



Virginia Business Lawyers

Preference Claims Defense Number 3

By: **Bill Gray**. *Tuesday, July 10th, 2012*

In **our last post** we outlined the second of three common defenses to **preference** claims, the “subsequent new value” defense. Now let’s look at the third common defense, “contemporaneous exchange for new value”, in a bit more detail.

Contemporaneous exchange for new value is very much like a COD transaction. For this defense, you give something of value to the **debtor** (e.g., goods; services), but at the same time you give this value to the debtor – and because you and the debtor have previously so agreed – the debtor immediately (contemporaneously) remits payment to you. That immediate payment may otherwise fall within the definition of preference payment, but you do not have to return it because it was a contemporaneous exchange for the new value you provided to the debtor.

As you can see from **our series**, if you receive a demand to return an alleged preference payment, it is always advisable to have a bankruptcy attorney look at your facts and circumstances. A **Virginia creditors’ rights lawyer** will do an analysis of whether the payment falls within the definition of preference, and even if it does, whether you have a valid defense to paying it back. Often, such an analysis can reduce, if not completely eliminate, what payments have to be returned to the debtor.

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