# Retirement Benefits Planning Update

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**Retirement Benefits Planning Update** provides information on developments in the field of retirement benefits law. The editors of *Probate & Property* welcome information and suggestions from readers.

## The Anticipated Growth of Inherited IRAs and Creditors Rights

IRC § 402(c)(11), enacted as part of the Pension Protection Act of 2006, Pub. L. No. 109-80, 120 Stat. 780, referred to herein as PPA, permits a designated beneficiary of a deceased plan participant who is not the participant's surviving spouse to transfer qualified pension or profit-sharing plan benefits by direct (trustee-to-trustee) rollover to an inherited IRA. Although IRC § 402(c)(11) was effective in 2007, many qualified plans deferred inclusion of a plan provision permitting direct rollovers by nonspouse beneficiaries until 2009 or 2010 when the inclusion of the provision was required by the cumulative list of changes in plan qualification requirements. An increasing portion of the assets in qualified plans, whether on the death of the plan participant, on the plan participant's death after the plan benefits have been rolled over to an IRA on retirement, or on the participant's surviving spouse's death after a rollover to a spousal IRA has occurred, will eventually be held by inherited IRAs for nonspouse beneficiaries. Provided that the requirements for having a designated beneficiary are met, an inherited IRA benefitting a nonspouse beneficiary may stretch out minimum required distributions (MRDs) over the lifetime of the beneficiary, making distributions directly to the beneficiary or to a trust for the beneficiary that is properly drafted to comply with the look-through rules of Treas. Reg. § 1.401(a)(9)-4, A-5. Minimum distributions are determined by using the years of life expectancy factor for the beneficiary's age attained in the calendar year following the account owner's death obtained from the single life tables at Treas. Reg. § 1.401(a)(9)-9, A-1 and then by subtracting one year from that factor for each year thereafter. The division of the prior year-end account fair market value by the life expectancy factor produces the annual MRD amount. Because of the year 2000 mortality assumptions on which the life expectancy factors are now based, if distributions are limited to the minimum amounts required to be distributed and the investment fund appreciates at historical levels, the assets of the inherited IRA will likely increase in value for a number of years after the inherited IRA is established before the annually reduced life expectancy factors will cause the annual amounts of the required distributions to overtake the account's annual appreciation. An inherited IRA that limits its distributions to the MRD amounts, whether by its terms, by the control of a trustee, or by the beneficiary's own restraint, represents a vehicle that can provide long-term security to an IRA account owner's child or grandchild.

If the beneficiary has creditors, however, preserving that security may require advance planning. As outlined in greater detail in previous *Retirement Benefits Planning Update* columns (January/February 2001 and May/June 2001), the assessment of a creditor's rights for inherited IRAs begins with the federal Bankruptcy Code. Under the Bankruptcy Code, all legal and equitable interests of the debtor in property as of the filing of a bankruptcy petition are included in the bankruptcy estate except to the extent specifically excluded. Bankruptcy Code § 541(c)(2) provides for the exclusion of a debtor's interest in a trust if there is "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law." If an inherited IRA that is a trust rather than a custodial arrangement is not excluded from the bankruptcy estate under Bankruptcy Code § 541(c)(2), the IRA might qualify for a federal or state exemption, each of which is potentially available under the amendments made to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (referred to herein as BAPA), as outlined in the September/October 2005 *Retirement Benefits Planning Update* column. Protection against creditors in bankruptcy and otherwise can be increased by using a trusteed IRA or by naming

  

an irrevocable trust for the individual to be benefited as the beneficiary of the inherited IRA.

