

Arizona Bankruptcy Attorney: Beware of Transferring Assets Prior to Bankruptcy

By Bankruptcy Attorney John Skiba

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On a pretty regular basis I have clients ask me if they can “sell” their car to their brother or simply give away an asset to a friend prior to filing for bankruptcy. The thought process is pretty straight forward – “in bankruptcy I will lose this asset, if I give it away, I technically won’t have it and thus the bankruptcy court will not be able to take it from me.” This is usually followed up with the thought that the friend can then “sell” or give it back to the person once their bankruptcy case is over.

Any type of transfer prior to bankruptcy is risky, and the above examples can be considered fraudulent. One thing to remember is that while this is likely your first time in bankruptcy, this isn’t the bankruptcy court nor the US Trustee’s Office’s first rodeo. Any way you may think of to conceal assets has been tried and failed thousands of times. Worse, it is felony to conceal assets in a bankruptcy and it carries heavy penalties and prison time – and yes people do go to prison for committing bankruptcy fraud.

If a person does transfer an asset prior to filing bankruptcy under certain situations the Trustee assigned to your bankruptcy case can go and get that asset from whomever you transferred it to. The bankruptcy code allows this under sections 547 and 548.

Preference

Section 547 deals with preferences. A preference occurs when a person who has filed for bankruptcy transfers (i.e. sold, gave away) an asset to a creditor on a debt that was owing prior to the transfer taking place, and done so while you were insolvent (really broke). For instance, if you owe someone \$10,000, and you decide you want to pay them off in full prior to your bankruptcy, this will likely be considered a preference. If this person is not related to you, then the trustee in your bankruptcy case can look at any transfer within the 90 days prior to your bankruptcy case. If the person who you are paying is a family member (“insider”) then the trustee can look back to all transfers within the 12 months prior to your bankruptcy.

If the trustee in your bankruptcy case determines that there is a preference, then the trustee can seek to undo the transaction by suing the person who received the money or property. If this person happens to be a family member, getting sued by your bankruptcy trustee can make all future family reunions very awkward.

Fraudulent Transfer

Section 548 of the bankruptcy code deals with fraudulent transfers. The most typical scenario where this comes up in bankruptcy is when property is sold within the two years prior to your bankruptcy case for less than the property is worth. For example, if you had a car that is worth \$15,000 but you sold it to your brother for \$5,000 within two years prior to your bankruptcy filing, the trustee in your case can go back and undo that transaction by suing the person whom you transferred the asset to, and then selling the item and giving the proceeds to your creditors.

The risks and problems associated with transferring property prior to your bankruptcy filing should make you give a second thought prior transferring any property if you are contemplating bankruptcy. Better yet, if you are thinking of filing for bankruptcy I would recommend you meet with a bankruptcy attorney to go over your current situation.

Arizona bankruptcy attorney John Skiba offers a free bankruptcy consultation to discuss your specific situation. He can be reached at (480) 464-1111.