

Bringing Clarity to Inherited IRAs

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The author is a close family relation of a member of the Executive Board of the *Loyola University Chicago Law Journal*. That board member has been screened from this article.—Ed.

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INTRODUCTION

Baby boomers are approaching their retirement years.¹ As a result, the wealthiest generation in US history has begun to devise estates at an accelerating rate, participating in some of the largest transitions of wealth the world has ever seen.² Because Individual Retirement Accounts (IRAs) amount to 27 percent of all retirement plan assets in the US,³ they are often included in the property an individual may inherit. On the other hand, 773,361 bankruptcy cases were filed in the US for the twelve-month period ending in June 30, 2019,⁴ nearly five hundred thousand of which were filed under Chapter 7.⁵

At the crossroad of the two sets of statistics rests an important issue for individual debtors: Are inherited IRAs protected from the grasp of creditors in and out of bankruptcy?⁶ Traditionally, all forms of retirement have been exempt and debtors have relied upon such exemption in their hope for a fresh start. Without the protection of bankruptcy, debtors will have to take additional steps, like the creation of a trust, to prevent creditors from reaching their IRAs. However, these alternatives usually entail their own costs. Moreover, many IRA administrators allow owners to designate beneficiaries on their own. Most individuals require the assistance of sophisticated estate planners to set up these financial instruments.

1. Ben Steverman, *The Richest Generation in U.S. History Just Keeps Getting Richer*, BLOOMBERG (July 12, 2016, 10:58 AM), <https://www.bloomberg.com/news/articles/2016-07-12/the-richest-generation-in-u-s-history-just-keeps-getting-richer> [https://perma.cc/6P39-43XB].

2. Diane Davis, *Supreme Court Leaves States Scrambling Over Inherited IRAs*, BLOOMBERG LAW (Sept. 21, 2018, 6:35 AM), <https://news.bloomberglaw.com/bankruptcy-law/supreme-court-leaves-states-scrambling-over-inherited-iras> [https://perma.cc/Y8M2-RLNU]; see also Jack Kelly, *Millennials Will Become Richest Generation in American History as Baby Boomers Transfer Over Their Wealth*, FORBES (Oct. 26, 2019, 9:00 AM), <https://www.forbes.com/sites/jackkelly/2019/10/26/millennials-will-become-richest-generation-in-american-history-as-baby-boomers-transfer-over-their-wealth/#22adb0d6c4b> [https://perma.cc/9R7X-5ZQM] (noting that “Millennials will hold five times as much wealth as they have today and the group is anticipated to inherit over \$68 trillion from their Baby Boomer parent by the year 2030,” representing one of the greatest wealth transfers in modern times).

3. Craig Copeland, *Individual Retirement Account Balances, Contributions, Withdrawals, and Asset Allocation Longitudinal Results 2010–2016: The EBRI IRA Database*, EMP. BENEFIT RES. INST. (Oct. 22, 2018), https://www.ebri.org/docs/default-source/ebri-issue-brief/ebri_ib_462_ira_long-22oct18.pdf?sfvrsn=80a3e2f_6 [https://perma.cc/6ZKB-44HZ].

4. U.S. BANKRUPTCY COURT—BUSINESS AND NONBUSINESS CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2019, U.S. COURTS (July 26, 2019), https://www.uscourts.gov/sites/default/files/data_tables/bf_f2_0630.2019.pdf [https://perma.cc/T7UL-D8NX].

5. *Id.*

6. See Jeffrey Cymrot & Donald R. Lassman, *Inherited IRAs: Exemption Issues under the Code*, AM. BANKR. INST. J., May 2011, at 65, 68 (“Inherited IRAs are becoming more common in bankruptcy filings and may represent a larger part of the typical consumer debtor’s bankruptcy estate in the future.”).

A bankruptcy estate is established when a debtor files for Chapter 7 bankruptcy.⁷ Such an estate includes a debtor's legal and equitable interests in property at the commencement of their case.⁸ Generally, both traditional and Roth IRAs are exempted from the bankruptcy estate because they are qualified "retirement funds" protected under 11 U.S.C. § 522(b)(3)(C)⁹ and § 522(d)(12).¹⁰ However, because the Bankruptcy Code does not define "retirement funds" beyond listing assets in certain Internal Revenue Code (IRC) categories, some courts interpreted "retirement funds" to consist of inherited IRAs,¹¹ while others rejected the inclusion of inherited IRAs under exempted assets.¹² The split between circuits came to a head in *Clark v. Rameker*.¹³

In *Clark*, the Supreme Court held in the negative for debtors who inherited IRAs from individuals other than their spouses, ruling that such inherited accounts were not protected by the federal bankruptcy exemption scheme.¹⁴ While the 2014 holding is unfavorable for debtors, *Clark* left open the possibility that inherited IRAs can be protected from bankruptcy and judgment creditors under available state exemptions.¹⁵ Certain states have enacted their own bankruptcy exemption laws in order to explicitly limit the reach of creditors from inherited IRAs. This Article examines whether inherited IRAs are protected under Illinois law from creditors in and out of bankruptcy. First, it explores the history of inherited IRA protections leading up to *Clark*. Then, it analyzes and compares how each state treats inherited IRAs under their respective exemption schemes. Finally, it concludes that Illinois debtor-beneficiaries will not receive asset protection in and out of bankruptcy with regards to inherited IRAs.

