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Bart Sarsh

Bart Sarsh is a lawyer at SimpsonWigle LAW LLP who practices in the areas of bankruptcy/insolvency and commercial litigation. Bart acts for trustees, creditors, debtors, and other stakeholders in the insolvency and restructuring process. He also provides legal opinions on risk management and asset protection strategies to individual and corporate clients. Bart has trial and appellate-level experience, and regularly appears before the Ontario courts.

Q

If I go bankrupt, will I lose everything or can I keep certain assets/property?

A

If you go bankrupt, you will not automatically lose all of your assets/property. Bankruptcy is a legal process by which a trustee in bankruptcy, acting on behalf of all unsecured creditors, takes control of the bankrupt's assets/property that can be seized.

The Bankruptcy and Insolvency Act contains detailed rules relating to a bankrupt's assets/property and how the trustee can deal with it. There are also provincial laws that preserve certain exemptions of assets/property from seizure in a bankruptcy.

The date for determining the right to an exemption from seizure under provincial law is the date of bankruptcy. Also, assets/property that are exempt from seizure at the date of bankruptcy remain exempt regardless of how the bankrupt deals with those assets/property after bankruptcy. If the value of exempt assets/property is greater than the monetary limit of the exemption, the excess amount can be seized. The onus is on the bankrupt to prove that he/she is entitled to an exemption from seizure.

A bankrupt living in Ontario can benefit from the following provincial exemptions from seizure: clothing worth \$5,650.00; household furniture, equipment and food relating to the bankrupt's permanent home worth \$11,300.00; tools/equipment ordinarily used in the bankrupt's business worth \$11,300.00; farming tools/equipment worth \$28,300.00; and a motor vehicle worth \$5,650.00.

In Ontario, if the bankrupt has any equity in a piece of real estate such as a home or condominium, the value of that equity can be seized by the trustee. Other provinces protect the bankrupt's equity from seizure up to certain limits.

For RRSPs and RRIFs, only contributions made within the 12 months before bankruptcy can be seized; contributions that are older than 12 months are protected from seizure.

Although it might seem like a straightforward matter, determining whether a certain asset is exempt from seizure in bankruptcy can lead to a complex dispute. If you are thinking about bankruptcy, contact a lawyer who practices in this area of the law in order to protect yourself against, and prevent, costly disputes in the future.



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