



Family Legacy Protection Planner

HOW TO PROTECT INHERITED IRAS AFTER THE CLARK V. RAMEKER DECISION

In a landmark, unanimous decision handed down on June 12, 2014, the United States Supreme Court held that inherited IRAs are not “retirement funds.”

This ruling is important to you and your family because it means you need to take action to insure your retirement funds are protected when they pass to the next generation – and, perhaps, even to your spouse.

Here’s what happened in the Clark case:

Ruth Heffron created an IRA, naming her daughter, Heidi Heffron-Clark, as beneficiary. After Ruth died, Heidi transferred the IRA assets (approximately \$300,000) into an “Inherited IRA.”

Some nine years later, Heidi and her husband, Brandon, filed bankruptcy and sought to protect the Inherited IRA from their creditors. The couple argued the inherited IRA assets were protected retirement funds. Both the bankruptcy trustee and the judgment creditors objected.

*The case went all the way to the Supreme Court, which ruled that funds held within an inherited IRA are **not** “retirement funds.” And, as a result, those funds have no protection as retirement funds and can be seized to pay off debt.*

The Court reached its conclusion using three elements, which differentiate an inherited IRA from a participant-owned IRA:

1. The beneficiary of an inherited IRA cannot make additional contributions to the account, while an IRA owner can.
2. The beneficiary of an inherited IRA must take required minimum distributions from the account regardless of how far away the beneficiary is from actually retiring, while an IRA owner can defer distributions at least until age 70 ½.

3. The beneficiary of an inherited IRA can withdraw all of the funds at any time and for any purpose without a penalty, while an IRA owner must generally wait until age 59 1/2 to take penalty-free distributions.

This simple analysis has sent shock waves through the estate planning and financial advisory worlds. The logic is easily extended to all inherited defined contribution retirement plan accounts, so inherited 401(k) and 403(b) accounts are also affected.

What Can Be Done to Protect Inherited IRAs from Creditors?

In light of the *Clark* decision, clients must thoughtfully reconsider any outright beneficiary designations. By far the best option for protecting an inherited IRA is to create a **Standalone Retirement Trust**. If properly drafted, this trust offers the following advantages:

- Protects the inherited IRA from beneficiaries' creditors as well as predators and lawsuits
- Insures that the inherited IRA remains in the family bloodline and out of the hands of a beneficiary's spouse, or soon-to-be ex-spouse
- Allows for experienced investment management and oversight of the IRA assets by a professional trustee
- Prevents the beneficiary from gambling away the inherited IRA or blowing it all on exotic vacations, expensive jewelry, designer shoes, and fast cars
- Enables proper planning for a special needs beneficiary
- Permits minor beneficiaries such as grandchildren to be immediate beneficiaries of the inherited IRA without the need for a court-supervised guardianship
- Facilitates generation-skipping transfer tax planning to insure that estate taxes are minimized or even eliminated at each generation

Could State Law Still Protect Inherited IRAs?

A handful of states – including Alaska, Arizona, Florida, Idaho, Missouri, North Carolina, Ohio and Texas – have either passed laws or had favorable court decisions that specifically protect inherited IRAs under state bankruptcy statutes. If the IRA beneficiary is lucky enough to live in one of these states, then that beneficiary may very well be able to protect their inherited retirement funds by claiming the state law exemption instead of the federal law exemption.

Caution: Caution should be used in relying on state law to protect a beneficiary's inherited IRA. In general, people are more mobile than ever and your beneficiary may need to move from state to state to find work, pursue educational goals, or be closer to family members. In addition, federal bankruptcy laws now require a debtor to reside in a state for at least 730 days to use state bankruptcy exemptions. Therefore, long-term planning should not rely on a specific state law but instead should take a broad approach.

The Bottom Line

If you have retirement funds, call our office now. We will show you how to protect your assets from your beneficiaries' bankruptcy creditors, divorcing spouses, frivolous lawsuits, medical crises, additions, and bad decisions. It's imperative that you take action now.

ENSURE YOUR FAMILY IS PROTECTED

If you want to ensure that your family is protected, please schedule your complimentary Estate Planning Strategy Call with San Francisco's premier estate planning attorney, Matthew J. Tuller.

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With an emphasis on developing and maintaining relationships with our clients and allied professionals, our firm collaboratively provides comprehensive estate planning and administration solutions to every client. Our firm provides the full spectrum of estate planning solutions. This includes creating and implementing a comprehensive estate plan, maintaining that plan through life, and administering the plan in the most effective and efficient manner.



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