7. 11 U.S.C. § 541(a) (2018).

8. 11 U.S.C. § 541(a)(1).

9. 11 U.S.C. § 522(b)(3)(C) (2018).

10. 11 U.S.C. § 522(d)(12).

11. See, e.g., *In re Nessa*, 426 B.R. 312 (B.A.P. 8th Cir. 2010) (deeming retirement funds to consist of inherited IRAs); *In re Thiem*, 443 B.R. 832 (Bankr. D. Ariz. 2011) (same); *In re Chilton (Chilton II)*, 674 F.3d 486 (5th Cir. 2012) (same); *In re Tabor*, 433 B.R. 469 (Bankr. M.D. Pa. 2010) (same); *In re Kuchta*, 434 B.R. 837 (Bankr. N.D. Ohio 2010) (same).

12. See, e.g., *In re Chilton (Chilton I)*, 426 B.R. 612 (Bankr. E.D. Tex. 2010); *In re Clark*, 714 F.3d 559 (7th Cir. 2013) (holding that inherited IRAs do not fall under statutory tax exemptions for retirement funds).

13. *Clark v. Rameker*, 134 S. Ct. 2242 (2014).

14. *Id.*

15. See Andrew A. DePeau, *Are Inherited IRAs Protected from Collection Under State Law?*, AM. BANKR. INST. J., Sept. 2018, at 20, 20 (2018) ("[*Clark*] did not resolve whether an individual debtor could rely on state exemption law to preserve inherited retirement assets."); Jennifer Salisbury, *Are They Or Aren't They "Retirement Funds"? The Case for Including Funds From an Inherited IRA in a Debtor's Bankruptcy Estate*, 80 MO. L. REV. 871, 891 (2015) (explaining that *Clark* does not apply to debtors who live in states with bankruptcy exemption laws that allow an exemption for inherited IRAs).

I. BACKGROUND

Congress broadened debtors' rights by enacting the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).¹⁶ BAPCPA added new protections to 11 U.S.C. § 522, the statute that governs exemptions in the federal bankruptcy scheme.¹⁷ Under § 522(b)(3)(C), a debtor may exempt "retirement funds" that are excluded from taxation under the IRC.¹⁸ While it is clear that traditional and Roth IRAs are protected from creditors' reach, ambiguity emerged as to whether § 522 encompasses retirement accounts inherited by debtors from individuals other than their spouses.¹⁹

An inherited IRA is defined by the IRC as "an individual retirement account or individual retirement annuity" that a beneficiary received "by reason of the death of another individual, and such [beneficiary] was not the surviving spouse of such other individual."²⁰ Prior to *Clark*, various courts approached the issue of whether inherited IRAs were exempted under § 522 and emerged with conflicting holdings. In 2010, the bankruptcy court in the Eastern District of Texas examined the matter in *Chilton I* and decided that funds from inherited IRAs were not "retirement funds" exempted from the bankruptcy estate because they differed from traditional IRAs in terms of funds distribution.²¹ By contrast, the bankruptcy appellate panel of the Eighth Circuit declared in the same year that while § 522 required an account be comprised of retirement funds in order to be exempt, "it [did] not specify that they must be the debtor's retirement funds even though the contents of the

16. Bankruptcy Abuse Prevention and Consumer Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (2005).

17. 11 U.S.C. § 522 (2018).

18. *Id.* § 522(b)(3)(C) (exempting from the bankruptcy estate "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"). § 522(d)(12) contains the same language. *Id.* § 522(d)(12).

19. The IRC treats spousal-inherited and non-spousal inherited IRAs differently. The IRS has clarified that "[i]f you inherit a traditional IRA from anyone other than your deceased spouse, you cannot treat the inherited IRA as your own." DEP'T OF THE TREASURY, INTERNAL REVENUE SERV., I.R.S. PUB. 590, CAT. NO. 15160X, INDIVIDUAL RETIREMENT ARRANGEMENTS (IRAS) (Jan. 30, 2013), <https://www.irs.gov/pub/irs-prior/p590--2013.pdf> [<https://perma.cc/8LAH-38BA>]. This means you cannot make any contributions to the IRA. It also means you cannot roll over any amounts into or out of the inherited IRA.

20. 26 U.S.C. § 408(d)(3)(C)(ii) (2018).

