



Legal Note – Fraudulent Transfers

Over the past several months, we have discussed some of the legal structures available to hold and protect valuable assets. Even the most established structures will, however, be undermined if improperly funded.

All states have adopted legislation permitting a creditor to reach otherwise protected assets if the assets are the subject of a “fraudulent transfer.” Such legislation not only permits suit against the debtor but also generally authorizes action against the transferee of such assets.

Such creditor remedies to reach fraudulently transferred assets generally require the creditor to prove (within the applicable limitations period) one or more fraudulent transfer criteria. Such criteria generally require proof that the debtor (i) intended to avoid the creditor to hinder collection, (ii) did not receive reasonable value for the asset transferred and/or (iii) became insolvent (i.e., unable to pay debt) as a result of the transfer. The precise criteria for recovery of the assets will depend on the applicable law and may hinge on further subtleties such as (i) whether the transfer occurred before the existence of the debt and (ii) whether the creditor was a current or future (foreseeable) creditor.