

Annuities Are Partially Protected Against Creditor Garnishment in New Jersey

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Sometimes a New Jersey consumer may give a sum of money to an insurance company or other entity in exchange for a promised stream of income usually paid monthly (an annuity contract). Other times, an insurance company is given a sum of money on behalf of a consumer to compensate for a personal injury. In any event, a consumer receiving annuity payments may be subject to claims by his or her creditors for unpaid debts. Is the annuity *principal* or the annuity *payments* subject to seizure (garnishment) by judgment creditors?



Annuity Principal and Annuity Payments Enjoy Limited Protection Against Creditor Garnishment

New Jersey law (N.J.S.A. § 17B:24-7) states that annuity principal and annuity payments are not only exempt from “execution, garnishment, attachment, sequestration or other legal process” but also that no creditors are “allowed to interfere with or terminate the [annuity] contract.” However, there are two major exceptions.

Annuity Principal and Annuity Payments Derived From Fraud Are Not Exempt from Garnishment

If the New Jersey consumer created the annuity *with intent to defraud his or her creditors* or engaged in other fraud, the creditors may seize the annuity or its payments with permission from a court. One cannot create an annuity to avoid the payment of existing creditors should they receive judgments. If this is proven, the court may order the principal liquidated to pay the affected debts or permit the full garnishment of annuity payments to repay debts. Attempting to defraud creditors can also result in criminal charges.

Annuity Payments In Excess of \$500.00 Per Month May be Partially Garnished

The law provides a second exception to the general rule that annuities cannot be garnished. If the annuity payment exceeds \$500.00 per month, the amounts in excess of \$500.00 ARE subject to garnishment the same as “wages and salaries.” Moreover, if a New Jersey consumer receives several annuity payments on different annuity contracts and each of them is less than \$500.00 per month, but when combined, they exceed \$500.00 per month, a court may determine that excess payments are nevertheless subject to garnishment. Additionally, New Jersey law allows 10% of a person’s gross “wages or salaries” to be garnished in response to a judgment. Let’s see this math in action based on the below example. Let’s assume:

- 1) The New Jersey consumer defaulted on a \$5000.00 credit card account.
- 2) The credit card company sued the consumer and received a judgment.
- 3) The consumer has an annuity with a \$150,000.00 balance.
- 4) The consumer receives an annuity payment of \$650.00 per month for life.

Therefore, the consumer could see \$15.00 of his or her annuity garnished until the judgment is paid. The math:

\$650.00 annuity payment

- 500.00 exempted pursuant to N.J.S.A. 17B:24-7(a)(2)

= 150.00 subject to garnishment

x 10% maximum garnishment percentage

= \$15.00 garnishment amount

Annuities enjoy a certain level of exemption from creditor garnishment because the New Jersey Assembly believed they should receive some protection against creditors with judgments. Because annuities are typically associated with retirement and the injured, the Assembly believed this protection, albeit limited, is appropriate.

PA & NJ consumers experiencing debt collection problems including garnishment should contact us for a no-obligation consultation regarding exemptions that may protect their assets.