6-29/111.10 Trustee Avoidance

The trustee may file an adversary proceeding to obtain a court order avoiding any transfer of the debtor's property if (11 USC 547, 548):

- the transfer was made while the debtor was insolvent
- the transfer was made within 90 days before the date of the filing of the petition;
- the transfer was made between 90 days and one year before the date of the filing of the petition if the creditor was an insider and had reasonable cause to believe the debtor was insolvent at the time of such transfer; or,
- the transfer or obligation was incurred within one year before the date of the filing of the petition with the debtor's intent to defraud.

The debtor is presumed to be insolvent on and during the 90 days immediately preceding the date of the filing of the petition. (11 USC 547) If the trustee claims that the creditor's lien is void because the debtor was insolvent at the time of levy, the trustee must allege and prove such insolvency. (Liberty Natl. Bank v. Bear, 265 US 365; Travis v. Bixler, 20 CA 2d 279; Fischer v. Pauline Oil & Gas Co., 309 US 294) A petition in bankruptcy does not automatically discharge a judicial lien. The trustee must take positive action to avoid any such acquired lien, otherwise the lien is retained intact by the creditor obtaining it. (Fischer v. Pauline Oil & Gas Co., 309 US 294)