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New Jersey Protected Assets – Questions & Answers

Question 1: Assuming that someone has won a money judgment against me in court, from what assets of mine does the judgment creditor satisfy the judgment?

Answer: The three basic sources which a **judgment creditor** may satisfy the judgment **(1) income, (2) tangible and intangible personal property and (3) real property.**

Question 2: What is considered income?

Answer: Income includes wages, debts, earnings, dividends, interest, salary, income from trust funds and business interests and profits. The debtor will be allowed to keep a portion of income and will pay the rest to the creditor. Generally, all income is subject to execution, but there are exceptions.

Question 3: What is tangible personal property?

Answer: Tangible personal property includes things like cars, airplanes, boats, jewelry, collectibles, and other such items.

Question 4: What is intangible personal property?

Answer: Intangible personal property includes cash and cash equivalents, securities, investment vehicles, debts, negotiable commercial paper (notes), inheritances, trust funds, brokerage accounts. Note that if a bank account contains exempt income (e.g. social security) the bank account is exempt to the extent of such income. As with anything else, the general rule has its exceptions.

Question 5: To what extent is real property subject to the claims of creditors?

Answer: Generally, real property, including the home and other parcels, is available to satisfy the claims of creditors, but the judgment creditor must first seek satisfaction out of personal property. If the personal property is insufficient, the creditor may then reach the real property. When a successful plaintiff records the judgment on the docket of the Clerk of the Superior Court, there is a lien against the debtor's real property interest. If the debtor/owner attempts to sell his interest, the judgment will appear on the lien search and the mortgage lender will not fund the purchase and the Title Insurance Company will not issue a policy until the judgment is satisfied.

Question 6: I own my home with my wife; if I get a judgment against me, can the creditor force me to sell my house?

Answer: Real property owned by both husband and wife is held as a tenancy by the entirety. New Jersey law prohibits unilateral alienation of interest created after April 6, 1988. After divorce the ownership interests become a tenancy in common and the interest of the debtor spouse loses its protection. If you get a judgment against both of you, a creditor may attach the equity in the real property.

Question 7: I own an investment property with my brother; if I get a judgment against me, can the creditor attach my interest in the real property?

Answer: Yes. A tenancy in common is not protected from the claims of creditors.

Question 8: Is there a way to protect the property?

Answer: One possibility is to transfer the property into a Limited Liability Company. Please see the Q&A on LLCs. A creditor of an individual member may satisfy debt out of the debtor member's right to receive distributions. Creditor/assignee my not become a member or interfere with management. Another possibility is to own real estate in a self-directed Individual Retirement Account (IRA). Please see the Q&A on self-directed IRAs.

Question 9: To what degree is property in an IRA protected?

Answer: Pursuant to New Jersey Statute, any property held in an IRA and any distributions from an IRA are exempt from the claims of creditors and from an estate in bankruptcy.

Question 10: I have a whole-life insurance policy with a cash value of $750,000.00 and a judgment against me for $500,000.00. A trust created in my Last Will is the beneficiary. Can the judgment creditor get at my cash value or death proceeds?

Answer: No. Life insurance proceeds, cash surrender value and accumulated dividends are protected from the claims of creditors. The purpose of the law is to secure the pecuniary aid and assistance to the beneficiary. If the policy is payable to the estate of the insured debtor or the owner debtor, the proceeds are attachable. Proceeds payable to trust created in your Last Will are not considered payable to you or your estate.

Question 11: To what extent are payments from Annuity Contracts protected?

Answer: Courts will consider the needs of the annuitant and his dependants in deciding the amount protected from creditors, but a maximum of $500.00 per month is protected.

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Question 12: My husband has huge credit card debt. My name is not on the account and I never promised to pay. I have a large brokerage account; is it open to attachment by his creditors?

Answer: Absent an agreement to the contrary or unless the debt is for "necessaries," a spouse's separate property is not subject to the debts of the other spouse. A debt for "necessary" goods and services provided while the marriage subsists is primarily the responsibility of the spouse who received the goods or services. The creditor must first seek satisfaction out of the separate property of the debtor spouse. If the separate property is insufficient to satisfy the debt, creditor may look to property of other spouse. Necessaries include food, shelter, medical expenses and other items depending on the couple's financial standing. Marriage "subsistance" depends on the facts of the case.

Question 13: Before my father died he set up a trust for me in his Last Will. The trustee, my uncle, is required to distribute $1,000.00 per month to me. He is also required to distribute all remaining principal when I reach age 35. There is $500,000.00 in the trust, I am 34 years old, and I am $400,000.00 in debt because of a failed business venture. The creditors are taking the $1000.00 per month. Will they be able to get at the $500,000.00?

Answer: Yes. The creditors of a beneficiary of a trust established by another may not reach trust assets, as long as they remain in the trust, if the trust includes anti-alienation ("spendthrift") language. Unfortunately, your creditors may attach all distributions from the trust to you, the beneficiary. One way to avoid attachment of income is to create a discretionary trust. This kind of trust gives an independent trustee the right (obligation?) to withhold income or apply income and corpus directly to providers for the benefit of the debtor beneficiary. If the beneficiary does not directly receive income, there is nothing for the creditor to attach.

Question 14: What is a fraudulent transfer?

Answer: Generally, a court may void transfers that a debtor makes with the intent to defraud creditors and with knowledge of a pending or contemplated lawsuit or liability, e.g. debtor purchases a single-premium whole life policy after a car accident. Also, if a debtor rolls an ERISA account subject to a restraining order into an IRA with the intent to defraud creditors, the IRA is subject to execution. A fraudulent conveyance to a spouse will remove spousal protection to the extent of the conveyance.

Question 15: What property interests are subject to attachment by creditors?

Answer: A creditor may reach **all non-exempt property or interests in property** to satisfy a debt. Attachable property includes, but is not limited to, goods, chattels, shares of stock, personal property, real estate, equitable liens, wages, debts, earnings, salaries, profits, dividends, interest, receivables, promissory notes, income from trust funds established by debtor or a third party, assets of a trust established and funded by the debtor. **Trusts** holding personal property for the benefit of the person who conveyed the property into the trust are void as against creditors. The right of any creator of a trust to receive either the income or the principal or any part of either thereof, presently or in the future, shall be freely alienable and shall be subject to the claims of his creditors, notwithstanding any provision to the contrary in the terms of the trust. **Shares of stock** in any corporation, belonging to a debtor, may be taken and sold by the judgment creditor, however the by-laws, certificate of formation or shareholder agreement may contain reasonable restrictions on transfer. If a court finds a restriction unreasonable the corporation has a thirty-day option to redeem the shares. The corporation must then deliver to the creditor the agreed upon or appraised value of the redeemed shares. Generally, an **inheritance or devise** is not protected from the claims of decedent's creditors or the heir's or devisee's creditors; however a spouse's failure to exercise a right to elective share may protect the inheritance from execution. A qualified disclaimer will not protect existing claims if the disclaimer is in fraud of creditors. A **Joint Account** belongs each living party in proportion to the net contributions by each to the sums on deposit. In the absence of proof of net contributions, the account belongs in equal shares to all parties having a present right to withdrawals. "Account" includes a checking account, savings account, certificate of deposit, share account and similar arrangements.