

What happens to my 529 education account if I file for bankruptcy?

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It depends on a number of factors. But relatively recent changes in bankruptcy law by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) made it *more likely* you will be able to keep all or at least some of the funds.

BAPCPA was a sweeping change to the bankruptcy code. At the risk of oversimplifying the changes, as the name of the Act may imply, most amendments were debtor unfriendly, but some were debtor friendly. Initially, some background is necessary to understand these changes.

When someone files for bankruptcy, a bankruptcy estate is created that includes, with a few exceptions, all of the debtor’s property in whatever form in whatever place. If property is part of the bankruptcy estate, it is subject to the jurisdiction of the bankruptcy court and *could be* liquidated which depends on other subjects not discussed in this post. But if property is not part of the bankruptcy estate to begin with, then it cannot be liquidated.

Some of the debtor friendly amendments in BAPCPA were a few additions to the short list of items excluded from the bankruptcy estate under §541 of the bankruptcy code. One amendment covered so-called 529 education accounts. It is not as simple as thinking the entire balance in the account is excluded from the bankruptcy estate. First, the timing of when the funds were contributed to the account is crucial. Second, the designated beneficiary must be a child, stepchild, grandchild, or step-grandchild of the debtor for the tax year when the funds were put into the account. Third, is that funds contributed within 365 days of the petition date remain property of the estate. Up to \$5,000.00 of the amount contributed to the account made between 365 and 720 days before the petition date are excluded from the bankruptcy estate. And all amounts contributed to an account more than 720 days before filing the bankruptcy petition are completely excluded. (There are some more qualifications in the code that are not discussed here that should be reviewed prior to settling this question.)

Just because some or all of what is in your 529 education account may be property of the estate means that it must be forfeited. Your bankruptcy lawyer can help you try and retain the funds even if they will be part of your future bankruptcy estate.

I hope that this post shows that bankruptcy may not be simple enough to be able to navigate alone. One may say they do not have a 529 education account so it does not affect them. But if it is this complicated on this somewhat obscure subject of 529 education accounts, it could be this complicated in other subjects that do affect them. I also hope that this post shows why a review of so many documents and an answer to so many of the right questions are needed prior to a bankruptcy filing. Of course, this is if one wants to know whether some of their assets will be liquidated.

If you have questions about how your 529 education account will be treated in bankruptcy or others about insolvency matters, we suggest you engage a competent Massachusetts bankruptcy attorney.

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