21. *Chilton I*, 426 B.R. 612, 622 (Bankr. E.D. Tex. 2010). In *Chilton I*, the debtor transferred funds from an IRA inherited from her deceased mother to a new account. *Id.* at 615. The debtor argued that the new account was protected from creditors because it contained "retirement funds" as a tax-exempt account. *Id.* at 621. The bankruptcy court disagreed, holding that inherited IRAs differ from traditional IRAs in significant aspects. *Id.* at 622. Inherited IRAs do not contain funds intended for an individual's retirement purposes because assets are distributed to beneficiaries regardless of the beneficiaries' ages or retirement statuses. *Id.* at 620–22.

Debtor's inherited account were the Debtor's father's retirement funds, not the Debtor's own retirement funds, they remain in form and substance, 'retirement funds.'"²²

Apart from one exception,²³ almost every decision that has discussed whether inherited IRAs are exempt under § 522 since *Chilton I* and *Nessa* have followed the reasoning and holding of *Nessa*.²⁴ Notably, *Chilton I* was overturned by *Chilton II*, in which the Fifth Circuit decided that inherited IRAs were exempt under § 522(d)(12).²⁵ All signs indicated that courts would continue to rule in the trend of *Nessa* and protect inherited IRAs for debtors in bankruptcy. Unexpectedly, *In re Clark* crashed in and created a circuit-split.²⁶

In *In re Clark*, the debtor-beneficiary acquired an IRA from her mother following the latter's death.²⁷ In determining whether the funds in this account were protected under § 522(b)(3)(C) and § 522(d)(12), Judge Easterbrook compared the attributes of an inherited IRA to a traditional IRA and found significant differences between the two.

For example, no new contributions can be made, and the balance cannot be rolled over or merged with any other account And instead of being dedicated to Heidi's retirement years, the inherited IRA must begin distributing its assets within a year of

22. *In re Nessa*, 426 B.R. 312, 314–15 (B.A.P. 8th Cir. 2010). Here, the bankruptcy appellate panel held,

It is irrelevant whether a traditional IRA and an inherited IRA have different rules regarding minimum required distributions. Section 408(e) of the Internal Revenue Code provides, in pertinent part, that '[a]ny individual retirement account is exempt from taxation.' . . . It does not distinguish between an inherited IRA and traditional types of IRAs.

Id. at 315 (citation omitted).

23. *See generally In re Clark*, 714 F.3d 559 (7th Cir. 2013) (disagreeing with *Chilton II* and holding that, because an inherited IRA is not a fund of retirement savings, § 522 does not include inherited IRAs).

24. *See, e.g., In re Thiem*, 443 B.R. 832, 843–44 (Bankr. D. Ariz. 2011) ("This court agrees with *Nessa* and *Tabor* that neither § 522(b)(3)(C) nor § 522(d)(12) require the retirement funds to be those originally created by the debtor-beneficiary. Until Congress sees fit to amend or clarify this exemption, this court holds that an inherited IRA that complies with the IRC is, in name and substance, an account that meets the requirements of the . . . federal retirement exemption statutes at issue here."); *In re Tabor*, 433 B.R. 469, 475–76 (Bankr. M.D. Pa. 2010) (finding that reliance on *Chilton I* "would impermissibly limit [§ 522] beyond its plain language"); *In re Kuchta*, 434 B.R. 837, 843–44 (Bankr. N.D. Ohio 2010) (reminding that exemptions are meant to be "liberally construed in favor of the debtor").

25. *Chilton II*, 674 F.3d 486, 488–90 (5th Cir. 2012). The Fifth Circuit agreed with *Nessa* and stressed that "[t]he plain meaning of [§ 522(d)(12)] refers to money that was 'set apart' for retirement. Thus, the defining characteristic of 'retirement funds' is the purpose they are 'set apart' for, not what happens after they are 'set apart.'" *Id.* at 489. The court also declared that inherited IRAs were tax-exempt under 26 U.S.C. § 408(e), which stated that "[a]ny individual retirement account is exempt from taxation . . ." *Id.* at 490.

26. *In re Clark*, 714 F.3d at 562.

27. *Id.* at 560.

the original owner's death Payout must be completed in as little as five years (though the time can be longer for some accounts).²⁸

Announcing that an inherited IRA was a “time-limited tax-deferral vehicle” instead of “a place to hold wealth for use after the new owner's retirement,”²⁹ the Seventh Circuit held that inherited IRAs were not protected by either § 522(b)(3)(C) or § 522(d)(12).³⁰

Upon a grant of certiorari, the Supreme Court heard the *In re Clark* debtor-beneficiary's appeal in *Clark v. Rameker*.³¹ The unanimous Court affirmed the Seventh Circuit's decision and ruled that inherited IRAs are not included in the definition of “retirement funds” under § 522(b)(3)(C).³² According to the Court, “retirement funds” are “sums of money set aside for the day an individual stops working.”³³ In reaching its conclusion, the Court first explained that the funds in inherited IRAs are “not objectively set aside for the purpose of retirement.”³⁴ For the Court, the argument made in *Nessa* and *Chilton II* that funds in inherited IRAs are retirement funds because they were at some point set aside from retirement was problematic. To highlight the flaw in this argument, the Court suggested the following scenario: “if an individual withdraws money from a traditional IRA and gives it to a friend who then deposits it into a checking account, that money should be forever deemed ‘retirement funds’ because it was originally set aside for retirement.”³⁵ The Court concluded that this interpretation was “plainly incorrect.”³⁶

