A fraudulent conveyance is the transfer (conveyance) of title to real property for the express purpose of putting it beyond the reach of a known creditor. In such a case, the creditor may bring a lawsuit to void the transfer.

This occurs when a debtor seeks to take advantage of their creditor by structuring a transaction with the intent to hinder, delay, or defraud their creditor, see 11 U.S.C. § 548(a)(1)(A). The owner of real or personal property does so by either seeking to place land or goods beyond their creditors’ reaches, operating to prejudice their creditors’ legal or equitable rights, or operating to prejudice the legal or equitable rights of third parties - 11 U.S.C. § 544(b).

Constructive fraudulent conveyance is generally a transaction for less than reasonably equivalent value made when the debtor was insolvent or became insolvent upon the transfer. The debtor must have intended or believed that they would incur debts that would be beyond their ability to pay as these debts matured or made this transfer to or for the benefit of an insider under an employment contract outside of the debtor’s ordinary course of business, see 11 U.S.C. §548(a)(1)(B).

To file an action for fraudulent conveyance, the transfer must have been made or incurred within two years before the date of filing of the bankruptcy petition.

A transfer of a charitable contribution to a qualified religious or charitable entity or organization is not considered a fraudulent conveyance if the amount of the contribution does not exceed 15% of the gross annual income of the debtor during the year in which the transfer of the contribution is made. If the contribution made by a debtor exceeded the 15% of gross annual income, the transfer is not a fraudulent conveyance if it is consistent with the practices of the debtor in making charitable contributions, see 11 U.S.C. §548(a)(2).

See also: Chapter 11 Bankruptcy
[Last updated in February of 2022 by the Wex Definitions Team]

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