### Exclusion of Inherited IRAs from a Beneficiary's Bankruptcy Estate

A beneficiary's interest in a qualified pension or profit-sharing plan is excluded from the debtor's bankruptcy estate because of the Supreme Court's determination that the anti-alienation provisions of ERISA constitute a restriction on the transfer of a beneficial interest in a trust under applicable nonbankruptcy law under Bankruptcy Code § 541(c)(2). *Patterson v. Shumate,* 504 U.S. 753 (1992). Part 2 of Title 1 of ERISA, which contains the anti-alienation rules for pension plans, does not apply to IRAs. ERISA § 201(6). Accordingly, a state spendthrift statute (an applicable nonbankruptcy law) that applies to restrain the transfer of a beneficial interest in a trust that is an IRA is not preempted by ERISA and could meet the Bankruptcy Code § 541(a)(2) requirements for exclusion from the bankruptcy estate, depending on the particular state law provisions. As discussed further below in connection with asset protection planning, spendthrift provisions are designed to secure trust funds both from creditors and from the beneficiary's own imprudence. Trusts created by the debtor (self-settled trusts) generally do not provide spendthrift protection nor does a trust over which the debtor beneficiary has the power to withdraw the trust assets.

An account owner debtor's IRA was held to be excludable under a New Jersey statute that provided that property held in a qualifying trust (defined to include an IRA) was exempt from all creditors' claims and excludable from an estate in bankruptcy. *In re Yuhas,* 104 F.3d 612 (3d Cir. 1997), cert. denied, 521 U.S. 1105 (1997). The court concluded that a restriction on transfer under Bankruptcy Code § 541(c)(2) includes a restriction on a creditor's access to a trust and need not also limit a debtor's access to funds. The court in *In re Fulton,* 240 B.R. 854 (Bankr. W.D. Pa. 1999), in dicta, held that a Pennsylvania statute providing that IRAs were exempt from attachment or execution constituted a restriction on transfer under Bankruptcy Code § 541(c)(2), even though the statute did not preclude a debtor from transferring the IRA, but denied the exclusion in the case of an IRA annuity because it was not an interest in trust. IRAs exempted from levy and sale under execution by a similar Michigan statute, however, were held not to be excludable because the restriction on transfer was not contained in the IRA agreement and did not apply to the debtor as well as creditors. *In re Zott,* 225 B.R. 160 (Bankr. E.D. Mich. 1998). See also *In re Shackelford,* 27 B.R. 372 (Bankr. Va. 1983), in which the debtor account owner's ability to withdraw account assets prevented the exclusion of the IRA account as a spendthrift trust.

### Pre-BAPA Bankruptcy Exemption Limited

Before the enactment of BAPA, a debtor who was the beneficiary of an IRA in some cases could choose under pre-BAPA Bankruptcy Code § 522(b) to have (1) the federal exemptions of the Bankruptcy Code apply or (2) state law exemptions apply. Often, there was no choice because a majority of state laws "opted out" of the federal exemptions under pre-BAPA Bankruptcy Code § 522(b)(1) that restricted persons domiciled in those states to the state law exemptions. If available, Bankruptcy Code § 522(d)(10)(E), which was not modified by BAPA, exempts a debtor's right to receive

> a payment under a stock bonus, pension, profitsharing, annuity or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless . . . such plan or contract does not qualify under § 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986 . . . .

Just before the enactment of the BAPA amendments to the Bankruptcy Code, the Supreme Court resolved a conflict among the circuits by holding that the phrase "similar plan or contract" includes a traditional IRA and that the IRC § 72(t) 10% premature distribution tax that applies to distributions until the account owner attains age 59½ effectively limits the payment of IRA benefits "on account of" age. *Rousey v. Jacoway,* 125 S. Ct. 1561 (2005). The *Rousey* decision made it clear that an IRA established by an account owner debtor is covered by the IRC § 522(d)(10)(E) exemption, but the relief granted is limited to payments that are reasonably necessary for the debtor's support as determined by the bankruptcy court.

