

### Supreme Court Denies Bankruptcy Protection for Inherited IRAs

Your retirement funds are protected from creditors even if you file for bankruptcy, with only a few limitations. This protection extends to funds in all government-qualified pension plans, including IRAs (traditional and Roth), 401(k)s, 403(b)s, Keoghs, profit sharing, money purchase, and defined benefit plans. A recent U.S. Supreme Court decision has held, however, that an inherited IRA is not a "retirement fund" and therefore does not qualify for bankruptcy protection.

An inherited IRA is a traditional or Roth IRA that a deceased owner has bequeathed to a beneficiary. It differs from a "true" retirement account in three ways:

1. The beneficiary is not allowed to contribute additional retirement funds to the inherited IRA.
2. The beneficiary, regardless of age, may withdraw funds from an inherited IRA in any amount and at any time without penalty.
3. The beneficiary, regardless of age, is required to take annual minimum distributions from any inherited IRA.

Based on the above characteristics, the Court unanimously concluded that with respect to beneficiaries, inherited IRAs are "not funds objectively set aside for one's retirement" and instead constitute a "pot of money that can be used freely for current consumption."

Although the Court did not specifically address it, there is a possible option available if (and only if) the beneficiary is the spouse of the decedent. Spouses are permitted to roll over funds from inherited IRAs into their own IRAs, which would presumably bring those funds back under bankruptcy protection. The funds would, however, become subject to the rules that apply to non-inherited IRAs, such as penalties for withdrawals before age 59½.

Certain other strategies may be available if you have inherited or are likely to inherit an IRA and you are interested in possible bankruptcy protection. Call us for an appointment to discuss your options.