

# IRA bankruptcy and creditor protection

Your retirement accounts may be your largest asset and if you are sued, file for bankruptcy, or have other creditor claims, you may lose them. While you hope this doesn't happen, it is important to know what protection federal and state laws offer you.

## Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA)

BAPCPA clarified the federal bankruptcy code regarding IRAs and bankruptcy. Traditional and Roth IRA contributions and earnings are protected from creditors in federal bankruptcy proceedings to a maximum limit of \$1,362,800, periodically adjusted for inflation. Rollovers from qualified employer sponsored retirement plans (QRPs) such as 401(k), 403(b), or governmental 457(b), as well as SEP, and SIMPLE IRAs have no maximum limit for federal bankruptcy protection.

## Inherited IRAs and bankruptcy

The U.S. Supreme Court ruled that Inherited IRAs were not protected in bankruptcy under federal law because these accounts have different characteristics for the beneficiary than a retirement account for an owner. However, an Inherited IRA may have protection at the state level if a bankruptcy debtor can apply state bankruptcy exemptions.

## Creditor protection

It is important to remember that an IRA does not have the same level of protection as QRPs. One provision of the Employee Retirement Income Security Act of 1974 (ERISA) requires plans to

contain stipulations which assert that benefits may not be assigned to a creditor. Additionally, ERISA preempts state laws that relate to any employee benefit plan, with certain exceptions. These two components continue to protect ERISA QRPs from certain other creditors such as state creditor claims outside of bankruptcy.

However, QRPs not covered by ERISA are not protected. These include 401(k)s that only cover the owner, spouse, and partners, as well as 403(b) and governmental 457(b) plans. IRAs are subject to state creditor laws regarding malpractice, divorce, creditors, or other types of lawsuits.

## Keep in mind

- A non-spouse beneficiary does not have federal bankruptcy protection. States may offer bankruptcy and perhaps creditor protection in non-bankruptcy situations.
- It is unclear if a spouse beneficiary will have bankruptcy protection or not. The Supreme Court's decision did not explicitly state this one way or another.
- Naming a trust as an IRA beneficiary may not solve all bankruptcy and creditor concerns. The trust would need to have certain requirements and language to provide protection.

## Work with a legal advisor

While Wells Fargo Advisors and its financial advisors do not render tax or legal advice, we do hope to educate our clients and prospects on issues that can be important considerations for them and their families. Any questions you may have on laws and regulations about asset protection should be directed to your tax and legal advisors.

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