While the wording of the Bankruptcy Code § 522(d)(10)(E) exemption might extend to an inherited IRA formed on the death of an account owner if the debtor beneficiary establishes that the account is reasonably necessary for the beneficiary's support, several state law exemption statutes, some using wording similar to the federal exemption's wording, have been ruled not to protect a beneficiary's interest in an inherited IRA. See *In re Sims,* 241 B.R. 467 (Bankr. N.D. Okla. 1999); *In re Greenfield,* 289 B.R. 146 (Bankr. S.D. Cal. 2003); *In re Navarre,* 332 B.R. 24 (Bankr. M.D. Ala. 2004); *In re Taylor* (Bankr. C.D. Ill. 2006, unreported); *In re Kirchen,* 344 B.R. 908 (Bankr. E.D. Wis. 2006); and *In re Jarboe,* 365 B.R. 717 (Bankr. S.D. Tex. 2007). Even though each state statute construed in the above cases either specifically exempts IRAs described in IRC § 408 or has been interpreted to do so, the court decisions each conclude that inherited IRAs were not intended to be protected by the exemption statute. The court in *Greenfield,* based on a California statute worded in almost the same language as Bankruptcy Code § 522(d)(10)(E), expressed the prevailing argument against applying the state law exemption to inherited IRAs by stating, "In order to qualify for an exemption the IRA must be used for 'retirement needs.'" 289 B.R. at 150. The court cited the common denominator that the Ninth Circuit Court of Appeals pointed out in its ruling, which held that IRAs were included within the California statute as plans "similar" to a stock bonus, pension, profit sharing, or

 

annuity plan providing for payment to the debtor on account of age—namely, that all such plans are "aimed to enable working taxpayers to accumulate assets during their productive years so that they might draw upon them during retirement." *In re McKown,* 203 F.3d 1188, 1190 (9th Cir. 2000).

A second reason cited in the above cases to deny a bankruptcy exemption for an inherited IRA, even in those cases in which the state statute specifically refers to IRAs described in IRC § 408, is that the Internal Revenue Code places an entirely different set of rules on the use, distribution, and taxation of the funds in an IRA inherited by a nonspouse beneficiary. In particular, the beneficiary cannot make contributions to the account, cannot roll over the account, and must take distributions immediately (in some cases, over only five years). *Sims,* 241 B.R. at 470. The Oklahoma statute construed in *Sims* exempted any interest in a retirement plan or an arrangement qualified for tax exemption purposes under present or future Acts of Congress. The statute defined "retirement plan or arrangement qualified for tax exemption purposes" to include IRAs. *Sims,* 241 B.R. at 468 n.2. In *Jarboe,* supra, the court construed a section of the Texas probate code that states:

> [A] person's right to assets held in . . . any individual retirement account . . . is exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract, or account does not qualify under the applicable provisions of the Internal Revenue Code.

Tex. Prop. Code Ann. § 42.0021(a) (Vernon 2006).

After pointing out that retirement plans may be "qualified" structurally but must also be qualified operationally to be tax-exempt, the court cited the *Kirchen* opinion, 344 B.R. at 913, that compliance with the Internal Revenue Code in the context of an IRA requires "compliance in the context of retirement." The court concluded that an IRA inherited from someone other than a spouse is not a retirement plan and that such an inherited IRA does not "qualify" under the Texas statute.

## Post-BAPA Bankruptcy Protection

Under the Bankruptcy Code as amended by BAPA for bankruptcy filings after October 16, 2005, a debtor whose state law has not opted out of the federal exemptions can still choose under Bankruptcy Code § 522(b)(2) to have the federal exemptions set forth in Bankruptcy Code § 522(d) apply, including the new Bankruptcy Code § 522(d)(12) exemption for retirement funds. In the alternative, a debtor can choose under Bankruptcy Code § 522(b)(3) to have state law exemptions plus the federal law exemption of Bankruptcy Code § 522(b)(3)(C) apply. In either case, whether Bankruptcy Code § 522(d)(12) or § 522(b)(3)(C) applies, the same exemption for retirement funds applies. The exemption applies to "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986."

Bankruptcy Code § 522(n) limits the exemption for a Roth IRA or a traditional IRA that is not part of a SEP under IRC § 408(b) or a SIMPLE under IRC § 408(p) to an aggregate value of $1 million. The $1 million limit, now increased, as of April 1, 2010, to $1,171,650 by COLA adjustments, does not apply to amounts attributable to rollover contributions from qualified plans and tax sheltered annuity plans and the earnings thereon. Because of the limits that apply to nonrollover contributions to traditional IRAs and Roth IRAs, the exemption cap is likely to exceed the amounts contained in inherited IRAs that are not attributable to rollover contributions, at least for the foreseeable future. The broad wording of exemptions introduced by BAPA (with no reference to the purpose of the payment of benefits other than the use of the term "retirement funds") would seem to render the Bankruptcy Code § 522(d)(10)(E) exemption, which remains unchanged as a federal exemption, irrelevant. The breadth of the exemption would also seem to make the possible alternative of excluding an inherited IRA from the bankruptcy estate under Bankruptcy Code § 541(c)(2) relating to restrictions on transfer irrelevant, too.

