dividends. If any dividend that shall have been declared, shall remain unclaimed by the person entitled thereto for one year after the same was declared, the trustees shall consider it as relinquished, and shall distribute it, on any subsequent dividend, among the other creditors.

§ 199. Disposition of surplus. If after settling the estate of any debtor, and after discharging his debts, entitled to a dividend, any surplus shall remain in the hands of his trustees, the same shall be paid to such debtor or his legal representatives.

§ 200. Allowance to debtor. Every debtor who shall be discharged under the third or fourth articles of this chapter shall be allowed the sum of five per centum on the net produce of all his estate, that shall be received by the assignees, to be paid to him by them, in case such net produce, after such allowance made, shall be sufficient to pay the creditors of such debtor, entitled to a dividend, the sum of seventy cents on the dollar, on the amount of their debts respectively, as the same shall have been ascertained; but the said allowance shall not exceed in the whole, the sum of five hundred dollars.

§ 201. Accounting by trustees. Within ten days after any dividend made by any trustees, they shall render on oath and file with the clerk of the court where the order appointing them was entered an account in writing of all their proceedings in the premises, stating:

1. Their disbursements, commissions and the dividends made by them;

2. The names and residences of the creditors to whom dividends were made, and the names of those actually receiving them;

3. The property, moneys and effects of the debtor remaining in their hands, and the value and situation of such property.

And such trustees may at any time be compelled by an order of the supreme court, or of the county court of the county in which they reside, to render such account on oath, on the application of the debtor, or of any creditor.

§ 202. Trustees subject to order of court. Such trustees shall be subject to the order of the supreme court, and of the county court of the county in which they were appointed, upon the application of any creditor, or of any debtor in respect to whom they were appointed, in relation to the execution of any of the powers and duties confided to them; and they may be removed by such court, for cause shown.

§ 203. Appointment of substitute trustee. Whenever any trustee shall be removed, or shall die, or become incapacitated to perform his duties, the court which originally appointed such trustee, after giving notice, and an opportunity to the creditors to propose proper persons, may appoint another in the place of such trustee, who shall, in all respects, have the like powers and authority, and be subject to the same control, obligations and responsibilities; and the said appointment shall be certified and recorded, as the original appointment was required to be recorded.

§ 204. Application by trustee for leave to renounce. Any trustee appointed pursuant to the provisions of this chapter who shall be desirous of renouncing the trust vested in him, may apply to the court from whom his appointment was received, for an order to all persons interested, to show cause why such renunciation should not be accepted.

§ 205. Account upon application. Such application shall be accompanied by a full, true and just account of all the transactions of such trustees, in that character, and particularly of the property, moneys and effects received by him; of all payments made, whether to creditors or otherwise; and of the remaining effects and estate of the debtor, in respect to whom, or whose estate, he was appointed trustee, within his knowledge, and the situation of the same.

§ 206. Verification of account. To such account shall be annexed the affidavit of the trustee, that the said account is in all respects just and true, according to the best of his knowledge and belief.

§ 207. Order to show cause. The court shall thereupon grant an order, directing notice to be given to all persons interested in the estate of the debtor, in respect to whom or whose estate such trustee was appointed, to show cause on a day, or at a term and at a place therein to be specified, why he should not be permitted to renounce his appointment.

§ 208. Publication of notice. Such notice shall be published, once in each week, for four weeks successively, in such newspapers, as such court shall direct.

§ 209. Hearing. On the day appointed for such hearing, and on such other days as shall from time to time be appointed, if it shall appear that notice was duly published, the court shall proceed to hear the proofs and allegations of the parties.

§ 210. Order permitting renunciation. If it shall appear that the proceedings of such trustee, in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts vested in him; and if such court be satisfied, that for any reason, it is inexpedient for such trustee to continue in the execution of the duties of his appointment, and that such duties can be executed by another trustee, without injury to the estate of the debtor, or to the creditors; and if no good cause to the contrary appear, the court shall grant an order, allowing such trustee to renounce his appointment, and to assign the property and effects of the debtor.

