

ESTATE PLANNING NEWSLETTER

PROTECTION FOR INHERITED IRAs

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We are receiving more and more questions from clients related to asset protection, and we want to make sure you are aware of developments in the law. As many of you may be aware, retirement accounts have historically been protected from the claims of creditors of the account owner both under federal bankruptcy law as well as Tennessee state law.

The law regarding the protection of inherited IRAs after the death of the account owner has been much more unclear. An inherited IRA is an IRA that is for the benefit of a child or other beneficiary upon the death of the account owner.

Recently, the Supreme Court decided in Clark v. Rameker that inherited IRAs are not protected from the claims of creditors in the event of the bankruptcy of the beneficiary. The Court found that inherited IRAs are significantly different from regular or Roth IRAs. Therefore, inherited IRAs, unlike regular or Roth IRAs, should not be protected from the beneficiary's creditors in bankruptcy.

In order to understand the Supreme Court's ruling and how it may impact your estate plan, it is helpful to understand a little about inherited IRAs. If you have a retirement plan (401(k), IRA, Roth IRA, etc.), it is protected from your creditors. If you are married, at your death, your spouse will have the option to roll-over that retirement account into his or her own IRA.

At the death of the second spouse or at your death if you are not married, your children or other beneficiaries have the option to treat the retirement account as an inherited IRA. Typically, a beneficiary would utilize an inherited IRA to maximize the tax benefit by stretching out distributions over his or her life expectancy.

In light of the Clark ruling, we think it is more important than ever to consider or reconsider beneficiary designations on retirement accounts. From an asset protection standpoint, for example, you would not want to name even adult beneficiaries as outright beneficiaries of retirement accounts at your death. The Supreme Court was very clear that inherited IRAs passing outright to a

beneficiary would be subject to the beneficiary's creditors in bankruptcy.

At a minimum, we would recommend naming a trust for the benefit of the child (or other beneficiary) as the beneficiary of the retirement account. When you name a trust as the beneficiary of a retirement account, it is very important for tax purposes that the trust is properly drafted.

Another great option would be a Retirement Benefits Trust. These trusts are specifically drafted to ensure that the trust qualifies for more favorable tax treatment AND provides increased asset protection for the beneficiary. These trusts can be particularly helpful in situations where retirement accounts are a significant portion of your estate or if you are concerned about asset protection for one or more beneficiaries.

We would love the opportunity to review your plan and discuss your options with you. Please contact our office to learn more about these issues in light of this case.

## MISSISSIPPI PASSES ASSET PROTECTION TRUST STATUTE

Effective July 1, 2014, Mississippi joined 14 other states, including Tennessee, by enacting a self-settled asset protection trust statute titled the Mississippi Qualified Disposition in Trust Act.

Historically, if an individual created a trust under which he was a beneficiary, the assets of the trust could be subject to the claims of his creditors. As a result, an individual could not establish a trust to protect his wealth from his own creditors and be a beneficiary of that trust.

The Mississippi Act is similar to the Tennessee Investment Services Trust Act of 2007. Like Tennessee's act, the Mississippi Act allows an individual to establish a qualified disposition trust ("MQDT") that can be used to protect assets from the claims of the trust creator's creditors. The Mississippi Act also allows the creator of

the trust to retain several rights, including, but not limited to, the rights to receive distributions of income, receive distributions of principal within the discretion of the Qualified Trustee, veto distributions to any beneficiary, direct the distribution of trust assets upon death to any one or more persons, remove the Trustee, and appoint unrelated successor Trustees.

The Trustee must be either an individual resident of Mississippi or a corporate Trustee authorized to conduct business in Mississippi. The creator of the trust cannot serve as the Trustee of the trust. At least a portion of the assets of the MQDT must be administered in Mississippi. Upon the creation of an MQDT, the creator must execute an affidavit stating that he does not intend to defraud a creditor and does not have any pending or threat-

ened court action against him. The Mississippi Act also requires the transferor to pay the premiums for and be a named insured on a general liability insurance policy of at least \$1,000,000.

There is a two-year "look back" rule that applies to assets transferred to the trust. After the two year period has passed, a majority of the creator's creditors cannot seize the assets of the MQDT to satisfy claims against the creator.

If you are a Mississippi resident or have substantial Mississippi assets, please contact us to discuss establishing a MS trust or converting your TN asset protection trust to a MQDT. We have assisted many clients with TN asset protection trusts since 2007 and are excited about the opportunity to protect Mississippi residents and assets with this trust.



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***MERRY CHRISTMAS AND  
HAPPY NEW YEAR!***

**All of us at Wiseman Bray hope that you and your families have a safe and happy holiday season! We look forward to continuing to assist you with your legal needs as we wrap up 2014 and enter 2015.**

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