Furthermore, the Court decided that to continuously designate funds in inherited IRAs as retirement funds would render the first portion of § 522(b)(3)(C) superfluous.³⁷ As all funds in inherited IRAs were at one point retirement funds, the debtor-beneficiary's argument would lead to the need of the statute to only read “[any] fund or account that is exempt from taxation under [the IRC].”³⁸ The Court stressed that “[a]llowing that kind of exemption would convert the Bankruptcy Code's purposes of

28. *Id.* (citations omitted).

29. *Id.* at 560–61 (“[A]n inherited IRA does not have the economic attributes of a retirement vehicle, because the money cannot be held in the account until the current owner's retirement.”).

30. *Id.* at 562.

31. *Clark v. Rameker*, 134 S. Ct. 2242 (2014).

32. *Id.*

33. *Id.* at 2243.

34. *Id.* at 2247. The Court found three “legal characteristics” of inherited IRAs which distinguish them from funds set aside for the purpose of retirement: beneficiaries may not invest additional funds in inherited IRAs, are required to withdraw from the accounts regardless of their time from retirement, and may withdraw entire balances for any purpose. *Id.* at 2247–48.

35. *Id.* at 2248.

36. *Id.*

37. *Id.*

38. *Id.*

preserving debtors' ability to meet their basic needs and ensuring that they have a 'fresh start' . . . into a 'free pass'."³⁹

For the foregoing reasons, the Court affirmed the Seventh Circuit's ruling that inherited IRAs are not retirement funds subject to the protections of § 522(b)(3)(C).⁴⁰

II. EXEMPTION STATUS OF INHERITED IRAS ACROSS THE COUNTRY

While *Clark* made clear that funds held in and derived from inherited IRAs are not exempt under federal bankruptcy law, it leaves open the possibility that such funds may be protected by state law. Section 522(b)(2) allows states to opt-out of the federal exemption scheme.⁴¹ The majority of states have opted-out, therefore bankruptcy and non-bankruptcy exemptions are often decided by individual state judgment exemptions.⁴² In the aftermath of *Clark*, some states scrambled to amend their exemption statutes in order to clarify their intent to protect debtor-beneficiaries' inherited IRAs from creditors, while others left it up to the courts to interpret existing state law. The following section analyzes each state's exemption scheme with regards to inherited IRAs both in and out of bankruptcy.

Alabama

Alabama is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. Under the Alabama Code, traditional IRAs and Roth IRAs are "qualified trusts" which are protected from bankruptcy proceedings, assignment, and alienation.⁴³ Because the Alabama Code does not explicitly exempt inherited IRAs, it is possible that funds in such accounts are vulnerable under a *Clark* analysis against both bankruptcy and non-bankruptcy creditors.⁴⁴

39. *Id.*

40. While the Court did not discuss § 522(d)(12), the language in § 522(d)(12) and § 522(b)(3)(C) is identical. *Id.* at 124 n.1. As such, inherited IRAs do not qualify under the § 522(d)(12) exemption. For a detailed and creative analysis of the Court's holding in *Clark*, see Lester B. Law & Bryan D. Austin, *Inherited IRAs: Strategy or Planning Opportunity*—*Clark v. Rameker*, PROB. & PROP., Sept.–Oct. 2014, at 21.

41. 11 U.S.C. § 522(b)(2) (2018) ("Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize."); see also, Alvin J. Golden, *Creditor's Rights in IRAs*, ALI-ABA ESTATE PLANNING IN DEPTH AJG-1, AJG-2 (2012) (describing the expansion of BAPCPA benefits under state exemption election).

42. See James L. Boring et al., *Protection of Inherited IRAs*, 36 ACTEC L.J. 577, 580–81 (2010) (discussing whether exemptions shielding an IRA from the owner's creditors should also shield an inherited IRA from the beneficiary's creditors).

43. ALA. CODE § 19-3B-508(a)(4), (b) (2020).

44. While no Alabama court has dealt with the current statutes in relation to inherited IRAs, the

Alaska

Alaska is an opt-out state that explicitly exempts inherited IRAs in bankruptcy and collection proceedings. Under the Alaska Code of Civil Procedure, a debtor's interest in "a retirement plan if the [debtor] acquired the interest as a result of the death of an individual . . . is exempt to the same extent that the individual's interest was exempt immediately before the individual died."⁴⁵ Consequently, debtors in Alaska are able to shield their inherited IRAs from the reach of creditors both in and out of bankruptcy.

