

The Supreme Court's recent decision, *Clark v. Rameker*, has made apparent the vulnerability of directly passing your IRA on to your family. Here are 5 things you should know about inherited IRAs if you plan on leaving one to your family:

1. **Your Children May Lose It.** It is now clear that if your children inherit your IRA, it is no longer federally protected from their creditors. This means that if they declare bankruptcy, a creditor will be able to claim these funds to satisfy any debts.
2. **Your Spouse May Lose It.** The IRA might not be protected even if your spouse is the one inheriting the funds. This is counter-intuitive to most of us since couples usually consider retirement funds a joint resource, but is a vulnerability that nonetheless exists. Rather than risk the assets going to a creditor, it is extremely advisable for the surviving spouse to immediately rollover an inherited IRA into his or her own name.
3. **State Law May Protect an Inherited IRA...Or It May Not.** Even though inherited IRAs are not federally protected from creditors, they may still be protected under state law. If such protection is offered, creditors would not be able to reach the inherited IRA. However, before taking comfort in this, you should know that to date only 8 states extend protection to inherited IRAs. Furthermore, this protection is only good if your child or spouse is a resident of one of these states when they file for bankruptcy. If an individual fails to meet the residency requirement of the state, a creditor would still be able to claim the asset.
4. **All is Not Lost.** There is still something you can do to protect retirement assets you pass on to your family. You can name a Trust as the beneficiary of the policy rather than naming a child or other loved one. A precisely and particularly drafted Trust can hold the IRA after your death. The Trust can use the IRA funds for the benefit of your child, but will keep the assets out of your child's estate and thus keep the property away from the hands of the child's creditors.
5. **You Need to Plan.** If you want this protection for your family, you need to act today. The protections offered by a Trust are only good if you have actually created the Trust and properly updated your retirement policy, both of which are things you can only do if you are alive. But if you take the time to do this planning, you can protect these retirement assets for the next generation.

If you would like to know more about Stand-Alone Retirement Trusts or additional estate planning strategies that protect your assets or ensure as much of your assets as possible get passed onto your spouse and family according to your wishes, please contact our estate planning boutique department.



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