

## Can I Give Away Property Before I File for Bankruptcy?

Sometimes in Chapter 7 bankruptcy your property can be taken and sold to satisfy your debts. When I explain to clients that they could potentially lose their property in bankruptcy, the most common response is, "I'll just transfer my car out of my name to my relative," Please do not transfer property to a relative, friend, or third party shortly before filing bankruptcy as this is known as a fraudulent conveyance or fraudulent transfer and carries with it serious repercussions.

When I tell clients they have committed a fraudulent transfer I usually hear, "I didn't do it on purpose to keep the bankruptcy court from taking my property," or, "I didn't even know I was going to file bankruptcy." Even though you may not have intended to defraud the bankruptcy court, the trustee does not have to prove any actual fraud or intent to commit fraud. The act itself is enough for the trustee to avoid the transfer. Occasionally I hear, "how is the trustee going to find out." To be honest, I don't know how, but I can almost guarantee they will. These days the internet makes it very convenient for trustees to discover transfers.

If a fraudulent transfer has occurred, bankruptcy trustee has the power to avoid the transfer and recover the property from a friend, relative or third party. The trustee will then sell the property and distribute the proceeds to your unsecured creditors. Additionally, you do not receive the exemption amount you would have been entitled to had you not made the fraudulent conveyance.

For example, bankruptcy filer Bill transferred his \$9,000 PT Cruiser to Uncle Phil 7 months prior to filing for bankruptcy. This is a fraudulent conveyance and Uncle Phil will be required to turn over the vehicle. In addition to the vehicle being sold and proceeds going to Bill's unsecured creditors, Bill cannot claim the motor vehicle exemption which would have resulted in him receiving \$5,000 (Arizona's motor vehicle exemption). Therefore, it is often best to wait to file bankruptcy if you have made a fraudulent transfer.

When confronted with these facts I often hear clients suggest, "I'll sell it to it a family member or friend for a small sum of money." It may sound a little better than giving it away, but the bankruptcy court does not recognize the difference. Property can be sold prior to filing bankruptcy, but it must be sold for around fair market value. Therefore, if you have a car worth \$4,500, you cannot sell this car to your brother for \$500. This too is a fraudulent transfer.

If you have transferred or sold property and you are considering filing bankruptcy, you should consult with a qualified Tucson bankruptcy lawyer in determining whether the transfer is a fraudulent transfer, and if so, how long you should wait to file your Chapter 7 or Chapter 13 bankruptcy. Our Tucson bankruptcy attorneys are available around the clock to answer any questions you may have regarding fraudulent transfers and fraudulent conveyances.