If you have property that can be seized to pay a judgment debt, consider “exemption planning” that maximizes the protection of your state’s exemption laws by converting property that can be seized (for example, cash) into property that cannot be seized (for example, household goods or your home).

For example, Mrs. Q has $10,000 in equity in her home and $10,000 in a bank account. Her state has a $20,000 homestead exemption and lets her exempt $3,000 in cash. Her home is thus completely exempt from seizure by a judgment creditor, but $7,000 in her bank account is at risk of seizure.

Instead of losing $7,000 to the creditor, Mrs. Q can prepay the mortgage by $7,000. Her equity in the home increases from $10,000 to $17,000, but her home is still protected by the $20,000 homestead exemption. Her remaining $3,000 in cash is fully protected by the state’s $3,000 cash exemption.

Courts often—but not always—rule that exemption planning is valid. Exemption planning is different than an improper transfer of property where you try to give away property to a friend or relative or sell it for a less than it is worth to someone who will later return it. Creditors can have these bogus transfers cancelled as “fraudulent transfers” or “fraudulent conveyances.”

Source: National Consumer Law Center, Surviving Debt [50th NCLC Anniversary Edition], updated at www.nclc.org/library
Source URL: https://library.nclc.org/sd/2109