

[Date]

[Client Name]

[Client Address]

[City, State, Zip]

Re: Analysis of Earmarking Doctrine Defense regarding [Debtor Name]

Dear [Client Name],

You have requested a legal opinion regarding the applicability of the "earmarking doctrine" as a defense to potential preference claims under 11 U.S.C. § 547(b) arising from payments made to [Creditor Name] (the "Creditor") prior to the bankruptcy filing of [Debtor Name] (the "Debtor").

## I. Executive Summary

Based on the facts provided, it is our opinion that the transfers totaling \$[Amount] likely [do/do not] qualify for the earmarking doctrine defense. This doctrine serves to prevent the avoidance of a transfer where a third party provides funds to a debtor specifically to pay a designated existing creditor, as such funds never truly became "property of the estate."

## II. Factual Background

The analysis is based on the following sequence of events:

- On [Date], the Debtor received [Amount] from [New Lender/Third Party Name].
- The agreement between the Debtor and the New Lender specified that the funds were to be used exclusively to satisfy the debt owed to [Creditor Name].
- The funds were transferred to the Creditor on [Date].
- The Debtor filed for Chapter [7/11] bankruptcy on [Date].

## III. Legal Analysis: The Earmarking Test

To successfully assert the earmarking doctrine, the following four-part test must generally be satisfied:

1. **Agreement:** There must be an agreement between the new lender and the debtor that the new funds will be used to pay a specific antecedent debt.
2. **Performance:** The agreement must be performed according to its terms.
3. **Control:** The debtor must lack "dispositive control" over the funds. If the debtor can use the money for any purpose, the defense fails.
4. **Effect on Estate:** The transfer must not result in a diminution of the debtor's estate. Because one liability is simply traded for another, the net value of the estate remains unchanged.

## IV. Application to Current Matter

[Insert detailed analysis here, discussing whether the New Lender's control over the funds was sufficient and if the estate's assets available for general creditors were reduced.]

## **V. Conclusion**

In conclusion, because the funds were "earmarked" by a third party for the express benefit of the Creditor, they should not be considered "an interest of the debtor in property." Therefore, the Trustee should be precluded from recovering these payments as avoidable preferences.

Sincerely,

[Your Name/Law Firm Name]

[Signature Line]