



“Fraudulent Conveyance During Business Failures”

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During or near a time of business failure or turnaround, if you are managing the business, you need to be careful of committing fraudulent conveyance. Although fraudulent conveyance is normally a civil issue, some states do have criminal fraudulent conveyance laws, making it a criminal offence.

Fraudulent conveyance occurs when an asset is sold for much less than its value. This occurs in two forms, with intent and without intent. This means that you may be found guilty of it even though you did not fully understand that you were doing it.

This brings to mind the old adage:

“Ignorance of the law excuses no man from practicing it.”

- Addison Mizner.

To illustrate fraudulent conveyance, here is an example of what might occur.

Suppose you run a computer firm and your debts exceed \$200,000. You have come to the realization that you will no longer be able to make the payments on these debts and you have tried to effect a turnaround of your business, but you were unsuccessful in your attempt, so you have decided to declare bankruptcy.

Since you have not met with an attorney yet, you are not aware of fraudulent conveyance. You do know a little bit about the bankruptcy process; in fact, the small amount you know is probably just enough to get you into trouble. You know that during the process, all of the assets will be liquidated and the proceeds will go to the creditors.



Since everything is going to be sold off, you decide to sell your wife your personal office computer and instead of getting a fair price for it, you only take \$100, thinking that it doesn't matter anyway that you are not getting the \$500 it would probably bring if advertised in the newspaper.

You have just committed fraudulent conveyance. In essence, you have "stolen," indirectly, \$400 from the creditors. If you had not sold this computer, it would have likely sold for \$500, and the money would have been turned over to the creditors. It is a pretty simple concept if you think about it.

Many people don't.

This is a very simple case, and there are many nuances of fraudulent conveyance, and some very subtle, so you need to be extra careful when your business gets close to having problems. Remember, during these times, you have a fiduciary duty to both the investors/owners of the business and the creditors.