

# THE LINE BETWEEN PRUDENT AND CRIMINAL: THE LAW ON TRANSACTIONS BEFORE BANKRUPTCY



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## CAN TRANSACTIONS MADE PRIOR TO BANKRUPTCY BE SET ASIDE?

Actions you take before declaring bankruptcy can be declared improper and set aside. Worse, if it is shown that you acted fraudulently, a criminal charge and jail time is a possibility. What is allowed and what is not allowed often comes down to interpretation and good legal advice is crucial in picking your way through this.

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## WHO WILL BE DECIDING IF TRANSACTIONS PRIOR TO BANKRUPTCY ARE 'IMPROPER'?

The Official Assignee in Bankruptcy is the person who will take control of all of your assets and liabilities if you are adjudicated bankrupt and he is the person who will call a transaction into question.

The burden of proof then rests with the Official Assignee to show that the transaction was improper before a Court if you choose to challenge his decision.

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## WHAT TYPES OF TRANSACTIONS ARE AT RISK OF BEING SET ASIDE?

Any transaction made within three months of bankruptcy which saw the asset being sold for less than its market value can be automatically set aside.

If the asset is transferred in Trust prior to bankruptcy then the Official Assignee may apply to set aside the transfer within 2 years or 5 years (if it can be shown the asset was needed to meet the debts).

For other transactions, the key element in deciding whether it is liable to be set aside is intent.

Put at its simplest, if it can be shown that the intention of the transaction was to prevent creditors being paid what they are owed then a transaction at an undervalue may be set aside.

Voluntary transfers for example often happen between spouses and the intention may be a genuine one to recognise the non-owning spouse's interest in the family home. Indeed, the Family Home Protection Act 1976 was brought in primarily to recognise such interests.

The onus of proof rests with the Official Assignee to show the intention was to avoid creditors.

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## WHAT IF THE PERSON WHO RECEIVED THE PROPERTY WAS UNAWARE AND BOUGHT IN GOOD FAITH?

A general rule of thumb is that establishing good faith provides a good foundation for success in any action. If the recipient can show they knew nothing of the bad intentions of the seller (and did not have any indication that something was amiss) then they will likely be allowed to keep the property they honestly purchased.

It will often depend on the circumstances of the relationships as to whether a Court will believe such lack of knowledge was likely.

As we have seen in some high-profile cases in the recent past, spouses may be presumed to know the general state of their partner's affairs and the general intention behind a transfer.

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## WHAT TO DO IF YOU ARE UNSURE?

At Lynch Solicitors we specialise in providing advice and guidance through debt management issues. You can contact us on 052 612 4344 or via email at [reception@lynchsolicitors.ie](mailto:reception@lynchsolicitors.ie).

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