

ARE YOUR INVESTMENTS PROTECTED FROM CREDITORS?

Legislation exists at both the federal and provincial level to protect your investments from creditors. Some offer full protection with no strings attached, while others provide protection with conditions or limitations.

REGISTERED INVESTMENTS**FULL PROTECTION – NO CONDITIONS**

There are some situations where registered money is fully protected.

- a)** Provincial legislation – British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island (PEI) and Newfoundland & Labrador fully protect registered (RRSP/RRIF) assets from creditors.
- b)** Pension money – All provinces and jurisdictions provide unconditional protection against creditors for money while in a pension plan or when transferred out to a personal locked in or prescribed plan such as LIRA, LIF, LRIF etc.

PROTECTION – WITH LIMITATIONS AND/OR CONDITIONS

- a)** Bankruptcy – The federal government provides protection to RRSPs, RRIFs and Deferred Profit Sharing Plans (DPSPs), in the event of bankruptcy only.

Limitations of the bankruptcy legislation

1. Except for DPSPs, contributions made within 12 months of declaring bankruptcy are not protected.
2. You must be insolvent to go bankrupt. Just because you are in default with creditors doesn't mean you can go bankrupt. In most situations, if you owe less than what you own, you are not insolvent, therefore you can't go bankrupt and therefore you could have your RRSPs/RRIFs seized.

b) Provincial Insurance Laws and The Quebec Civil Code
– Investments held with an insurance company are fully protected from creditors in bankruptcy and non bankruptcy situations provided the beneficiary designation is irrevocable or a spouse or common law partner, child, parent or grandchild, of the annuitant in all provinces except Quebec. In Quebec, the contract must qualify as an annuity contract and have a named beneficiary in one of these categories: a married or a civil union spouse (not common law spouse), ascendants or descendants of the owner, or anyone named as an irrevocable beneficiary.

Another requirement is that there cannot be a fraudulent conveyance. In other words, the investments can not have been deposited into an insurance investment merely to avoid creditors.

Some provinces, specifically British Columbia and PEI have laws in place to protect RRSPs/RRIFs from creditors of an estate. In Ontario it has been held¹ that assets that go directly to a named beneficiary are also protected from creditors of the estate.

NON REGISTERED INVESTMENTS

Creditor protection on non-registered investments is still only available through an insurance company product with the same requirements as described earlier i.e. that the appropriate beneficiary designation is made and that there is no fraudulent conveyance involved.

SUMMARY

Unless you are in British Columbia, Alberta, Saskatchewan, Manitoba, PEI or Newfoundland & Labrador, or have pension or locked in plans, the protection available to you for registered plans will have some limitations. At the federal level you must be bankrupt. At the provincial level you must be invested in an insurance company product with an appropriate beneficiary designation and it cannot be a fraudulent conveyance. In addition, in Quebec your registered investment must qualify as an annuity. For non-registered investments, the only products available to you for creditor protection are with an insurance company.

¹Amherst Crane Rental v Perrin, Ontario Court of Appeal 2004

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