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Legal Spotlight

The Colorado Uniform Fraudulent Transfer Act

Avoiding CUFTA Claims

Mark D. Changaris, Partner
Berg, Hill, Greenleaf & Ruscitti, LLP
mdc@bhgrlaw.com

Colorado's Uniform Fraudulent Transfer Act, C.R.S. § 38-8-101, *et seq.* can be a trap for the unwary and a potent tool for creditors. Here are a few things you should know about the statute.

CUFTA in a Nutshell

The goal of CUFTA is to prevent debtors from escaping liability for their debts by transferring their assets to third parties. By way of example, a debtor who is facing a court action for millions of dollars in damages may want to transfer all of his significant assets to his family members to protect the assets from the plaintiff. Under CUFTA, if the debtor makes that transfer, the plaintiff would be able to claw back the assets transferred and also involve the family members in time consuming and protracted litigation.

How to Avoid Trouble under CUFTA

If you are facing a substantial liability (through threatened court action, judgment creditors, or otherwise), you may feel a strong desire to transfer your assets to family members, closely held entities, or trusts to try to put the assets beyond the reach of creditors. While this may seem like a good idea, if you have already received notice of threatened claims (or already incurred a debt), it is probably already too late under CUFTA to make the transfer.

CUFTA defines a creditor incredibly broad to include anyone who has a claim (whether the claim is contingent, matured, unmatured, disputed, legal, equitable, unsecured, or otherwise). Thus, even though someone sending you a demand letter may not be what you typically think of as a creditor, under CUFTA, they are entitled to protection and would have standing to clawback any transfers you make.

As a result, if you have been threatened with claims, you should avoid transferring any assets to third parties. By doing so, you will not only expand your potential liability to include CUFTA claims against

Estate Planning

If you want to preserve and protect your assets, the time to do so is prior to the assertion of any claim or incurring the debts. Validly implemented estate planning tools can dramatically reduce your exposure to creditor claims. And by doing the estate planning work before any disputes arise or the debts are incurred, you will significantly reduce the likelihood of creditors asserting CUFTA claims against your assets.

Available Defenses

It is important to note that CUFTA does codify certain defenses in § 109, including the 'contemporaneous exchange for new value' defense and the 'ordinary course of business' defense. While these defenses should be explored, it is important to note that they do not apply to transfers made with intent to hinder, delay, and defraud creditors under § 105(1)(a). As such, while there may be statutory defenses available, the defenses are often fact sensitive and require litigation on the merits to resolve.