Of the four bankruptcy court decisions that relate to bankruptcy petitions filed after the October 16, 2005, effective date of the BAPA amendments, only two construe the language of the amended Bankruptcy Code. The first two post-BAPA cases focused on state law exemptions, as if the Bankruptcy Code had not been amended. One of these, the *Jarboe* case described above, involved a bankruptcy petition filed on November 10, 2006. That opinion did acknowledge in a footnote that one of the features that distinguished an inherited IRA from a regular IRA had changed because of the enactment of the PPA, noting that it was less likely that an inherited IRA would need to be paid over a five-year period or received as a lump sum by the beneficiary, but it pointed out that the PPA was not effective until December 31, 2006. The second post-BAPA decision detemined that an inherited IRA was exempt under an Idaho statute. *In re McClelland*, No. 07-40300, 2008 WL 89901 (Bankr. D. Idaho Jan. 7, 2008). In that case, the court noted that the Idaho statute, although similar to the statutes construed in the pre-BAPA decisions discussed above, was broader in scope, specifically expressing the goal of protecting the "right of a person to a pension, annuity, or retirement allowance or disability allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any citizen of the state of Idaho under any employer benefit plan or arrangement." Idaho Code § 11-604A(3). Noting that the definition of any plan or arrangement included individual retirement accounts described in IRC § 408 set forth in Idaho Code § 11-604A(4)(b), the court concluded the inherited IRA was an exempt asset under "a plain reading" of the statute and that, "had the legislature intended to limit the scope of this exemption to only funds held by the person who contributed them to the account, it

  

certainly could have done so." Id. at 11 and 12.

In the first case to address the amended Bankruptcy Code, the bankruptcy trustee argued that an inherited IRA does not qualify for exemption under Bankruptcy Code § 522(d)(12), citing several of the pre-BAPA cases described above, but the court concluded that "the plain language of the statute compels the contrary conclusion" and held that the inherited IRA was exempt. *In re Nessa*, No. BKY 09-60081, 2010 WL 128313 (Bankr. D. Minn. Jan. 11, 2010). The bankruptcy trustee characterized the inherited IRA as a rollover IRA, but the court pointed out that, although the account was transferred to a new trustee after the account owner's death, the recipient account remained in the name of the decedent, it was not legally owned by the husband and wife debtors, and the transferred amounts did not lose their character as retirement funds. The court further noted in footnote 1 that none of the pre-BAPA cases cited by the bankruptcy trustee, including *Sims*, *Greenfield*, and *Navarre*, supra, as well as *Robertson*, described below, dealt with Bankruptcy Code § 522(d)(12). 2010 WL 128313, at *2. In the second case to address Bankruptcy Code § 522(d)(12), the Bankruptcy Court for the Eastern District of Texas ruled that an inherited nonspousal IRA did not represent "retirement funds" protected by the exemption. *In re Chilton*, No. 08-43414, 2010 WL 817331 (Bankr. E.D. Tex. Mar. 5, 2010). Stating that all words in a statute should be given meaning, it quotes the dictionary definition of "retirement" as "withdrawal from one's position or occupation or from active working life." The court concludes that, because IRA funds are not intended for retirement purposes but, instead, are distributed to the beneficiary of the account without regard to age or retirement, an inherited IRA is not a retirement fund.

