



Written By:
Dustin I. Nichols
Partner



Heather Kocer
Attorney

The Potent Statutory Exemption Protection of CCP § 704.115(b)

Exemption planning is a safe and effective protection solution for wealth preservation and is fundamental to estate planning. With exemption planning, you can properly prepare for the next financial disaster regardless of whether it is self-inflicted or just bad luck. The first step to protecting yourself, your family, and your legacy must always begin with the exemption planning toolbox. For California residents, the exemption planning toolbox contains creditor exemptions and retirement plan exemptions for both ERISA qualified plans and non-qualified plans.

Some basic tools that anyone experiencing financial misfortune can take advantage of are creditor exemptions. The most beneficial of which is the homestead exemption that allows a debtor to safeguard from \$300,000 to \$600,000 of equity in their home, this amount is determined by the countywide median sale price for a single-family home in the prior calendar year. Next is the \$13,975 exemption for life insurance policies (doubled if married), followed by \$12,050 for jewelry, heirlooms, works of art and vehicles, and finally \$8,725 for personal property necessary to and used in business (doubled if married).

For the average lower to middle class resident, the creditor exemptions will provide just enough protection so that the debtor is not left destitute. These basic exemptions; however, fall far short of protecting the upper class and ultra-high net worth residents. For those California residents that are fortunate enough to live a lavish lifestyle, it is imperative to utilize the most coveted statutory exemption protection of CCP § 704.115(b), which preserves and protects the assets of private retirement plans at the expense of creditors.

Section 704.115(b) provides that: *"[a]ll amounts held, controlled, or in process of distribution by a private retirement plan, for the payment of benefits as an annuity, pension, retirement allowance, disability payment, or death benefit from a private retirement plan are exempt."* This potent statutory exemption protection for private retirement plan assets is unrivaled. It allows California residents to convert their "exposed" personal assets to "exempt" private retirement assets, and thereafter shields the exempt assets from creditors if the private retirement plan is principally or primarily designed and used for retirement purposes (with the exception of IRS, family, spousal and child support obligations). And, to add icing to the cake, the statute is to be construed in the light most favorable to the debtor.

Since no one wants to go from living the highlife to being a public charge, especially in their retirement years, the need for a private retirement plan is a no-brainer. The establishment of such; however, requires sophisticated exemption planning by an experienced attorney familiar with the statute and underlying case precedent since the validity of the plan depends on how it is designed and used. At a minimum, a private retirement plan requires retirement analytics, sponsorship by an employer company (which company can be wholly owned by the beneficiary of the plan), a private retirement trust to hold the retirement assets that is preferably controlled by an independent trustee or custodian, and an independent plan administrator to ensure the proper management and yearly maintenance of the plan.

Instead of wondering whether your financial status will survive unforeseen hardship, take action now to strengthen your financial security by contacting an exemption planning attorney to determine your exemption protection potential.