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**INHERITED IRA'S ARE SUBJECT TO CREDITORS' CLAIMS**

The United States Supreme Court has ruled in Clark v. Rameker that inherited IRA's do not qualify for an exemption from the bankruptcy estate for debtors in bankruptcy. Therefore, inherited IRA's are not protected from creditors in a bankruptcy proceeding.

The facts in the Clark case were that Mrs. Clark inherited her deceased mother's traditional IRA as the sole beneficiary. She began taking monthly distributions from the IRA. Approximately nine years later, Mrs. Clark and her husband filed for Chapter 7 Bankruptcy (a liquidation). In Mrs. Clark's petition, she sought to exempt the inherited IRA from the bankruptcy estate under Bankruptcy Code §522(b)(3)(C). This Bankruptcy Code Section exempts amounts that are "retirement funds" and that are exempt from income tax under IRC §408.

The Bankruptcy Court held that the inherited IRA did not qualify as Mrs. Clark's retirement funds and therefore were an asset in her bankruptcy estate. The Federal District Court reversed the Bankruptcy Court and held that the inherited IRA was exempt. The case was appealed further, and the U. S. 7<sup>th</sup> Circuit Court of Appeals agreed with the Bankruptcy Court, reversed the District Court, and held that the inherited IRA did not qualify for a bankruptcy exemption and therefore was part of Mrs. Clark's bankruptcy estate.

The U. S. Supreme Court ruled the same as the Bankruptcy Court and 7<sup>th</sup> Circuit stating that the test and purpose of the Bankruptcy Code provides that funds in inherited IRA's are not "retirement funds" for purposes of Bankruptcy Code exemptions.

**MY RECOMMENDATION:** Know your bankruptcy and creditors' exemptions. A person's own IRA would meet the criteria for exemption under Bankruptcy Code §522(b)(3)(C). There are both exemptions under bankruptcy law and Tennessee law dealing with what assets are exempt from creditors' claims and from a bankruptcy trustee.

Yours very truly,

**RAINEY, KIZER, REVIERE & BELL, P.L.C.**

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