### Exposure of Inherited IRAs to Nonbankruptcy Creditors

Many states, either as a part of the statute that provides for exemptions in a bankruptcy proceeding or in separate statutes, provide that retirement plans will be exempt from execution, attachment, garnishment, seizure, or any other levy by or under any legal process. Fla. Stat. § 222.21(2)(a) (2008) renders money or other assets payable to an owner, a participant or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account exempt from garnishment if it is a fund or account that is maintained as an IRA under a plan or governing instrument that is exempt from taxation under the Internal Revenue Code. In *Robertson v. Deeb*, 16 So. 3d 936 (Fla. Dist. Ct. App. 2009), the Florida District Court of Appeal held that, although the statute provides an exemption from all claims of creditors of the beneficiary of an IRA, an inherited IRA is not protected because the exemption extends only to an IRA's money and assets if they are maintained in one particular fund or account. Because inherited IRAs are separate funds or accounts that are created when the original account passes to a beneficiary on the death of an owner or participant, they are not exempt. The court also observed that the protected fund or account is identified by its tax-exempt status but that the tax-exempt status of an IRA changes dramatically when it is distributed on the owner's death and becomes an inherited IRA.

### Spendthrift Clauses—Trusteed IRAs and Conduit Trusts

IRC § 408(a) defines an IRA as "a trust . . . for the exclusive benefit of an individual or his beneficiaries." Under IRC § 408(h), a custodial account may be treated as an IRA for purposes of IRC § 408. Virtually all commercially marketed IRA accounts are custodial IRAs. In recent years, a number of financial institutions have introduced a "trusteed IRA" or "stand-alone IRA" designed to continue after the account owner's death. Among other potential benefits, a trusteed IRA permits an account owner to control the disposition of the IRA assets after death, both in terms of the beneficiaries' identities and the manner of payment to the beneficiaries. On the death of the account owner of a custodial IRA, the IRA agreement typically requires that a new custodial IRA or IRAs in the name of the deceased account owner for the benefit of (FBO) the beneficiary or beneficiaries be established. The creation of post-death FBO inherited IRA accounts is one of the bases for permitting their garnishment under *Robertson*, supra. As a practical matter, most providers of custodial IRAs are unwilling (or claim to be unable) to accept customized beneficiary designations that place restrictions on distributions to designated beneficiaries. This appears to be, in part, because of the difficulty of tracking such original account owner restrictions from one IRA account to another under the IRA provider's recordkeeping systems.

A trusteed IRA agreement could include a spendthrift clause prohibiting the beneficiary from alienating the IRA benefits and stating that the beneficiary's interest in the trust shall not be subject to any legal process by a beneficiary's creditors. A spendthrift clause would be less likely to provide protection from creditors under many state laws if the beneficiary who inherits an IRA (as is the case with custodial IRAs) has the same power that the account owner has to withdraw the assets of the IRA. For example, Uniform Trust Code (UTC) § 502(a) provides that "[a] spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest." A spendthrift clause might afford some protection if distributions from a trusteed IRA to beneficiaries are partially restricted by the account owner. For example, the typical provision that an account owner can elect under a trusteed IRA is to limit distributions to the beneficiaries (or to a beneficiary) to the amounts of the annual MRDs. The designation of an irrevocable conduit trust (or subtrust) created under the account owner's estate plan (either as a separate irrevocable trust or, as of the account owner's death, under the account owner's revocable trust) could similarly have the protection of a spendthrift clause. A conduit trust or subtrust created under a separate trust agreement offers increased flexibility to the extent that an independent trustee is given the power to withdraw (and distribute) amounts to the beneficiary in excess of the MRD amounts. See *Retirement Benefits Planning Update*, May/June 2006.

 

In the case of either a trusteed IRA that restricts distributions to beneficiaries to MRD amounts or a separate irrevocable conduit trust or subtrust, a spendthrift clause should prevent a creditor from attaching the undistributed assets held in the inherited IRA account. While each state's spendthrift laws differ, UTC § 502(c) provides that "[a] beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in this [article], a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary." UTC § 503 "Exceptions to Spendthrift Provision," as amended in 2004, provides that a spendthrift provision is unenforceable against certain excepted creditors, including (1) a beneficiary's child, spouse, or former spouse who has a judgment or court order against the beneficiary for support or maintenance, (2) a judgment creditor who has provided services for the protection of a beneficiary's interest in trust, and (3) a claim of a state or the United States to the extent a statute of the state or federal law so provides. UTC § 503(c) states that "[A] claimant against which a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances."

