



This is understandably a major concern for many people considering filing for bankruptcy. The good news is that under most circumstances, you can keep your retirement accounts, such as 401ks and IRAs, if you file for bankruptcy. It is important to note that federal law caps the protected amount for some accounts. And, in a few limited situations, your retirement accounts might not be safe from the claims of the bankruptcy trustee and your creditors.

ERISA v. NON-ERISA Qualified Plans

The type of protection the law provides for your retirement account depends on whether it's an ERISA (Employment Retirement Income Security Act) qualified plan or a non-ERISA plan.

ERISA-qualified plans. An ERISA plan is established by an employer, meets certain IRS guidelines, and is tax exempt.

Non-ERISA-qualified plans. The most common type of non-ERISA plans are IRAs (Individual Retirement Accounts).

ERISA-Qualified Retirement Plans

If you have a ERISA-qualified account and file for bankruptcy you have nothing to worry about. You can protect an unlimited amount of money in these accounts. An ERISA-qualified retirement plan isn't property that's included in bankruptcy and can't be liquidated by the bankruptcy trustee appointed to your bankruptcy case. Here are some examples of ERISA-qualified retirement plans include:

- 401(k)s
- 403(b) or profit sharing plans
- 457(b) deferred compensation plans
- governmental plans, and
- tax-exempt organizational retirement plans.

Non-ERISA Qualified plans

Bankruptcy law also protects non-ERISA retirement accounts. Non-ERISA plans include:

IRA's

Roth IRA's

SEP-IRA's (for small business owners)

SIMPLE IRA's (for self-employed individuals), and similar retirement plans.

While ERISA plans have unlimited protection from creditors, the protection for traditional and Roth IRAs is capped at \$1,362,800 for cases filed between April 1, 2019, and March 31, 2022. If you have more than one traditional or Roth IRA, you can only protect \$1,362,800 combined. The bankruptcy trustee will be able to take any amount over \$1,362,800 to repay creditors.

State vs. Federal Bankruptcy Exemptions

The retirement exemptions are part of the federal bankruptcy exemptions. States can "opt-in" and use the federal bankruptcy exemptions or "opt-out" and use their own state exemptions.

However, federal law affords equal treatment of exemption claims of retirement funds to all Chapter 7 and Chapter 13 bankruptcy filers. Therefore, whether you live in an opt-in state or an opt-out state, the federal retirement bankruptcy exemptions apply to your bankruptcy case.

Georgia Bankruptcy Exemptions Related to Retirement Accounts Pensions and Retirement Accounts

IRAs and ERISA-qualified benefits – 18-4-22 and 11 U.S.C. § 522(b)(3)(C)

➡ Most people use Ga. Code Ann. § 18-4-22 to cover ira, erisa. For single debtors filing, it has no coverage limit.

Employees of nonprofit corporations – 44-13-100(a)(2.1)(B)

Other pensions necessary for support – 44-13-100(a)(2.1)(C), (a)(2)(E), 18-4-22

➡ Most people use Ga. Code Ann. § 44-13-100 (a)(2.1)(C); Ga. Code Ann. § 44-13-100 (a)(2)(E) to cover reasonably necessary pensions. For single debtors filing, it has no coverage limit.

IRA Payments necessary for support – 44-13-100(a)(2)(F)

Public employees retirement benefits – 44-13-100(a)(2.1)(A), 47-2-332

➡ Most people use Ga. Code Ann. § 47-2-332 to cover state, county, city employees pensions. For single debtors filing, it has no coverage limit.

Inherited IRAs are Not Protected From Creditors

IRA owners have to take additional steps to protect their heirs from creditors after they die.

When an IRA owner dies the account is passed on to their heirs. So what happens if it is inherited by a person who later files for bankruptcy protection? Can this person who inherited the IRA benefit from the IRA bankruptcy exemption? The United States Supreme Court says that, where the beneficiary is a person other than the account owner's spouse, the answer is "no."

The Supreme Court held that, after the death of an IRA owner, assets in an inherited IRA for a non-spouse beneficiary no longer constitute retirement funds for bankruptcy purposes; therefore, they are not protected from creditors' claims when a non-spouse beneficiary files for bankruptcy. (Clark v. Rameker, 134 S.Ct. 2242 (2014).)

IRA beneficiaries in some states are not subject to this decision because these states have established their own bankruptcy exemptions that can differ from the federal exemptions that were the subject of the Supreme Court's decision.