

# Protecting Inherited IRAs

11.03.17 | Linda J. Rosenthal, JD



Do you have IRAs or other retirement accounts that you plan to leave to your loved ones? If so, **proceed with caution**. Most people don't know the law has changed: inherited retirement accounts no longer have asset protection, meaning they can be seized by creditors.

In *Clark v. Rameker*, the U.S. Supreme Court, in a unanimous decision, held that inherited IRAs are not exempt from the beneficiary's creditors because inherited IRAs are not "retirement funds" within the meaning of 11 USC §522(b)(3)(C) of the federal Bankruptcy Code. As a result, the creditors of the beneficiary of an inherited IRA may attach the inherited IRA.

## How Can Inherited IRAs Be Protected? Enter the Standalone Retirement Trust

Fortunately, retirement account protection still exists but only if you take pre-emptive action. Many of our clients are using Standalone Retirement Trusts (SRT) to protect their retirement assets, and to ensure their loved ones are protected. The SRT is a special type of revocable trust just for retirement accounts.

A properly drafted SRT:

- Protects the inherited retirement accounts from creditors as well as predators and lawsuits;
- Ensures that inherited retirement accounts remain in your bloodline and out of the hands of a daughter-in-law or son-in-law or former daughter-in-law or son-in-law;
- Allows for experienced investment management and oversight of the assets by a professional trustee;
- Prevents the beneficiary from gambling away the inherited retirement account or blowing it all on exotic vacations, expensive jewelry, designer shoes, and fast cars;

- Enables proper planning for a special needs beneficiary;
- Permits you to name minor beneficiaries such as grandchildren without the need for a court-supervised guardianship;
- Facilitates generation-skipping transfer tax planning to ensure that estate taxes are minimized or even eliminated at each generation of your family.

## The Bottom Line on Protecting Inherited IRAs

Unfortunately, the Supreme Court decision has made outright beneficiary designations for IRAs and other retirement accounts a risky business. However, we are here to help you decide whether an SRT is a good fit for you and to answer your questions about protecting your retirement accounts. We look forward to hearing from you.