Arizona

Arizona is an opt-out state that explicitly exempts inherited IRAs in bankruptcy and collection proceedings.⁴⁶ Under the Arizona Revised Statutes, "[a]ny money or other assets payable to a . . . beneficiary . . . , or any interest of any . . . beneficiary in, a retirement plan under §§ 401(a), 403(a), 403(b), 408, 408A or 409 . . . whether the beneficiary's interest arises by inheritance . . ." is protected against the reach of all creditors.⁴⁷ As a result, Arizona debtors are able to shield their inherited IRAs from the reach of creditors both in and out of bankruptcy.

Arkansas

Debtors in Arkansas may choose to employ either federal bankruptcy exemptions under § 522 or state exemptions under the Arkansas Code. While the Arkansas Code exempts IRAs from attachment, execution and seizure for the satisfaction of debt, it is unclear whether inherited IRAs are protected both in bankruptcy and collection proceedings.⁴⁸ Therefore, if an Arkansas debtor chooses to use the federal bankruptcy exemptions, they will be precluded from exempting inherited IRAs from their bankruptcy estate. However, if the debtor chooses to use the exemptions provided by the state, there is currently no definitive answer as to whether such inherited funds can be protected from creditors both in and out of bankruptcy.

bankruptcy court held in *In re Navarre* that the now repealed Alabama Code section 19-3-1 did not exempt inherited IRAs because the IRC treated an inherited IRA distinctly from a traditional IRA. *In re Navarre*, 332 B.R. 24, 31 (Bankr. M.D. Ala. 2004).

45. ALASKA STAT. § 09.38.017(a)(3)(A) (2020); see REP. WES KELLER, HOUSE BILL 102 VER. U SECTIONAL ANALYSIS, H.B. 102 (2013) ("[The statute] protects an individual's interest in a retirement plan from the claims of the individual's creditors.").

46. ARIZ. REV. STAT. ANN. § 33-1133(B) (2020).

47. *Id.* § 33-1126(B). In *In re Pacheco*, the court emphasizes that the Arizona statute does not distinguish between IRAs inherited by a spouse and a non-spouse and that the exemption statute expressly includes inherited IRAs. *In re Pacheco*, 537 B.R. 935, 940 (Bankr. D. Ariz. 2015).

48. ARK. CODE ANN. § 16-66-220(a)(1) (2020). No Arkansas court has dealt with the statute in relation to inherited IRAs.

California

California is an opt-out state with two exemption schemes. California Code of Civil Procedure section 703.140(b)(10)(E)⁴⁹ provides bankruptcy exemptions to funds under IRAs, while section 704.115(a)(3)⁵⁰ protects IRAs against judgment-creditors. Neither section references inherited IRAs, but the bankruptcy court held in *Greenfield* that inherited IRAs are not used for “retirement needs” and therefore cannot be protected by section 703.140(b)(10)(E).⁵¹ An argument can be made that California courts may follow similar reasoning when analyzing whether inherited IRAs are exempt under section 703.115(a)(3) for this statute includes the phrase “for retirement purposes” as well.

Colorado

Colorado is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. However, the Colorado Revised Statutes exempt IRAs from bankruptcy and judgment proceedings.⁵² Because Colorado law does not explicitly exempt inherited IRAs both in and out of bankruptcy, it is possible that funds in such accounts are vulnerable under a *Clark* analysis.

Connecticut

Debtors in Connecticut may choose to employ either federal bankruptcy exemptions under § 522 or state exemptions under the state’s laws. The Connecticut statutes exempt IRAs in bankruptcy proceedings and judgment collections, but the language is not clear as to the status of

49. CAL. CIV. PROC. CODE § 703.140(b)(10)(E) (West 2020). The statute exempts from the bankruptcy estate a debtor’s right to receive a

payment under a stock bonus, pension, profit-sharing, 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 all of the following apply:

....

(iii) That plan or contract does not qualify under Section 401(a), 403(b), 408, or 408A of the Internal Revenue Code”

Id.

50. *Id.* § 704.115(a)(3). Private retirement plans, which are exempt from judgments under California Civil Procedure Code § 704.115(b), include “individual retirement annuities or accounts provided for in the Internal Revenue Code of 1986, as amended, including individual retirement accounts qualified under Section 408 or 408A of that code” *Id.* § 704.115(a)–(b).

51. *In re Greenfield*, 289 B.R. 146, 150 (Bankr. S.D. Cal. 2003).

52. COLO. REV. STAT. § 13-54-102(1)(s) (2020). No Colorado court has dealt with the statute in relation to inherited IRAs.

inherited IRAs.⁵³ In *In re Archambault*, the bankruptcy court held that the inclusion of the term “beneficiary” along with “participant” in section 52-321(a) indicated that the Connecticut legislature intended to exempt inherited IRAs along with regular IRAs.⁵⁴ It is likely a future court may follow this case and find that inherited IRAs are also exempt from judgments in the state. Therefore, if a Connecticut debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. However, if the same debtor chooses to use Connecticut exemptions, they will be able to protect their inherited IRAs in bankruptcy.

