

## The Supreme Court Rules: Inherited IRA's Are Not Protected

### Now How Do You Build Protection For Your Heirs When You Leave Them An IRA Or 401(K)?

In our most recent Client Newsletter (Summer 2014), I summarized the recent legal attacks on Inherited IRAs. Historically, it was assumed that, like an IRA you create for yourself, an Inherited IRA would protect your heirs from bankruptcy, creditors, and others who seek to gain access to the underlying funds. However, cases dealing with a creditor's right to seek payment from a debtor's Inherited IRA were heard in multiple Federal Courts, but with different results. Some Courts upheld the protected nature of the Inherited IRA and others allowed creditors to claim them. Because of the conflicting results, the U.S. Supreme Court stepped in to resolve the issue once and for all.

In an unanimous opinion on June 12, 2014, the U.S. Supreme Court ruled in *Clark v. Rameker* that a bankruptcy creditor could expect to obtain payment from an Inherited IRA and that assets contained in the Inherited IRA were not retirement funds that were exempt from the debtor's bankruptcy estate.

This means that more clients than ever before will consider putting IRA proceeds into a trust for their heirs rather than naming children, grandchildren and others directly.

The debtor in the *Clark* case asserted that the Inherited IRA was a "retirement asset" under the definition of the Bankruptcy Code and was therefore a protected asset. However, the Supreme Court explained that traditional retirement accounts, such as IRAs or Roth IRAs, are "retirement assets under the Bankruptcy definition, but Inherited IRAs are not.

The Supreme Court observed that Inherited IRAs have three key differences that separate them from true "retirement assets." First, inherited IRA owners cannot add money to the account. Second, Inherited IRA owners are required to withdraw money



from their accounts, regardless of age. Third, Inherited IRA owners may withdraw money from their accounts without penalty regardless of age.

The Supreme Court concluded that these characteristics of the Inherited IRA make the underlying assets freely available both to the account owner and his/her creditors.

### **How Do We Build Stronger Walls Of Protection For Inherited IRAs, Retirement Assets And Other Assets?**

Now that we know the law of the land regarding a creditor's rights to access a debtor's Inherited IRA, you can be proactive with your planning if you want to make sure that the IRAs, Retirement Assets and other assets you leave to your children and other non-spousal beneficiaries are protected, not only from bankruptcy concerns, and also protection from divorce, lawsuits and other creditors. There is no more wondering about this issue, ***we know*** that an IRA your beneficiary inherits from you will be subject to his or her potential creditors unless you take affirmative action.

#### **THE OLD WAY**

Instead of leaving IRAs outright to your beneficiaries, you should now consider establishing creditor, asset and divorce protection trusts for each of your beneficiaries under your Wills or Revocable Trusts. But, these trusts MUST have very specific legal provisions, not any old trust will do.

#### **THE NEW WAY**

Some of the attributes of these asset protection trusts are as follows:

1. Each of your beneficiaries will have a separate trust.

2. Your adult, capable beneficiaries can act as an Interested Trustees of his or her own separate trusts.
3. Inherited IRAs, Retirement Assets and other assets paid to the trusts at your death (rather than outright to the child or beneficiary) will enjoy substantial divorce, creditor and asset protection that would not be available if the assets had been paid directly to the individual beneficiary.
4. Although the trust language will exist in your Will or Revocable Trust, the beneficiary trusts will be funded only after your death.
5. IRAs and Retirement Assets can continue to receive favorable required minimum distribution schedules with proper trust language and properly structured beneficiary designation language.

## **DANGER AND BEWARE**

### **How Do We Insure Inherited IRAs and Retirement Assets Get The Trust Protections We Want?**

## **GET THE RIGHT KIND OF TRUST**

Assuming you have established the trust language referenced above, you must also confirm that the trusts have the necessary language to allow the trustee (adult trustee/beneficiary) to take required minimum distributions as slowly as the law will allow. Our documents have this language as a necessary part of any such trust planning.



## **MAKE SURE TO DO THE RIGHT BENEFICIARY DESIGNATION**

Secondly, IRA and Retirement Assets will not automatically be paid to trusts you have established under your Will or Revocable Trust. The beneficiary designations on these and other accounts will take precedence over your Will or Revocable Trust. You must take great care in obtaining new beneficiary designation forms for each asset, modifying the forms, and submitting the forms to the company holding your account.

As a part of the planning process, we will typically provide clients with detailed sample IRA and Retirement Asset beneficiary designation language that the client could choose to utilize in order to insure that these assets are properly paid to the intended trusts.

I have authored a great guide to assist clients through the process of modifying beneficiary designations. If you would like to receive a free copy of *Beneficiary Designations And Your Estate Plan*, please call the office at (610) 933-8069 and we will be glad to send one out to you upon request. If you are reading this electronically, just [click here](#) to download one.

### **Conclusion**

The Supreme Court decision in the Clark case clearly allows IRA money left to your heirs to be vulnerable to the beneficiary's creditors. The good news is that you can now take steps to protect against the known Inherited IRA vulnerability. Through proper estate planning, like that described above, you can substantially increase the creditor, divorce and asset protection afforded the IRAs, Retirement Assets, and other assets you leave to your beneficiaries.

**For a risk assessment consultation and review of your plan and beneficiary designations, please contact Lisa Snyder or Tammy Myers at 610 933 8069 who will be happy to schedule a meeting or telephone consultation.**



P.S. Don't forget to order a free copy of [\*Beneficiary Designations And Your Estate Plan.\*](#)

P.P.S. What do you do now? For a risk assessment diagnosis and to review your plan and beneficiary designations, call 610 933 8069 to schedule a meeting or telephone consultation.