

**386.605 Restrictions on actions, remedies, and claims. (Effective July 15, 2026)**

- (1) Notwithstanding any law to the contrary, including KRS 386B.5-020(7)(a), no action of any kind, including but not limited to an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition to a qualified trust or for the avoidance of a qualified disposition to a qualified trust, unless:
  - (a) The action is brought pursuant to the Kentucky Uniform Voidable Transactions Act, KRS 378A.005 to 378A.140; and
  - (b) The qualified disposition was made with actual intent to defraud a creditor whose claim arose after a qualified disposition.
- (2)
  - (a) Notwithstanding KRS 378A.090, a creditor's claim under subsection (1) of this section shall be extinguished:
    1. If the person is a creditor when the qualified disposition to a qualified trust is made, unless the action is commenced within the later of two (2) years after the qualified disposition is made or six (6) months after the person discovers or reasonably should have discovered the qualified disposition; or
    2. If the person becomes a creditor after a qualified disposition to a qualified trust is made, unless the action is commenced within two (2) years after the qualified disposition is made.
  - (b) Any valid lien attaching to property before a disposition of that property to a trustee of a qualified trust shall survive the disposition, and the trustee shall take title to the property subject to the valid lien and subject to any agreements that created or perfected the valid lien. This chapter shall not be construed to authorize any disposition that is prohibited by the terms of any agreements, notes, guaranties, mortgages, indentures, instruments, undertakings, or other documents. In the event of any conflict between this paragraph and any other provision of this chapter, this paragraph shall control.
  - (c) If paragraph (a) of this subsection applies:
    1. A person shall be deemed to have discovered the existence of a qualified disposition to a qualified trust at the time any public record is made of any transfer of property relative to the qualified disposition, including but not limited to the conveyance of real property that is recorded in the office of the county clerk in which the property is located, the filing of a financing statement under Article 9 of KRS Chapter 355, or the equivalent recording or filing of either with the appropriate person or official under the laws of a jurisdiction other than this Commonwealth; and
    2. No creditor shall bring an action with respect to property that is the subject of a qualified disposition unless that creditor proves by clear and convincing evidence that the settlor's transfer of the property was made with intent to defraud that specific creditor.
- (3) For purposes of KRS 386.601 to 386.619, a qualified disposition that is made by

means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time the property that is the subject of the qualified disposition was originally transferred to the transferor acting in the capacity of trustee, or any predecessor trustee, in a form that meets the requirements of KRS 386.601(11)(a) and (c).

- (4) Notwithstanding any law to the contrary:
  - (a) A creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only the rights with respect to a qualified disposition that are provided in this section and KRS 386.609;
  - (b) Neither a creditor nor any other person shall have any claim or cause of action against the trustee, an advisor of a qualified trust, or any person involved in the counseling, drafting, preparation, execution, or funding of a qualified trust; and
  - (c) For purposes of this subsection, counseling, drafting, preparation, execution, or funding of a qualified trust includes the counseling, drafting, preparation, execution, or funding of a limited partnership or limited liability company if interests in the limited partnership or limited liability company are subsequently transferred to the qualified trust.
- (5) Notwithstanding any law to the contrary, no action of any kind, including but not limited to an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against a trustee or an advisor of a qualified trust, or against any person involved in the counseling, drafting, preparation, execution, or funding of a qualified trust if, as of the date the action is brought, an action by a creditor with respect to the qualified trust would be barred under this section.
- (6) In circumstances where more than one (1) qualified disposition is made by means of the same qualified trust:
  - (a) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (2) of this section; and
  - (b) Any distribution to a beneficiary shall be deemed to have been made from the latest qualified disposition.
- (7) (a) If, in any action brought against a qualified trust, a court takes any action whereby the court declines to apply the law of this Commonwealth in determining the effect of a spendthrift provision of the trust:
  1. The trustee shall immediately, upon the court's action and without the further order of any court, cease in all respects to be trustee and a successor trustee shall succeed as trustee in accordance with the terms of the trust; or
  2. If the trust does not provide for a successor trustee and the trust would otherwise be without a trustee, a court of this Commonwealth, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon the terms and conditions it determines to be consistent with the purposes of the trust and KRS 386.601 to 386.619.

- (b) Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust in accordance with this subsection.
- (8) A qualified trust shall be subject to this section whether or not the transferor retains any or all of the powers and rights described in KRS 386.617 or serves as an investment advisor pursuant to KRS 386.613.
- (9) (a) Notwithstanding subsection (1) or (2) of this section, the limitations on actions by creditors in law or equity shall not apply, and such creditors' claims shall not be extinguished, if the transferor is indebted on account of an agreement, judgment, or order of a court for the payment of any of the following:
  - 1. Past due child support;
  - 2. Past due temporary or permanent maintenance to a spouse or former spouse;
  - 3. A written agreement, judgment, or order of a court for division of marital property of a spouse or former spouse, but only to the extent of the debt, legally mandated interest on the debt, and the reasonable cost of collection of the debt; or
  - 4. A valid note, mortgage, security interest, or debt instrument in existence prior to the qualified disposition.
- (b) 1. A claim under this subsection shall be asserted against a trustee only:
  - a. Upon a final, nonappealable determination of a Kentucky court or a fully domesticated, final, nonappealable order of a court of another state as defined by KRS 386B.1-010 that the debt is past due; and
  - b. After the court has determined that the claimant has made reasonable attempts to collect the debt from any other sources of the transferor or that such attempts would be futile.
- 2. Nothing in this paragraph shall be construed to prohibit the court from making the findings required in subparagraph 1. of this paragraph in the same proceeding and order.
- (c) This subsection shall not apply to any claim for forced heirship, legitime, or elective share.

**Effective:** July 15, 2026

**History:** Created 2026 Ky. Acts ch. 134, sec. 61, effective July 15, 2026.