§ 211. Assignment by renouncing trustee. Such assignment shall be executed by such trustee, to such person, or persons, as the court shall appoint for that purpose; and in the appointment, such persons as shall have been named to be assignees by the creditors of such debtor, or by the major part of them, shall be preferred, if approved by such court.

§ 212. Effect of assignment. Such assignment shall transfer to the persons to whom it shall be made, all the remaining estate and effects, vested in the trustee so renouncing; and such new assignee shall have the same powers, be subject to the same duties, and be entitled to the same compensation, as the original trustee; and shall continue any suit that may have been commenced by such original trustee, in his name, or in that of such new assignee.

§ 213. Order for discharge of trustee from trust. Upon producing to the court allowing such assignment, the certificate of the assignee, duly proved by the oath of a subscribing witness, that such assignment has been duly made, and the property capable of delivery, belonging to such debtor, together with all the books, vouchers and documents, relating to the estate of such debtor, has been duly delivered; and also a certificate of the county clerk, that such assignment has been recorded; such court shall grant to the trustee so applying, an order that he be discharged from his trust.

§ 214. Effect of order. Upon such order being granted, such trustee shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease; but he shall, notwithstanding, remain subject to any liability he may have incurred, at any time previous to the granting of such order, in the management of his trust.

§ 215. Recording order and filing papers. Such new assignment, upon being duly proved or acknowledged, shall be recorded in the office of the clerk of the county where the order appointing the original trustee was entered; and the petition of the trustee, the affidavit and proceedings thereon, with the certificate of the new assignee, shall be filed in the same office.

§ 216. Payment of expense of renunciation. The expense of all proceedings in effecting such renunciation and assignment, shall be paid by the trustee making the application.

§ 217. New trustee in place of one absent. Whenever any trustee appointed under any authority conferred by any of the provisions of articles three, four or five of this chapter, shall remove from and continue to reside out of this state for one year, it shall be lawful for the court which originally appointed such trustee, after giving notice and an opportunity to the creditors to propose proper persons, to appoint another person in the place of such trustee.

§ 218. Powers and duties of new trustee. The trustee appointed in the place of the trustee so removed shall in all respects have the like powers and authority, and be subject to the same control, obligations and responsibilities as the trustee originally appointed; and the appointment of such trustee shall be certified and recorded as the original appointment was required to be recorded.

ARTICLE 9
PAYMENT OF DEBTS OF INCOMPETENT PERSON OR CONSERVATEE

§ 250. Notice to creditors of incompetent person or conservatee. A court exercising jurisdiction over the property of an incompetent person or conservatee may, upon the petition of a committee of the property of such incompetent person or of the conservator of the property of such conservatee, authorize him to advertise for creditors and other persons interested in such estate, to present to him their claims with the vouchers thereof, duly verified, and naming a post-office address at which papers may be served on them by mail, as hereinafter provided, on or before a day to be specified in such advertisement, not less than thirty days from the last publication thereof, which advertisement or notice shall be published in two newspapers to be designated by the court as most likely to give notice to the persons to be served, not less than once a week for four successive weeks, and a copy of such notice securely inclosed in a post-paid wrapper, shall be deposited in the post-office in the village or city where such committee or conservator resides, addressed to each person interested in the estate of such incompetent person or conservatee who shall appear from the books or papers of such incompetent person or conservatee to be interested in said estate, or who shall be known to said committee or conservator to be so interested, at the proper post-office address of such interested person, so far as said committee or conservator shall be able to ascertain the same, at least thirty days prior to the time limited in such notice for presentation of such claims.

