CONSIDERATIONS FOR PROTECTING AN INHERITED IRA

“The definition of success: getting up one more time than you fall down.” Anonymous

A July 2014 Supreme Court ruling surprised almost everyone in the financial services industry when they determined that an inherited IRA was not protected from creditors. In Clark 18 UX vs. Remaker, the high court unanimously ruled that inherited individual retirement accounts are not retirement funds in the meaning of the federal bankruptcy law. In other words, the justices concluded with certainty that a retirement account can be both a retirement account and not a retirement account.

The ruling shifts the focus from bankruptcy law context to the estate planning realm in which retirement plans inherited from descendants won't benefit from the same shield of creditor protection that is afforded to such plans during a decedent's lifetime. The issue now becomes how to protect inherited plans and avoid consequences of failing to do so. If the beneficiary is the surviving spouse, there's a good chance this will be protected however the forecast is not certain.

The good news is the spouse's beneficiary possesses a unique right to roll inherited retirement benefits into their own retirement plan. In this case, the spouse may make additional contributions to the plan with a 10% penalty that applies to early withdrawals and no minimum distributions are required until 70 and a half.

These three common retirement features form the three form tests used by the court in Clark to define retirement plan. And, they likely will save the day for a spouse and result in protection from creditors. The bad news is if a spouse instead takes the benefits as a spousal inherited IRA and not as a rollover to his or her own plan the Clark ruling might apply. Thus, more confusion, more need for better planning, and in reality, we cannot be 100% sure of the answers. For more information, call me.

INVESTMENT NEW UPDATE

Very important news: Money Market funds can now break a dollar for large institutional investors. Will individuals be far behind? This means that if you have money in the money market and they do not make enough money, you actually could end up with a loss of some of your money. This is happening for the first time in the history of money markets. No one knows exactly what this will mean in the long-term, but one thing is for sure, it will more than likely change people's behavior and may send more money to banks than money markets, looking for both a guarantee and for the FDIC insurance.

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