

Are your investments protected from creditors?

Legislation exists at both the federal and provincial level to protect your investments from creditors. Some offer strong protection, while others provide protection with conditions or limitations.¹

REGISTERED RETIREMENT INVESTMENTS

STRONG PROTECTION

There are some situations where registered money is generally protected.

- a) Provincial legislation** – British Columbia, Alberta, Saskatchewan, Manitoba, Prince Edward Island (PEI) and Newfoundland and Labrador fully protect Registered Retirement Savings Plan (RRSP) and Registered Retirement Income Fund (RRIF) assets from creditors.
- b) Pension money** – All provinces and jurisdictions provide protection against creditors for money while in a pension plan or when transferred out to a personal locked-in or prescribed plan such as a Locked-in Retirement Account (LIRA) or Life Income Fund (LIF).²

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:

- Except for DPSPs, contributions made within 12 months of declaring bankruptcy are not protected
- 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

¹Under certain circumstances assets that are otherwise creditor protected may be seizable if there is a court order to that effect. For example, family maintenance or support payments in case of divorce. ²Assets transferred from a Quebec regulated pension plan to a LIRA or a LIF are generally creditor protected. However, where assets are transferred from certain Quebec government pension plans to a LIRA or a LIF and where assets are transferred from a federally regulated pension plan to a locked-in RRSP, a restricted locked-in RRSP, a LIF or a restricted LIF, creditor protection may not apply.

b) Provincial Insurance Laws and The Quebec

Civil Code – Investments held with an insurance company are generally 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 cannot have been deposited into an insurance investment merely to avoid existing 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 held³ that assets that go directly to a named beneficiary are also protected from creditors of the estate.

It is important to note that when we speak of creditor protection, we are speaking of protection against the creditors of the owner of the assets or of the owner's estate.

The funds, once received by a beneficiary, whether in the form of a lump sum or as an income stream, are generally not protected from the creditors of that beneficiary.

OTHER INVESTMENTS

Creditor protection on non-registered investments and Tax-Free Savings Accounts (TFSA) 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).

Creditor Protection for a Registered Education Savings Plan (RESP) generally is not available even for an RESP with an insurance company. This is because the *Income Tax Act* (Canada) requires that an RESP be a trust arrangement and that the RESP Trust be the contract beneficiary. However, Alberta legislation now provides protection for assets held in an RESP and where used for post-secondary education purposes.

SUMMARY

If you are in British Columbia, Alberta, Saskatchewan, Manitoba, PEI or Newfoundland and Labrador, or have pension or locked-in plans, the protection available to you for registered retirement plans is very strong. In other situations there will be more 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 and TFSAs, the only products available to you for creditor protection are with an insurance company. With the exception of Alberta, creditor protection is not available for RESPs.

³Amherst Crane Rental v Perrin, Ontario Court of Appeal 2004.

FOR MORE INFORMATION, PLEASE CONTACT YOUR ADVISOR OR VISIT MANULIFE.CA/INVESTMENTS



The commentary in this publication is for general information only and should not be considered investment or tax advice to any party. Individuals should seek the advice of professionals to ensure that any action taken with respect to this information is appropriate to their specific situation. Manulife, the Block Design, the Four Cubes Design and Strong Reliable Trustworthy Forward-thinking are trademarks of The Manufacturers Life Insurance Company and are used by it, and by its affiliates under license.