§ 251. Authority for committee or conservator to compromise claims. A court exercising jurisdiction over the property of a person with a mental illness, or conservatee may, upon the application of the committee of the property of such incompetent person or the conservator of the conservatee, and for good and sufficient cause shown, and upon such terms as it may direct, authorize the committee or conservator to sell, compromise or compound any claim or debt belonging to the estate of the incompetent person or conservatee. But such authority shall not prevent any party interested in the trust estate, from showing upon the final accounting of such committee or conservator that such debt or claim was fraudulently or negligently sold, compounded or compromised. The sale of any debt or claim heretofore made in good faith by any such committee or conservator, shall be valid, subject, however, to the approval of the court, and the committee or conservator shall be charged with and liable for, as a part of the trust fund, any sum which might or ought to have been collected by him.

§ 252. Payment by committee or conservator of claims. A committee of the property of a person, incompetent by reason of mental illness, a developmental disability or alcohol abuse, to manage his or her affairs, or a conservator of the property of a conservatee, may, under direction of the court exercising jurisdiction of such estate, after payment of the expenses, disbursements and commissions of such trust, apply so much of the funds and property of said estate remaining in his or her hands as such committee or conservator, as may be necessary to pay and discharge the proper claims of creditors who have presented claims pursuant to the notice in this article provided for, to the payment of such claims, and if the property so remaining be insufficient to pay such claims in full, then the committee or conservator may distribute the same according to law among the creditors who have presented and proved their claims as in this article provided, and such payment, when so made in good faith and under direction of such court, shall relieve such committee or conservator and his or her sureties from liability to creditors who have failed to present their claims as in this article provided.

§ 253. Citation to attend judicial settlement of accounts of committee or conservator. A citation may be issued by the court to all parties interested in the estate of such incompetent person or conservatee, as creditors or otherwise, requiring them to appear in court on some day therein to be specified, to make proof of their several claims if they be creditors, and to show cause why a settlement of accounts and proceedings of the committee or conservator up to the date of such hearing should not be had, and if no cause be shown, to attend the settlement of such account. All such citations must be returnable in court, and said court when not otherwise engaged shall always be open for proceedings under this article. Such citations may be issued on petition of such committee or conservator, or of one or more of his sureties, or of a creditor of such incompetent person or conservatee, or other person interested in said estate; and when issued on a petition of a committee, conservator, or his surety, it may be issued at any time after the appointment of such committee or conservator, in any other case, after lapse of one year from the appointment of such committee or conservator, or upon his removal or resignation. A citation issued on petition of a creditor may be addressed to and served on the committee or conservator alone, but on or after the return of such citation, the committee or conservator may have a general citation issued to all parties interested.

§ 254. Service of citation. A citation to the persons interested must be served on all parties, other than the petitioner, who are interested in the fund, including sureties of the committee or conservator; but the court may, in its discretion, dispense with the service on such incompetent person or conservatee, and, if the time limited by due advertisement for presentation of claims has expired before the issue of citation, creditors who have not duly presented their claims need not be served. The court may, by order, direct such citation to be served on creditors who have presented claims accompanied by post-office address, as provided in section two hundred and fifty, by depositing a copy of the same at least twenty days prior to the return day thereof in the post-office at the place where such committee or conservator, resides, duly inclosed and directed to each of such creditors at the post-office address specified by him as provided in section two hundred and fifty, with the postage prepaid, and publishing such citation once in each week for at least four weeks prior to such return day in one or more newspapers to be designated by the court as most likely to give notice to such creditors. A citation personally served within the county where such incompetent person or conservatee resided at the time of his becoming incompetent or incapable of managing his affairs, or an adjoining county, must be served at least eight days before the return thereof; if in any other county, at least fifteen days before the return thereof. The court may direct service to be made by publication, when it is satisfied by affidavit or verified petition, either that the person to be served is unknown or that his residence can not, after diligent inquiry, be ascertained, or that he can not, after due diligence, be found within the state. The order for such service must direct service of the citation upon such person to be made by publication thereof in one newspaper to be designated by the court as most likely to give notice to the person to be served once a week for four weeks, and that a copy of the citation be forthwith deposited in the post-office duly inclosed and directed to each person so served at his last known place of residence or post-office address, and the postage paid thereon, at least thirty days before the return day thereof. When publication has been ordered, personal service without the state made, if within the United States, at least thirty days, or without the United States, at least forty days before the return day, is equivalent to publication and mailing. Personal service on minors, incompetent persons and conservatees shall be made as prescribed by law for service of citations issued by surrogates for final accounting, and personal service on one or two or more creditors, claiming as co-partners or otherwise as joint creditors shall be equivalent to personal services on all, and voluntary appearance either in person or by attorney shall be equivalent to personal service, and such appearance may be made by any one claiming an interest, though not served, and such person shall thereupon become a party to the proceeding.

