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Inherited IRA Asset Protection – Brave New Worlds

By Jeremy C. Johnson

Recently the Supreme Court of the United States (SCOTUS) heard the case, *Clark et ux v. Rameker, Trustee et al.* In this case, SCOTUS ruled that Inherited IRA funds are part of the debtor's bankruptcy estate assets. This may not seem earth shaking at first; however, it has sent financial professional scrambling to find new options for their clients in the quest to protect the beneficiaries of their tax deferred monies. Until now, it was unclear and inconsistent how much asset protection an inherited IRA account would receive in the hands of the beneficiary. SCOTUS' conclusion is that there is little to no asset protection afforded to these accounts.

SCOTUS determined that Inherited IRA Funds are not '*Retirement Funds*' within in the meaning of the bankruptcy exemption carved out in the United States Code Section 522(b)(3)(C). In the analysis by the high court, there are three legal characteristics of Inherited IRA accounts that caused SCOTUS to conclude that Inherited IRA Funds are not objectively set aside for retirement purposes, similar to other IRA/401K type accounts held by the original owner/contributor. These three characteristics are:

The holder (beneficiary) of Inherited IRA may not invest/add additional money to the Inherited IRA account; and,

The holder (beneficiary) must immediately begin to withdraw money from the Inherited IRA account, on an annual basis (Required Minimum Distributions) regardless of how many years they are from retirement; and,

The holder (beneficiary) may withdraw the entire Inherited IRA account balance at any time without additional penalty (other than recognizing the outstanding deferred ordinary income within the distribution).

SCOTUS further concluded that Traditional/Roth IRAs/401Ks are intended to help provide for the original contributor's/owner's basic needs in their retirement and the same cannot be concluded regarding Inherited IRAs.

However, all is not lost with regard to asset protection planning and your IRA accounts that you wish to leave as Inherited IRAs for your beneficiaries. With a properly drafted 'Inherited IRA Trust', the attorneys of JGB can still help you achieve the asset protection goals you have for your future Inherited

IRA account as it passes to your children/grandchildren. SCOTUS' conclusions in *Clark et ux v. Rameker, Trustee et al* apply to Inherited IRAs received by the individual beneficiary. A properly drafted Inherited IRA Trust can still receive all of the tax deferral of a stretched Inherited IRA, while wrapping the asset protection armor of a trust around the account.

If you are interested in building Inherited IRA Trusts for your beneficiaries, contact JGB to start the conversation and process.



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About the Author:

Jeremy Johnson is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Jeremy takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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