

Retired in California and considering bankruptcy? Will you be able to keep your home, pension savings, and Social Security savings?

Are you retired in California, with lots of debt, and considering bankruptcy? Are you also wondering if you will be able to keep your home, your Social Security savings, and your pension savings? The short answer is that you may be able to get rid of those debts in bankruptcy and also keep all those items, even if you have equity in your home (your home is worth more than you owe on it).

Your home

Many retired people in California have owned their homes long enough to have equity in them even during the current downturn in the real estate market. If that is true for you, California has a "homestead exemption" that may be high enough for you to keep your home away from your creditors even if you file bankruptcy. If you or your spouse are age 65 or more, the homestead exemption is \$175,000. This means that you can keep your home if the expected net amount you would receive from the sale of it, less the amount you owe on it, is \$175,000 or less.

If you don't have equity in your home (it's worth less than the amount owed on it), there's no problem keeping it since your other creditors wouldn't get anything if your house were sold.

This discussion assumes that you're current on your house payments and can stay current. If you're not current on those payments, you still may be able to keep your home with a more complex type of bankruptcy (Chapter 13). Chapter 13 bankruptcy is not covered in this article.

Pension (retirement plan) savings

The same part of the California Civil Code that provides the homestead exemption (discussed above) also provides that money you receive from a retirement plan is exempt (protected) from your creditors, including the money that accumulates from saving those payments.

Social Security savings

Social Security benefit payments are protected from your creditors, including the money that accumulates from saving those payments.

Important tip!

The protection for your pension and Social Security payments depends on you being able to prove that the all the money you want to protect came from those sources. There have been many court cases involving that issue. Save yourself potential problems by having separate accounts for (1) depositing and saving your Social Security payments and (2) depositing and saving your retirement plan payments. Do not put any other money in those accounts.

What about other money you have?

What about other savings, including stocks and bonds? In California, if you use the large homestead exemption (described above), there is no protection for cash or bank or investment accounts.

What do you do about that other money?

As a part of planning for filing bankruptcy, your bankruptcy attorney may recommend that you stop spending from your pension and Social Security accounts, letting that protected money accumulate, and instead spend from the other (not protected) accounts, reducing them over time to near zero.

As you can probably guess, there's more to this than can be included in this article. Do yourself a big favor and consult with a qualified bankruptcy attorney in your area.

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