§ 255. Proceedings on return of citation. Upon the return of such citation properly served, such court shall have the powers in relation to such estates, claims, property and committee, which devolve on courts, by virtue of section twenty-one, in relation to assignments and assignees for benefit of creditors and such assigned estates.

ARTICLE 10

UNIFORM VOIDABLE TRANSACTIONS ACT

§ 270. Definitions. As used in this article:

(a) "Affiliate" means:

(1) a person that directly or indirectly owns, controls or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(2) a corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the debtor or a person that directly or indirectly owns, controls or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person that holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(3) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(4) a person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(b) "Asset" means property of a debtor, but the term does not include:

(1) property to the extent it is encumbered by a valid lien;

(2) property to the extent it is generally exempt under non-bankruptcy law; or

(3) an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(c) "Claim", except as used in "claim for relief", means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(d) "Creditor" means a person that has a claim.

(e) "Debt" means liability on a claim.

(f) "Debtor" means a person that is liable on a claim.

(g) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(h) "Insider" includes:

(1) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in subparagraph (ii) of this paragraph; or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(2) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in subparagraph (iv) of this paragraph; or

(vi) a relative of a general partner, director, officer or person in control of the debtor;

(3) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in subparagraph (iii) of this paragraph; or

(v) a person in control of the debtor;

(4) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(5) a managing agent of the debtor.

(i) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(j) "Organization" means a person other than an individual.

(k) "Person" means an individual, estate, partnership, association, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal or commercial entity.

(l) "Property" means anything that may be the subject of ownership.

(m) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(n) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(o) "Sign" means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic symbol, sound, or process.

(p) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(q) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

§ 271. Insolvency. (a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors, or that has been transferred in a manner making the transfer voidable under this article.

(d) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

§ 272. Value. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of paragraph two of subdivision (a) of section two hundred seventy-three and section two hundred seventy-four of this article, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

§ 273. Transfer or obligation voidable as to present or future creditor. (a) A transfer made or obligation incurred by a debtor is voidable 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 the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under paragraph one of subdivision (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 that transferred the assets to an insider of the debtor.

(c) A creditor making a claim for relief under subdivision (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

*** § 273-a. Conveyances by defendants.** Every conveyance made without fair consideration when the person making it is a defendant in an action for money damages or a judgment in such an action has been docketed against him, is fraudulent as to the plaintiff in that action without regard to the actual intent of the defendant if, after final judgment for the plaintiff, the defendant fails to satisfy the judgment.

* NB Repealed April 4, 2020

§ 274. Transfer or obligation voidable as to present creditor. (a) A transfer made or obligation incurred by a debtor is voidable 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 voidable 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 subdivision (b) of section two hundred seventy-one of this article, a creditor making a claim for relief under subdivision (a) or (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

§ 275. 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 which 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 section and the transfer is not so perfected before the commencement of an action for relief under this article, the transfer is deemed made immediately before the commencement of the action;

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

(d) a transfer is not made until the debtor has acquired rights in the asset transferred; and

(e) an obligation is incurred:

(1) if oral, when it becomes effective between the parties; or

(2) if evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee.