Delaware

Delaware is an opt-out state that explicitly exempts inherited IRAs in bankruptcy, execution and attachment proceedings.⁵⁵ Under the Delaware Code, a “retirement plan” includes an IRA that a decedent transferred to a beneficiary by reason of the decedent’s death.⁵⁶

District of Columbia

Debtors in DC may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the district’s laws. The DC Code exempts IRAs in both bankruptcy and collection proceedings, but the language is not clear as to the status of inherited IRAs.⁵⁷ Therefore, if a DC debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. However, if the same debtor chooses to use the district’s exemptions, there is currently no definitive answer as to whether such inherited funds can be shielded from the reach of bankruptcy and judgment creditors.

53. CONN. GEN. STAT. § 52-321(a)(1) (2020). Under the statute, any interest in or amounts payable to a participant or beneficiary from the following shall be exempt from the claims of all creditors of such participant or beneficiary . . . any individual retirement account which is qualified under Section 408 of said internal revenue code to the extent funded, including income and appreciation

Id. (footnote omitted).

54. *In re Archambault*, No. 19-21021 (JJT), 2019 Bankr. LEXIS 3902, at *4-5 (Bankr. D. Conn. Dec. 26, 2019).

55. DEL. CODE ANN. tit. 10, § 4915(a) (2020).

56. *Id.* tit. 10, § 4915(f) (“For purposes of this chapter, ‘retirement plan’ means any plan, trust, account, agreement or other arrangement described in § 401, § 403, § 408, § 408A, § 409, § 414 or § 457 of the Internal Revenue Code of 1986 . . . , as amended, including any such plan, trust, account, agreement or other arrangement that a decedent, upon or by reason of the decedent’s death, directly or indirectly transferred, conveyed, transmitted or otherwise left to, or for the benefit of, the owner or beneficiary by means of a will, trust, exercise of a power of appointment, beneficiary designation, transfer or payment on death designation, or any other method or procedure.”).

57. D.C. CODE § 15-501(a)(9) (2020).

Florida

Florida is an opt-out state that explicitly exempts inherited IRAs in bankruptcy and collection proceedings. Under Florida law, all interests of beneficiaries in IRAs are exempt from claims.⁵⁸ Specifically, interests in IRAs do not “cease to be exempt after the owner’s death by reason of a direct transfer or eligible rollover”⁵⁹

Georgia

Georgia is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. Under the Georgia Code, debtors may exempt both traditional IRAs and Roth IRAs.⁶⁰ Because the Georgia Code does not explicitly exempt inherited IRAs, it is possible that funds in such accounts are vulnerable against attacks from bankruptcy and non-bankruptcy creditors under a *Clark* analysis.

Hawaii

Debtors in Hawaii may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state’s laws. Hawaiian law exempts IRAs in all legal processes, but the language is not clear as to the status of inherited IRAs.⁶¹ Therefore, if a Hawaii debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. However, if the same debtor chooses to use the state’s exemptions, there is currently no definitive answer to the question of whether such inherited funds can be shielded from the reach of bankruptcy and judgment creditors.

58. FLA. STAT. § 222.21(2)(a)(2) (2020).

59. *Id.* § 222.21(2)(c). The statute specifies that any asset and interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner’s death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended.

Id. See also H.B. 469, Reg. Sess. (Fla. 2011), <http://flsenate.gov/Session/Bill/2011/469/BillText/Filed/PDF> [https://perma.cc/3ZAL-RSN8] (“[T]he Legislature clearly intended in s. 222.21.2(c), Florida Statutes, that inherited individual retirement accounts included in s. 402(c) of the Internal Revenue Code of 1986, as amended, be exempt from claims of creditors of the owner, beneficiary, or participant of the inherited individual retirement account”).

60. GA. CODE. ANN. § 44-13-100(a)(2.1)(D) (2020). No Georgia court has dealt with the statute in relation to inherited IRAs.

61. HAW. REV. STAT. § 651-124 (2020). No Hawaii court has dealt with the statute in relation to inherited IRAs.

Idaho

Idaho is an opt-out state. Under the Idaho Code, IRAs are exempted from all legal processes, but the language is not clear as to the status of inherited IRAs.⁶² In *In re Arehart*, the bankruptcy court held that the exemption statute is written broadly enough to protect inherited IRAs against bankruptcy creditors, indicating that the legislature did not intend to limit the scope of protection to original account owners.⁶³ A future Idaho court may follow the same reasoning in deciding whether section 11-604A(3) shields inherited IRAs from the reach of non-bankruptcy creditors.

