

## OF INTEREST

# Supreme Court Rules an Inherited IRA is not Protected in Federal Bankruptcy

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On June 14, 2014, the Supreme Court held in Clark v. Rameker that an inherited IRA is not exempt from a debtor's bankruptcy estate under 11 U.S.C. § 522(b)(3)(C). Under federal law, when an individual files for bankruptcy he or she may exclude certain tax-exempt "retirement funds" from the bankruptcy estate, including traditional and Roth IRAs. The Court's ruling essentially makes clear that only an individual's own IRA is protected in bankruptcy and that an IRA account inherited from someone else is not protected.

If the beneficiary of your IRA is an individual other than your spouse, you may want to consider instead naming a trust for the benefit of said individual as the beneficiary. Since the trust, not the individual, would be the beneficiary, the IRA assets should not be reachable by the individual's creditors.

If the beneficiary of your IRA is your spouse, naming a trust for the benefit of your spouse as the beneficiary may not be necessary since a spouse beneficiary of an IRA has an option that a non-spouse beneficiary does not have. That is, he or she can choose not to treat the IRA as an inherited IRA but rather rollover the IRA into his or her own IRA. In that case, presumably said IRA, since it would not be considered an "inherited IRA," would be exempt from the spouse's bankruptcy estate under the Court's reasoning in Clark v. Rameker. However, an argument could be made that rolling over the IRA would constitute a fraudulent transfer under state law and the bankruptcy trustee might be able to reach the IRA.

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Therefore, it may still be advisable to utilize a trust for the IRA even if your spouse would normally choose to roll the IRA over into his or her own IRA.

Before you name a trust as the beneficiary of your IRA, however, we would need to consider your specific circumstances and risk tolerance and the income tax consequences of the IRA assets being paid out to a trust rather than to an individual. If you would be interested in reviewing the beneficiary designations on your IRA accounts in light of this ruling, please call or email any one of us.

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