§ 276. Remedies of creditor. (a) In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in section two hundred seventy-seven of this article, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(iii) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

§ 276-a. Attorney's fees in action or special proceeding under this article to avoid a transfer or obligation. In an action or special proceeding under this article in which a judgment creditor who has been awarded by court order or agreement or has waived attorney's fees available to prevailing parties by the terms of the statute under which the creditor's underlying claim arose, or representative asserting the rights of such judgment creditor, recovers judgment avoiding any transfer or obligation, the justice or surrogate presiding at the trial shall fix the reasonable attorney's fees of the creditor, or creditor representative, incurred in such action or special proceeding under this article as an additional amount required to satisfy the creditor's claim, and the creditor, or creditor representative, shall have judgment therefor against the debtor and, subject to the defenses and protections in section two hundred seventy-seven of this article, against any transferee (or person for whose benefit the transfer was made) against whom relief is ordered, in addition to the other relief granted by the judgment. The fee so fixed shall be without regard, or prejudice, to any agreement, express or implied, between the creditor, or the creditor representative, and his or her attorney with respect to the compensation of such attorney.

§ 277. Defenses, liability, and protection of transferee or obligee.
(a) A transfer or obligation is not voidable under paragraph one of subdivision (a) of section two hundred seventy-three of this article against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under paragraph one of subdivision (a) of section two hundred seventy-six of this article the following rules apply:

(1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subdivision (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

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

(ii) an immediate or mediate transferee of the first transferee, other than:

(A) a good-faith transferee that took for value; or

(B) an immediate or mediate good-faith transferee of a person described in clause (A) of this subparagraph.

(2) Recovery pursuant to paragraph one of subdivision (a) or subdivision (b) of section two hundred seventy-six of this article of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in subparagraph (i) or (ii) of

paragraph one of this subdivision.

(c) If the judgment under subdivision (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 an interest in the asset transferred;

(2) enforcement of an obligation incurred; or

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

(e) A transfer is not voidable under paragraph two of subdivision (a) of section two hundred seventy-three or section two hundred seventy-four of this article 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 article nine of the uniform commercial code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(f) A transfer is not voidable under subdivision (b) of section two hundred seventy-four of this article:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent 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 subdivision (a), (d), (e) or (f) of this section has the burden of proving the applicability of that subdivision.

(2) Except as otherwise provided in paragraphs three and four of this subdivision, the creditor has the burden of proving each applicable

element of subdivision (b) or (c) of this section.

(3) The transferee has the burden of proving the applicability to the transferee of clause (A) or (B) of subparagraph (ii) of paragraph one of subdivision (b) of this section.

(4) A party that seeks adjustment under subdivision (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.

§ 278. Extinguishment of claim for relief. A claim for relief with respect to a transfer or obligation under this article is extinguished unless action is brought:

(a) under paragraph one of subdivision (a) of section two hundred seventy-three of this article, not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(b) under paragraph two of subdivision (a) of section two hundred seventy-three or subdivision (a) of section two hundred seventy-four of this article, not later than four years after the transfer was made or the obligation was incurred; or

(c) under subdivision (b) of section two hundred seventy-four of this article, not later than one year after the transfer was made.

§ 279. Governing law. (a) In this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

§ 280. Supplementary provisions. Unless displaced by the provisions of this article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

§ 281. Uniformity of application and construction. This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among states enacting it.

§ 281-a. Relation to electronic signatures in global and national commerce act. This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

ARTICLE 10-A

PERSONAL BANKRUPTCY EXEMPTIONS

§ 282. Permissible exemptions in bankruptcy. Under section five hundred twenty-two of title eleven of the United States Code, entitled "Bankruptcy", an individual debtor domiciled in this state may exempt from the property of the estate, to the extent permitted by subsection (b) thereof, only (i) personal and real property exempt from application to the satisfaction of money judgments under sections fifty-two hundred five and fifty-two hundred six of the civil practice law and rules, (ii) insurance policies and annuity contracts and the proceeds and avails thereof as provided in section three thousand two hundred twelve of the insurance law and (iii) the following property:

1. Bankruptcy exemption of a motor vehicle. One motor vehicle not exceeding four thousand dollars in value above liens and encumbrances of the debtor; provided, however, if such vehicle has been equipped for use by a disabled debtor, then ten thousand dollars in value above liens and encumbrances of the debtor.

