



# “On The Money Report”

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For those individuals to whom asset protection from creditors is a concern, the following table describes the statutory protections available. The laws vary from state to state so it is very important to consult an attorney before taking any action.

Two types of creditors are described.

**Primary**—Referring to the IRS as collector of federal taxes and family creditors such as ex-spouses and children who are judgment creditors and are entitled to payments for alimony, child support and property settlement agreements.

**Secondary:** All others

Statutory Technique	Characteristics	Protection from Primary Creditors	Protection from Secondary Creditors
Homestead Exemption	State laws permit a homeowner to designate a personal residence and the adjacent land as a homestead. Most states place a limit on the size or value of a homestead exemption	No	Yes, with the exception of creditor claims for loans used to construct, or purchase, or improve a home.
Exemption for Social Security benefits	Federal law provides an anti-assignment (anti-garnishment) provision for Social Security benefits.	No	Yes
Exemption for qualified retirement plan benefits	Federal law (ERISA) provides an anti-assignment (anti-garnishment) provision for qualified retirement plan benefits.	No	Yes. However, certain jurisdictions don't extend the protection to plans that cover a sole proprietor or sole shareholder only.
Exemption for deductible IRAs	Most state laws protect at least part of a deductible IRA from the claims of creditors	No	Yes. However, certain courts hold that state exemption statutes for IRAs are preempted by ERISA, and, therefore, invalid.
Judicial protection for jointly titled property—tenancies by the entirety	Tenancy by the entirety involves joint ownership between a husband and wife. Neither spouse can sell or give away his or her interest without the other's permission. Most states don't permit a debtor spouse's interest in a tenancy by the entirety to be divided and sold for the benefit of creditors.	No. However, cases decided prior to 2002 protected a tenancy by the entirety from the IRS as creditor.	No
File for bankruptcy to avoid creditors and discharge debts	Federal law excludes certain property such as qualified plan benefits and exempts part or all of other property such as a home from the bankruptcy estate and the claims of creditors.	Yes, in certain situations. However, income taxes owed to the IRS for three years prior to the date of filing for bankruptcy are not dischargeable, nor are claims for alimony obligations, child support, or property settlements.	Yes. However, priority creditors such as the IRS and state taxing authorities have first claim against the bankruptcy estate. Secondary creditors, (unsecured and nonpriority creditors) are entitled to share pro rata in the remaining property.

This information appeared in *Ticker* magazine. Written by Robert Pennington, JD, LL.M. College of Financial Planning

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