

Protecting Education Savings Accounts in Bankruptcy: Arizona Bankruptcy Attorney

By Arizona Bankruptcy Attorney John Skiba

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This is my 100th blog post since I started blogging back in June, 2009 and I thought I would go with a topic that has arisen a few times over the last couple of months: Education Savings Accounts and how they are impacted in bankruptcy.

When a bankruptcy case is filed a “bankruptcy estate” is created that includes almost all of your assets. Some parents have set aside money for their children’s college and are concerned that this money will be taken by the bankruptcy trustee if they file bankruptcy. There are two types of Education Savings Accounts that I see on a regular basis, the education IRA and the section 529 savings account. Under 11 U.S.C. § 541(b)(5)-(6), neither of these accounts are property of your bankruptcy estate (meaning that they are protected and you will not lose them) with a couple of exceptions.

First, if any of the funds in either the IRA or the 529 account were contributed within the last 365 days prior to the filing of your bankruptcy case they are *not* protected. The reason behind this is to stop people from taking cash they have on hand and dumping it in an education IRA or a 529 account and then filing bankruptcy. Notice that there is no requirement that you have any bad intent, merely depositing the funds in the account within the year prior to your bankruptcy filing will mean that those funds are part of your bankruptcy case and may result in you losing them through the bankruptcy process.

Second, any deposits you made into the education IRA or the 529 account between 365 days and 720 days prior to your bankruptcy filing will only be exempt up to \$5,850 per beneficiary. This means that if you made a deposit into one of these education savings account more than a year ago but less than two years ago that only a portion may be protected. It is important to note that the limit of \$5,850 is per beneficiary, meaning if you have four children you would be able to contribute \$5,850 per child and still have it be protected in bankruptcy.

If you have made significant deposits enter either of these types of accounts more than two years ago it does not become part of your bankruptcy estate and you will not risk losing them through the bankruptcy process.

If you are needing to file bankruptcy but have made recent contributions to an education savings account it will be necessary to evaluate whether you should wait to file your bankruptcy case or if the benefits of the bankruptcy filing outweigh the downside of losing the money in those funds. If you are looking into filing bankruptcy I offer a free bankruptcy consultation where we can discuss your specific situation.

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