

What is a fraudulent transfer in Massachusetts?

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A creditor files suit against you for a debt owed. It eventually obtains a judgment and then an execution. You learn that the creditor is seeking to give the sheriff the execution to have him levy against your vacation home and force its sale to satisfy the judgment. Just before the sale takes place, you sell (transfer) the vacation home to your son for \$1.00 to make sure that the creditor cannot take it from you to satisfy the debt. What you just did is called a “fraudulent transfer” and would most likely be found to fit the definition under Massachusetts law for one type of fraudulent transfer. The applicable statute reads:

A transfer made or obligation incurred by a debtor is fraudulent 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.

. . . .

Mass. Gen. Laws. c. 109A § 5(a).

So what if it is a fraudulent transfer, what does that mean to me, you might ask. Well the creditor can sue you and your son. If it is found to be a fraudulent transfer by the court, the sale can be “avoided” or set aside. That means the court orders that the sale be undone and the property is back in your ownership. It can place an attachment on the vacation home. It can enjoin both you and your son from further transfer of the property. It also may be able to order you to pay punitive damages and possibly attorneys’ fees and costs. The applicable statute reads:

. . . .

(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 in accordance with the applicable procedure set forth in chapter two hundred and fourteen for actions to reach and apply chapter two hundred and twenty-three for attachments, and chapter two hundred and forty-six for trustee process and in accordance with applicable rules of civil procedure;

(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.

Mass. Gen. Laws. c. 109A § 8.

Fraudulent transfers typically surprise people because they do not know this kind of law exists and have not seen anything like it before. What also tends to surprise and disturb people is that the transferee, the son in our example, can be sued by the creditor. Typically this evokes a very bad reaction from the son, the person you thought you were helping, being something like “thanks but no thanks, I do not want to be involved.”

A real detriment to the accusation of conducting a fraudulent transfer is the possibility of punitive damages and attorneys’ fees and costs. The legal question is what “any other relief the circumstances may require” should be interpreted to mean. Id. This varies from state to state with the majority of states finding that they can be awarded. See e.g. Renbolt v. Kern, 2013 Ohio 1359, 2013 WL 1390607 (April 5, 2013). So usually the threat is there.

In any event, there is a lot at stake with a fraudulent transfer situation. In the event that you find yourself involved in a fraudulent transfer situation in Massachusetts, feel free to contact this office.

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