"Year's end is neither an end nor a beginning, but a going on, with all the wisdom that experience can instill in us." Hal Borland

Welcome to Our January 2013 Asset Protection Newsletter!

When is a transfer for less than fair value?

One obvious situation is when the debtor merely gifts his assets. However, proving a sale was made for less than fair value can sometimes be difficult to prove. Courts define ‘fair’ consideration subjectively. ‘Fair’ consideration is the price for which a reasonably prudent seller would sell his property in a commercially reasonable manner. ‘Fair value’ depends largely on the type of property. For example, public stocks or bonds have an ascertainable fair value and a debtor who transfers public shares for less than its daily quoted price would create a fraudulent transfer equal to the difference in value. Conversely, real estate sold for 70 percent of appraised value has been held to satisfy the fair value test. Other difficult-to-value items include jewelry and the closely-owned business. Courts must then consider the relevant facts to determine ‘reasonable value’.

What do you mean by a transfer after you incur a ‘present liability’?

If you sell an asset for less than its fair value, the creditor must secondly show that the transfer occurred after you had the liability.

Important Changes in Florida Law

Latest update: In June of 2010, the Florida Supreme Court held in Olmstead v. Federal Trade Commission (No. SC08-1009) that a charging order is not the exclusive remedy available to a creditor holding a judgment against the sole member of a Florida single-member limited liability company.

Be one step ahead, keep following our newsletter for up to date changes in the law!

Craziest Lawsuit of the Month

Sued a Restaurant After She Slipped on a Spilled Drink

A Philadelphia restaurant was ordered to pay a woman $113,500 after she slipped on a spilled drink and broke her tailbone. The beverage was on the floor because the injured woman threw it at her boyfriend 30 seconds earlier during an argument.

Trending Asset Protection Article of the Month

Once you have a present liability, you cannot safely transfer your assets for less than fair value. No less safe are assets that you transfer when you have a future, foreseeable or probable liability. But you can safely transfer your assets to protect them against a future possible liability. How do we differentiate a probable from a possible liability? The courts consider the facts of each case. When did the act occur that created the liability? When did the debtor first learn of the liability? When was the transfer? Courts conclude differently on whether a liability was probable or possible.

A ‘present liability’ exists from the moment you have a creditor (incurred a liability). Later asset transfers can be challenged. For example, if you sign a lease today and gift your assets tomorrow, your landlord can recover your gifted assets if you later default on your lease. You didn’t have to be in default on your lease for your transfer to be fraudulent. It’s also immaterial whether you were yet sued. The critical date is when did the liability arise – not the date of default or when the lawsuit was filed.

It seems that the fraudulent transfer laws are somewhat subjective. How can you be certain a transfer isn’t fraudulent?

Frequently you can’t. When you review these three elements of a constructive fraudulent transfer, you still have hundreds of unanswered questions. For instance, is it fraudulent to exchange non-exempt assets for exempt (protected) assets of equal value? What if you transfer your assets at the time you have a foreseeable creditor (i.e. you expect to sign a lease)? We can go on. The fraudulent transfer laws are complex, murky, and there can be gray areas of uncertainty. Many transfers are neither clearly fraudulent nor conclusively non-fraudulent. A seasoned asset protection specialist can perhaps best understand the complexities and apply the nuances of these laws to best predict whether a court is likely to unwind a transfer.

The Presser Law Firm, P.A. - Asset Protection Attorneys

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What Happens When Your GREAT Sales Deal Goes Bad?

It's a salespersons job to meet with people and execute business deals on an every day basis – what happens when a business deal, and this inevitably always happens, goes south and you get sued? Or, what if the person you were dealing with just didn't love the outcome of a particular deal? There are so many frivolous lawsuits getting into courts these days, don't allow yourself to be one!

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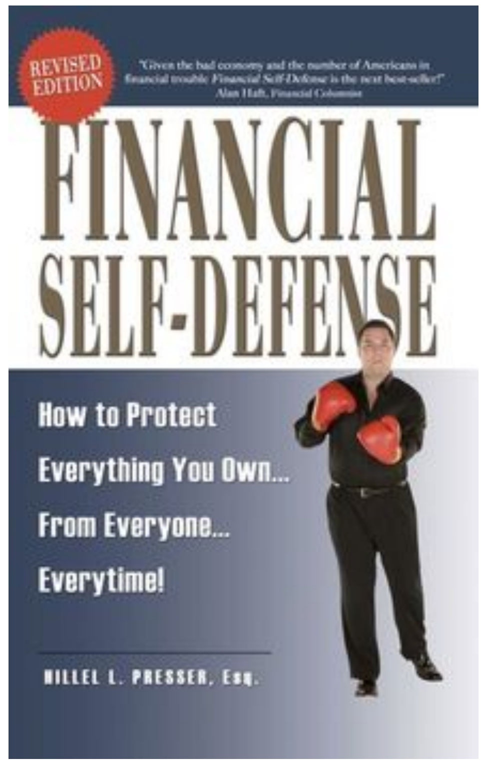

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Best Wishes,

The Presser Law Firm, P.A.
Asset Protection Attorneys

If you know anyone that would benefit from this newsletter, please have them contact us at Info@AssetProtectionAttorneys.com.

For every 60 minutes you spend making money, spend 60 seconds thinking about how to protect it!

Visit Us At Our Location!

The Presser Law Firm, P.A.
Asset Protection Attorneys

800 Fairway Drive
Suite 340
Deerfield Beach, FL 33441

Info@AssetProtectionAttorneys.com
www.AssetProtectionAttorneys.com

The Presser Law Firm, P.A.
Asset Protection Attorneys

561-953-1050 (w)

THE PRESSER LAW FIRM, P.A.
ASSET PROTECTION ATTORNEYS