

## **Protecting Your Retirement Accounts in Bankruptcy**

**By Arizona Bankruptcy Attorney John Skiba**

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Too often people come to me to file their bankruptcy after they have liquidated their retirement accounts to try and get on top of credit card debt. The end result is a bankruptcy and nothing to fall back on during retirement. In deciding when/if to file bankruptcy it is important to know that most retirement accounts are exempt – meaning that they will not be taken from you – during bankruptcy.

### **401(k) & IRA**

The most common retirement accounts I see are 401(k) accounts and IRAs. Under both Arizona state law (A.R.S. § 33-1126(B)) and federal law (11 U.S.C. § 522 (b)(3)(C)) these types of retirement accounts are exempt during bankruptcy. This even applies to states, like Arizona, that have opted out of the federal exemptions for bankruptcy.

### **Social Security**

If you are currently retired and you receive social security, or if you are disabled and receive social security associated with your disability, those payments are exempt from attachment or garnishment and do not become part of your bankruptcy. In fact, as mentioned in earlier posts, you must qualify to file a chapter 7 bankruptcy based upon your income and family size. If making those calculations we do not include social security income. This means that it is more likely that you will qualify for a chapter 7 bankruptcy.

If you are facing financial trouble and are thinking of cashing out your 401(k) or IRA to pay credit card debts or mortgage payments, before you do so it is wise to meet with an Arizona bankruptcy attorney to discuss your options and the reality of your ability to pay the debts that are currently owed. If you are in a situation where emptying your 401(k) or IRA will only temporarily fix the problem, you may want to consider bankruptcy where your retirement can be protected and allow you to eliminate debt.

I offer a free bankruptcy consultation where we can discuss your specific situation.

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