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## **SUPREME COURT TO DECIDE IF INHERITED IRA'S ARE CREDITOR PROTECTED OR NOT IN THE BANKRUPTCY CONTEXT**

The United States Supreme Court has agreed to hear a case that will decide whether inherited individual IRA's are protected for the beneficiary or are available to the beneficiary's creditors in bankruptcy. The case *Clark v. Rameker* (No. 13-299, *Cert. Granted* Nov. 26, 2013) will resolve the split in decisions created by two different federal Court of Appeals courts.

Heidi Heffron-Clark inherited a \$300,000 IRA from her mother. Sometime thereafter, Mrs. Clark and her husband filed for creditor protection in bankruptcy court. The Clarks argued that Heidi's IRA was exempt from creditors because bankruptcy law protects retirement accounts. The federal District Court agreed with the Clarks; however, the US Court of Appeals, Seventh Circuit, reversed the District Court's (714 F3d 559(2013)). The Seventh Circuit held that the IRA no longer constituted retirement funds once it was inherited and owned by the non-IRA participant.

In the meantime, the US Federal Court of Appeals, Fifth Circuit, decided differently *In Re: Chilton* (674 F.3d, 486(2012)). Taking a contrary position, the Fifth Circuit essentially held that once the monies are in the protected IRA account, they will always be protected. The fact that the plan participant died and a non-participant was now the owner of the IRA was immaterial to the Fifth Circuit Court.

The Supreme Court will likely resolve this issue later in the current term. The only issue will be whether the law intended to extend creditor protection only to the plan participant or whether it is broad enough to extend to non-plan participants. In resolving the issue, the Supreme Court will be looking at the federal retirement law and also congressional intent.

This case points up yet another example of how Congress and the IRS have not looked far enough down the road to see the obvious results of IRA ownership being passed at some points to the next generation. There is a lack of guidance from the IRS as to what happens when an inherited IRA beneficiary dies and how the IRA continues. By matter of extension of current law and regulations, it would seem that the inherited IRA should continue for generations, or until the money has run out.

***Brooks' Blast***

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