Indiana

Indiana is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. Under Indiana law, a debtor may exempt from their property interests that they have in retirement plans to the extent of “contributions, or portions of contributions, . . . made to the retirement plan or fund by or on behalf of the debtor or the debtor’s spouse.”⁶⁴ In a pre-*Clark* case, the bankruptcy court in the Southern District of Indiana held that because both the IRC and the Indiana Code did not view inherited IRAs as retirement plans, funds from such accounts could not be exempted and protected from bankruptcy and judgment creditors.⁶⁵

Iowa

Iowa is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. The Iowa Code exempts IRAs in bankruptcy proceedings and judgment collections, and the language of the statute seems to favor protection for debtors.⁶⁶ However, as no court

62. IDAHO CODE § 11-604A(3) (2020) (“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 employee benefit plan, and any fund created by the benefit plan or arrangement, shall be exempt from execution, attachment, garnishment, seizure, or other levy by or under any legal process whatever.”).

63. *In re Arehart*, No. 17-01678-TLM, 2019 WL 171466, at *3 (Bankr. D. Idaho 2019), *aff’g In re McClelland*, No. 07-40300, 2008 WL 89901 (Bankr. D. Idaho 2008).

64. IND. CODE § 34-55-10-2(c)(6)(A) (2020).

65. *In re Klipsch*, 435 B.R. 586, 588–89 (Bankr. S.D. Ind. 2010).

66. IOWA CODE § 627.6(8)(f)(1)(g) (2020) (“Exempt assets *transferred from* any individual retirement account, individual retirement annuity, Roth individual retirement account, or Roth individual retirement annuity *to any other* individual retirement account, individual retirement annuity, Roth individual retirement annuity, or Roth individual retirement account established under section 408A of the Internal Revenue Code shall *continue to be exempt regardless of the number of times transferred* between individual retirement accounts, individual retirement annuities, Roth individual retirement annuities, or Roth individual retirement accounts.” (emphasis added)).

has dealt with the exemption statute in relation to inherited IRAs, there is currently no definitive answer as to whether such funds are protected under state law.

Kansas

Kansas is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While Kansas law protects IRAs from both bankruptcy and judgment creditors,⁶⁷ the district court has held that inherited accounts do not qualify for exemptions under bankruptcy because the statute requires such accounts to be “retirement plans” and that such plans be “qualified” under the IRC.⁶⁸ The district court found *Clark* persuasive in determining that funds in inherited IRAs are not “sums of money set aside for the day an individual stops working”⁶⁹ and are therefore not retirement funds. Future courts may adhere to this rationale and hold that inherited IRAs are not exempt from non-bankruptcy proceedings under Kansas law.

Kentucky

Kentucky is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. Kentucky law protects IRAs from both bankruptcy and judgment creditors,⁷⁰ but a court interpreting the statute may find in favor of creditors when determining whether inherited IRAs are exempted. Section 427.150(2)(f) states that the IRA exemption applies to “the operation of the Federal Bankruptcy Code, for the purpose of applying the provisions of 11 U.S.C. § 522(b)(3) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law.”⁷¹ The statute’s explicit reference to § 522(b)(3) should give debtor-beneficiaries pause because it is likely a Kentucky court interpreting section 427.150(2)(f) will rely upon the reasoning in *Clark*.⁷²

Louisiana

Louisiana is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While Louisiana law protects IRAs

67. KAN. STAT. ANN. § 60-2308(b) (2020). The statute exempts from creditors moneys, assets and interests payable to a participant or beneficiary of a retirement plan qualified under §§ 401(a), 403(a), 403(b), 408, 408A and 409 of the IRC. *Id.*

68. *In re Mosby*, No. 15-9153-JWL, 2015 WL 6610988, at *2, n.4 (D. Kan. Oct. 30, 2015).

69. *Id.* at *1 (quoting *Clark v. Rameker*, 134 S. Ct. 2242, 2246 (2014)).

70. KY. REV. STAT. ANN. § 427.150(2)(f) (West 2020).

71. *Id.*

72. No Kentucky court has dealt with the statute in relation to inherited IRAs.

from both bankruptcy and judgment creditors,⁷³ the district court held in *Everett* that inherited IRAs are not exempt from debtors' bankruptcy estates because such accounts contain liquid assets instead of retirement funds.⁷⁴ The issue of whether inherited IRAs are outside the reach of creditors outside of bankruptcy has not been decided in Louisiana.

Maine

Maine is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. Retirement funds including IRAs are protected against bankruptcy and judgment creditors up to an aggregate value of \$1 million.⁷⁵ While no cases have discussed the impact of the Maine exemption statute on inherited IRAs, the usage of the term "retirement funds" suggests that future courts may look to *Clark* for its analysis on why inherited accounts are not "objectively set aside for the purpose of retirement."⁷⁶ Thus, debtors in bankruptcy and other legal proceedings should be cautious of exempting their inherited IRAs in Maine.

Maryland

Maryland is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While no cases have discussed whether the state bankruptcy and judgment exemption statute applies to inherited IRAs, section 11-504(h) protects moneys, assets, and interest payable to a participant or beneficiary from an IRA.⁷⁷ The inclusion of the term "beneficiary" likens the Maryland statute to state laws that have explicitly exempted inherited IRAs such as those in Arizona, Delaware and Florida. It may be likely that courts find that inherited IRAs are protected under Maryland law both in and out of bankruptcy.

