

College Savings Plans and the Bankruptcy Code

By Camille J. Iurillo and Gina M. Pellegrino

Generally speaking, in Florida, monies paid into a validly existing qualified tuition program authorized by 26 U.S.C. § 529, including funds paid into a 529 Plan or Florida Prepaid College Plan for a child, stepchild, grandchild or step-grandchild beneficiary, are exempt from creditor levy, pursuant to Fla. Stat. 222.22(1). *See*, Fla. Stat. 222.22(1). According to 26 U.S.C. § 529(b)(6), for a program to be treated as a qualified tuition program it must provide “adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.” 26 U.S.C. § 529(b)(6).

However, while Florida law provides that funds paid into a 529 Plan or Florida Prepaid College Plan are exempt from creditor levy, there are important distinctions to be made should the individual funding the 529 Plan or Florida Prepaid College Plan file for bankruptcy.

If an individual files for bankruptcy, the Bankruptcy Code provides that funds contributed by a debtor to a 529 Plan or Florida Prepaid College Plan, within 1 year prior to the bankruptcy filing, are property of the estate and therefore not exempt. *See*, 11 U.S.C. § 541(b)(6)(A).

In addition, the Bankruptcy Code provides that if funds are contributed to a 529 Plan or Florida Prepaid College Plan more than 1 year but less than 2 years prior to the bankruptcy filing, the exemption limit for the contribution is \$5,475. *See*, 11 U.S.C. § 541(b)(6)(C).

Pursuant to 11 U.S.C. § 541(b)(6)(B), if funds are contributed to a 529 Plan or Florida Prepaid College Plan more than 2 years prior to the bankruptcy filing, the funds are exempt so long as they do not exceed the contributions necessary to provide for the qualified higher education expenses of the beneficiary, “as adjusted beginning on the date of the filing of the petition in a case under [the Bankruptcy Code] by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor.” 11 U.S.C. § 541(b)(6)(B).

Regarding a 529 Plan, there is no limit on how often contributions may be made into the Plan, but there is a maximum account limit per beneficiary and once the total value of the account reaches this maximum limit no new contributions can be made. With respect to a Florida Prepaid College Plan, the exemption limit will vary depending on the age of the beneficiary.

This article is intended only as a starting point with respect to addressing the Bankruptcy Code and College Savings Plans, and is by no means an exhaustive discussion.

Iurillo & Associates, P.A., located in downtown St. Petersburg, is comprised of **Camille J. Iurillo**, Shareholder, **Gina M. Pellegrino**, Associate, and **Sabrina C. Beavens**, Associate. The primary areas of practice of **Iurillo & Associates, P.A.** are Commercial and Bankruptcy Litigation and Debtors’ and Creditors’ Rights.