2. Bankruptcy exemption for right to receive benefits. The debtor's right to receive or the debtor's interest in: (a) a social security benefit, unemployment compensation or a local public assistance benefit; (b) a veterans' benefit; (c) a disability, illness, or unemployment benefit; (d) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; (e) the debtor's interest in his or her rent-stabilized lease; and (f) all payments under a stock bonus, pension, profit sharing, or similar plan or contract on account of illness, disability, death, age, or length of service unless (i) such plan or contract, except those qualified under section 401, 408 or 408A of the United States Internal Revenue Code of 1986, as amended, was established by the debtor or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose, (ii) such plan is on account of age or length of service, and (iii) such plan or contract does not qualify under section four hundred one (a), four hundred three (a), four hundred three (b), four hundred eight, four hundred eight A, four hundred nine or four hundred fifty-seven of the Internal Revenue Code of nineteen hundred eighty-six, as amended.

3. Bankruptcy exemption for right to receive certain property. The debtor's right to receive, or property that is traceable to: (i) an award under a crime victim's reparation law; (ii) a payment on account

of the wrongful death of an individual of whom the debtor was a dependent to the extent reasonably necessary for the support of the debtor and any dependent of the debtor; (iii) a payment, not to exceed seventy-five hundred dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; and (iv) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

§ 283. Aggregate individual bankruptcy exemption for certain annuities and personal property. 1. General application. The aggregate amount the debtor may exempt from the property of the estate for personal property exempt from application to the satisfaction of a money judgment under subdivision (a) of section fifty-two hundred five of the civil practice law and rules and for benefits, rights, privileges, and options of annuity contracts described in the following sentence shall not exceed ten thousand dollars. Annuity contracts subject to the foregoing limitation are those that are: (a) initially purchased by the debtor within six months of the debtor's filing a petition in bankruptcy, (b) not described in any paragraph of section eight hundred five (d) of the Internal Revenue Code of nineteen hundred fifty-four, and (c) not purchased by application of proceeds under settlement options of annuity contracts purchased more than six months before the debtor's filing a petition in bankruptcy or under settlement options of life insurance policies.

2. Contingent alternative bankruptcy exemption. Notwithstanding section two hundred eighty-two of this article, a debtor, who (a) does not elect, claim, or otherwise avail himself of an exemption described in section fifty-two hundred six of the civil practice law and rules; (b) utilizes to the fullest extent permitted by law as applied to said debtor's property, the exemptions referred to in subdivision one of this section which are subject to the ten thousand dollar aggregate limit; and (c) does not reach such aggregate limit, may exempt cash in the

amount by which ten thousand dollars exceeds the aggregate of his or her exemptions referred to in subdivision one of this section or in the amount of five thousand dollars, whichever amount is less. For purposes of this subdivision, cash means currency of the United States at face value, savings bonds of the United States at face value, the right to receive a refund of federal, state and local income taxes, and deposit accounts in any state or federally chartered depository institution.

§ 284. Exclusivity of exemptions. In accordance with the provisions of section five hundred twenty-two (b) of title eleven of the United States Code, debtors domiciled in this state are not authorized to exempt from the estate property that is specified under subsection (d) of such section.

§ 285. Alternative federal exemptions. Notwithstanding any inconsistent provision of law, an individual debtor may opt to exempt from property of the estate such property as is permitted to be exempted pursuant to section five hundred twenty-two of title eleven of the United States Code in lieu of such property as is permitted to be exempted pursuant to the applicable provisions of this article.

ARTICLE 11
Laws Repealed; When to Take Effect

§ 290. Laws repealed. Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 291. When to take effect. This chapter shall take effect immediately.