

Exempting Life Insurance.

815.18(3)(f) provides as follows:

(f) *Life insurance and annuities.* 1. In this paragraph, “applicable date” means the earlier of the following:

- a. The date on which the exemption is claimed.
- b. The date, if any, that the cause of action was filed that resulted in the judgment with respect to which the execution order was issued.

2. Except as provided in subd. 3. and par. (j), any unmatured life insurance or annuity contract owned by the debtor and insuring the debtor, the debtor’s dependent, or an individual of whom the debtor is a dependent, other than a credit life insurance contract, and the debtor’s aggregate interest, not to exceed \$150,000 in value, in any accrued dividends, interest, or loan value of all unmatured life insurance or annuity contracts owned by the debtor and insuring the debtor, the debtor’s dependent, or an individual of whom the debtor is a dependent.

3. a. If the life insurance or annuity contract was issued less than 24 months before the applicable date, the exemption under this paragraph may not exceed \$4,000.

b. If the life insurance or annuity contract was issued at least 24 months but funded less than 24 months before the applicable date, the exemption under this paragraph is limited to the value of the contract the day before the first funding that occurred less than 24 months before the applicable date and the lesser of either the difference between the value of the contract the day before the first funding that occurred less than 24 months before the applicable date and the value of the contract on the applicable date or \$4,000.

PARSING THE STATUTE

Applicable date.

Outside of bankruptcy, the applicable date is the date the cause of action was filed for which the execution order was issued.

In an actual bankruptcy, the applicable date is arguably the bankruptcy petition is filed. However, someone could argue it is the date the “exemption is claimed,” which could be the date of an amendment to the claim of exemption or the date that schedule C is filed. It is also possible to argue that it could be the date of the hearing on the allowance of the exemption.

The applicable date is important, because it is used to calculate the amount of the value of the life insurance that may be allowed as exempt.

How much can the debtor exempt if the policy was issued less than 2 years ago?

Not more than \$4,000.00. (\$8,000 for joint filers). Arguably, this section 3(a) is not subject to the limitations in section 3(b).

(Question, when 3(b) refers to “*this paragraph*” is it referring to paragraph three, or the entire subsection (f)? I presume that it relates to the entire subsection, or the statute would not appear to make any sense.)

What is the maximum amount the debtor can exempt if s/he has had the policy more than two years?

Not more than \$150,000 aggregate. (\$300,000 for joint filers.)

How many life insurance contracts and annuity contracts can the debtor exempt?

Answer: All of them, but the aggregate value cannot exceed \$150,000 (\$300,000 for joint filers as long as the life insurance contract qualifies under the statute.)

Also note that the life insurance policy must insure the debtor, the debtor’s dependant, or an individual of whom the debtor is a dependant.

Equity in a life insurance policy that is owned by the debtor and that insures the life of the children of the debtor might not be exempt under this statute. A dependant is defined as “any individual, including a spouse, who requires and is actually receiving substantial support and maintenance from the debtor.” Wis. Stat. 815.18(2)(d).

How does funding within the last two years change the calculation?

Funding within the two year period will limit how much is exempt with the operative functions being the applicable date and the date of the first funding that occurred less than 24 months before the applicable date.

What is a funding?

It is not defined. Repayment of loans is a funding within the meaning of the statute.

Are payments of annual premiums funding of life insurance? (Yes.) In re Bork, 389 B.R. 823 (Bankr. E.D. Wis. 2008). Are payments of premiums from the cash value of the life insurance policy a funding under the statute? (We will likely find out at some point in time.)

What happens if there has been a funding in the two years prior to the bankruptcy?

DBFF = Value as of the Date Before First Funding after 2 years before the applicable date.

AD = Value as of the Applicable Date

EA = Exempt Amount

If policy issued more than two years before the applicable date, then -

$DBFF + (AD - DBFF) = EA$, but cannot exceed \$150,000.

However, if $AD - DBFF$ is greater than \$4000, then

$DBFF + \$4000 = EA$, but cannot exceed \$150,000

EXAMPLES

Joint debtors put \$8,000 into life insurance contract that was issued less than 24 months before the date of the bankruptcy. The entire \$8,000 will presumably be exempt.

A life insurance contract for a married couple was issued more than two years before bankruptcy case. 24 months prior to the bankruptcy, the policy had a value of \$5,000. The debtors took a loan against the policy for \$4,000 to pay some credit cards. One month thereafter, the debtors repay the loan with tax refund. The value as of the date of bankruptcy is \$5,500 due to interest accrual. Arguably, exempt amount is \$1,000 plus $(\$5,500 - 1,000) = \$5,500.00$.

Joint debtors put \$250,000 into a non-retirement annuity contract. The money sits in the annuity without additional funding for over two years. Debtors file bankruptcy. The debtors may exempt up to \$300,000 in cash value.

The joint debtors have a life insurance contract that they have had for years. The contract had a value two years prior to the bankruptcy of \$200,000 and earned interest at a rate of 7%. They made the yearly premium payment of \$2,000 a little more than one year before the filing of the bankruptcy when the account had a value of \$214,000. At the time of the bankruptcy the account had a value of about \$231,120. The debtors can claim \$222,000 of this amount as exempt.

(231,120 – 214,000 is greater than \$8000) Therefore, debtors can claim,

214,000 + 8,000 = 222,000 as exempt. The trustee will get the extra \$9,120.

Are *In re Bruski* 226 BR 422 (Bankr. W.D. Wis. 1998) and *In re Bogue* 240 B.R. 742 (Bankr. E.D. Wis. 1999) still good law with respect to retirement annuities? These cases found that certain annuities were exempt under Wisc. Stat. 815.18(3)(j) as retirement benefits. Wis. Stat. 815.18(3)(j) creates an exemption for certain retirement benefits, and it specifically refers to annuities as types of retirement assets that are exempt.

Answer: Probably. When the legislature changed the exemption for life insurance, it also created an exemption for annuities, with some limitations. The question then becomes whether the legislature intended to limit the exemption for retirement benefits simply because the retirement funds are in the form of an annuity. It would seem that had the legislature intended to limit the exemption for retirement annuities, it would have more specifically stated this limitation in the retirement section. See, *In re Bronk*, 444 BR 902 (Bankr. W.D. Wis. 2011) (This case is currently on appeal). However, it is unlikely, for example, that a court would find that the “annuity” limitation in Wis. Stat. §815.18(3)(f) should limit the amount that a debtor could claim as exempt in a 403(b). Also, the very first sentence of the exemption for life insurance and annuities provides, “Except as provided in subd. 3. and par. (j),” Therefore, the statute would seem to indicate that annuities that are exempt retirement benefits under par. (j) are excluded from the life insurance and annuity limitation under Wis. Stat. § 815.18(3)(f).