## Discretionary Trusts as Beneficiary

If an IRA account owner designates as beneficiary an irrevocable trust (or subtrust) of which the account owner's child or grandchild is the, or one of the, beneficiaries and the trust provides that distributions from the trust will be made to the beneficiary or beneficiaries in the sole and absolute discretion of an independent trustee, the beneficiary's interest in the trust is limited such that there is no property right that a creditor can attach (provided that the trust agreement also contains a spendthrift clause that prevents the beneficiary from assigning the beneficial interest to a creditor). Restatement (Second) of Trusts § 155 cmt. b (1959). In effect, a creditor has no ability to compel a trust distribution that the beneficiary could not compel. If an irrevocable trust provides a standard of distribution such as an ascertainable standard complying with IRC § 2041 so that the trustees, in their sole discretion, can make distributions for a beneficiary's health, maintenance, support, or education, the trust assets may also be protected from creditors, depending on the state law that applies. If the trust agreement states that the trustee shall make distributions in accordance with the standard as the trustee, in its discretion determines necessary, the beneficiary may arguably have a right to property reachable by a creditor. *United States v. Taylor,* 254 F. Supp. 752 (N.D. Cal. 1966). If the beneficiary serves as the sole trustee of a trust having an ascertainable standard for distributions, Restatement (Third) of Trusts § 60 cmt. (g) (2001) provides that creditors can reach the beneficiary's interest in the trust. Uniform Trust Code § 504, as amended through 2004, however, provides that creditors (other than certain excepted creditors) of discretionary trusts, whether or not the trust contains a spendthrift provision, may not compel a distribution subject to the trustee's discretion even if the discretion is expressed in the form of a standard of distribution and even if the beneficiary is the trustee or a co-trustee. The excepted creditors are the beneficiary's child, spouse, or former spouse who have a judgment or court order against the beneficiary for support or maintenance to whom a court can direct the trustee to pay such amount as is equitable under the circumstances, but not more than the trustee would have been required to distribute for the benefit of the beneficiary had the trustee complied with the standard. UTC § 504(c).

To obtain stretch-out distributions from an inherited IRA payable to an irrevocable trust (or subtrust), the trust (or subtrust) must limit the look-through beneficiaries of the trust so that all potential recipients of trust distributions are qualified to be designated beneficiaries. Thus, no nonindividual beneficiaries (charities or the beneficiary's estate) may be able to receive distributions from the trust after September 30 of the year following the account owner's death. The trust agreement also can prohibit distributions from the subtrust to beneficiaries who are older than the primary trust beneficiary whose life expectancy is intended to measure the MRDs payable from the inherited IRA to the subtrust. Compared to the use of a conduit trust, under which nonindividual beneficiaries and beneficiaries older than the beneficiary selected to be the measuring life for the conduit distributions can be named as contingent beneficiaries who can receive benefits after the "conduit" beneficiary's death, none of the permissible distributees of a discretionary trust or subtrust may be disregarded and all of such contingent beneficiaries must be individuals who are younger than the oldest trust beneficiary whose life expectancy is intended to measure MRDs. Potential appointees of the exercises of special powers of appointment also must be similarly restricted. As a consequence, naming a discretionary trust or subtrust (rather than a conduit trust or subtrust) as the beneficiary of an inherited IRA may not be a practical alternative for an account owner who does not have an adequate pool of children or grandchildren as permissible trust distributees.

## Conclusion

The degree to which the creditors of a beneficiary of an inherited IRA have access to the IRA account in a nonbankruptcy context depends on the interpretation of state statutes, which, in many cases, seem on their face protective of inherited IRAs but, when interpreted by the courts, are not. The protective provisions of the BAPA that appear to exempt an inherited IRA from a beneficiary's bankruptcy estate have yet to be subjected to extensive judicial scrutiny. If an account owner has concerns that the beneficiary or one of the beneficiaries who may inherit all or a portion of an IRA may have creditor problems, the use of a trusteed IRA that restricts post-death distributions and contains a spendthrift clause may, depending on the applicable state law and its interpretation, afford creditor protection. The naming of a properly drafted conduit trust or discretionary trust as the beneficiary of an inherited IRA invokes full protection of the state's spendthrift law and provides the maximum possible protections from the creditors of a beneficiary of the trust. ■

  