

25-6-5 Fraudulent transfer -- Claim arising before or after transfer.

- (1) 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:
 - (a) with actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - (b) without receiving a reasonably equivalent value in exchange for the transfer or obligation; and the debtor:
 - (i) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - (ii) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.
- (2) To determine "actual intent" under Subsection (1)(a), consideration may be given, among other factors, to whether:
 - (a) the transfer or obligation was to an insider;
 - (b) the debtor retained possession or control of the property transferred after the transfer;
 - (c) the transfer or obligation was disclosed or concealed;
 - (d) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
 - (e) the transfer was of substantially all the debtor's assets;
 - (f) the debtor absconded;
 - (g) the debtor removed or concealed assets;
 - (h) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
 - (i) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
 - (j) the transfer occurred shortly before or shortly after a substantial debt was incurred; and
 - (k) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Enacted by Chapter 59, 1988 General Session