

529 funds and bankruptcy

The problem: I retired some years ago and am having trouble paying my bills. I'm considering filing for bankruptcy, but I'm worried about the money I've invested over the years in 529 college savings plans for my grandchildren. What does the new bankruptcy law say about those accounts?

The expert: Robert L. Pryor, bankruptcy attorney, Pryor & Mandelup, L.L.P., Westbury, and a member of the Panel of Trustees for the U.S. Bankruptcy Court, Eastern District of New York.

The rules: The new law you refer to is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which went into effect Oct. 17. It does allow certain amounts contributed to a 529 qualified state tuition program to remain free from creditor claims.

How it works: In order to shield your grandchildren's college savings plans from creditors in a bankruptcy filing, there are a series of requirements that must be met. First, the designated beneficiary may only be your child, stepchild, grandchild or stepgrandchild

for the taxable year for which the funds were paid or contributed.

Second, the funds must have been contributed to the accounts no later than 365 days before you file for bankruptcy.

Third, if the funds were contributed between 365 days and 720 days before you file for bankruptcy, you can protect up to \$5,000 for each beneficiary. Any money you invested in the funds more than 720 days before your bankruptcy filing is not limited by the \$5,000 ceiling.

Finally, the contributions must not be greater than necessary to provide for the qualified higher education expenses of each beneficiary.

The results: The new law enables a debtor filing for bankruptcy to retain 529 college savings plan funds and many other assets — some quite substantial — free from creditor claims. Before you make a final decision on filing for bankruptcy, you may wish to speak to a bankruptcy professional to obtain a full list of those assets protected from creditors. — KAREN E. KLEIN

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