# CREDITOR PROTECTION

*For retirement plans*

Tax-deferred retirement plans are not subject to the creditors of the company sponsoring the plan. Also, they are generally protected from a plan participant's creditors to some extent under three areas of law:

- **FEDERAL EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (ERISA)**
- **FEDERAL BANKRUPTCY LAW**
- **STATE LAWS**

## ERISA Protection

Qualified retirement plans such as 401(k), pension, or profit sharing plans are typically protected under ERISA. Plans that cover only owners, spouses of owners, or just partners in a partnership are ***not*** subject to coverage under ERISA. Plans that have other participants, even other family members, should be covered by ERISA and protected.

ERISA protection, explained further below, has been litigated and upheld by the U.S. Supreme Court in a unanimous decision in 1992, so this protection is considered the "gold standard."

### What are ERISA plans protected from?

ERISA plans are protected from creditors due to normal debt, bankruptcy, or civil court judgment. ERISA protects retirement plan funds so they cannot be used to satisfy these types of debt.

### What's not protected?

- Property settlements due to divorce. There is a specific exception in the law that allows some or all of retirement plan assets to be assigned to a former spouse or children.
- Tax court judgments. Qualified plans are not protected from federal tax liens.
- Non-ERISA plans such as SEPs, SIMPLE IRAs, etc.

## Federal bankruptcy law

Federal bankruptcy law protects qualified plans, including those that are not covered by ERISA. It also protects rollover IRA accounts of any amount, and regular contributory IRA accounts up to $1 million. Protection for SEPs, SIMPLE IRAs, and similar accounts are also protected under bankruptcy law.

To take advantage of this protection, a debtor must file bankruptcy, otherwise federal bankruptcy protection does not apply.

## State laws

State laws generally offer some level of protection for retirement plan savings; however, this protection can vary and is often based on the court's evaluation of the debtor's needs.

## Non-qualified plans

Non-qualified plans are those that fall outside ERISA guidelines, are exempt from discriminatory and top-heavy testing, and don't receive the tax benefits of a qualified plan. There are many varieties and they may not enjoy any of the protections discussed above. Furthermore, they may be subject to company creditors as well.

*Please note laws governing retirement plans and creditor protection are complex. This information piece is a brief overview and is not intended as specific legal advice. You should consult with your own legal counsel for advice regarding any matter that may arise involving the protection of your retirement plan assets.*