Massachusetts

Debtors in Massachusetts may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. Massachusetts law exempts IRAs from bankruptcy and judgment

73. Section 13:3881(D)(1) of the Louisiana Code exempts "tax-deferred arrangements" from all liability from most debts, while section 13:3881(D)(3) defines "tax-deferred arrangement" to include "all individual retirement accounts or individual retirement annuities of any variety or name . . . including balances rolled over from any other tax-deferred arrangement as defined herein . . ." LA. STAT. ANN. § 13:3881(D)(1)–(3) (2020).

74. *In re Everett*, 520 B.R. 498, 506 (E.D. La. 2014) (concluding that "the purpose of protecting [the debtor] from being reduced by financial misfortune to absolute want [was] not served by allowing [her] to claim the inherited IRA as exempt.").

75. ME. STAT. tit. 14, § 4422(13-A) (2020).

76. *Clark v. Rameker*, 134 S. Ct. 2242, 2247 (2014).

77. MD. CODE ANN., CTS. & JUD. PROC. § 11-504(h) (West 2020).

processes, but the language does not speak to the status of inherited IRAs.⁷⁸ However, because the statute protects the “right or interest of any person” in an IRA,⁷⁹ an argument may be made that the legislature intended to include inherited IRAs under the state exemptions.⁸⁰ If a Massachusetts debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the debtor chooses to use the state’s exemptions, there is currently no definitive answer as to whether such inherited funds can be protected both in and out of bankruptcy.

Michigan

Debtors in Michigan may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state’s laws. Michigan has two exemption schemes; debtors in bankruptcy look to section 600.5451 for exemptions from the bankruptcy estate,⁸¹ while section 600.6023 outlines which assets are protected from judgment creditors.⁸² While no cases have discussed whether the two statutes cover inherited IRAs, both statutes mention § 522(b). The statutes’ explicit references to § 522(b) should give debtor-beneficiaries pause because it is likely a future court interpreting sections 600.5451 and 600.6023 will rely upon the *Clark* analysis. If a Michigan debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the same debtor chooses to use the state’s exemptions, there is currently no definitive answer as to whether such inherited funds can be protected both in and out of bankruptcy.

Minnesota

Debtors in Minnesota may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state’s laws. While no cases have discussed whether the state bankruptcy and judgment

78. MASS. GEN. LAWS ch. 235, § 34A (2020).

79. *Id.*

80. Bankruptcy courts have maintained that “exemption laws should be liberally construed in favor of the exemption.” *In re DeVoe*, 134 B.R. 74, 76 (Bankr. D. Mass. 1991), *aff’g*, *In re Giarrizzo*, 128 B.R. 321, 322 (Bankr. D. Mass. 1991).

81. MICH. COMP. LAWS § 600.5451(1)(k) (2020) (“All individual retirement accounts, including Roth IRAs, or individual retirement annuities as defined in section 408 or 408a of the internal revenue code . . . and the payments or distributions from those accounts or annuities. This exemption applies to the operation of the federal bankruptcy code as permitted by section 522(b)(2) of the bankruptcy code . . .” (citations omitted)).

82. *Id.* § 600.6023(1)(j) (“An individual retirement account or individual retirement annuity as defined in section 408 or 408a of the internal revenue code of 1986 . . . and the payments or distributions from the account or annuity. This exemption applies to the operation of the federal bankruptcy code as permitted by section 522(b)(2) of the bankruptcy code . . .” (citations omitted)).

exemption statute applies to inherited IRAs, employee benefits are protected against bankruptcy and judgment creditors up to an aggregate value of \$72,000 in addition to amounts necessary to support a debtor, their spouse, and their dependents.⁸³ If a Minnesota debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the same debtor chooses to use the state's exemptions, there is currently no definitive answer as to whether such inherited funds can be protected both in and out of bankruptcy.⁸⁴

Mississippi

Mississippi is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While no cases have discussed whether the state bankruptcy and judgment exemption statute applies to inherited IRAs, section 85-3-1(e) protects moneys and assets payable to a participant or beneficiary from an IRA.⁸⁵ The inclusion of the term "beneficiary" likens the Mississippi statute to state laws that have explicitly exempted inherited IRAs such as those in Arizona, Delaware and Florida. It may be likely that courts will decide inherited IRAs are protected under Mississippi law both in and out of bankruptcy.

Missouri

Missouri is an opt-out state that explicitly exempts inherited IRAs in both bankruptcy and judgment proceedings. Under Missouri law, all interests of beneficiaries in IRAs are exempt from claims.⁸⁶ The legislature specifically dictates that the interest of a beneficiary in IRAs may arise by inheritance.

Montana

Montana is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While Montana law protects IRAs from both bankruptcy and judgment creditors,⁸⁷ the Montana Supreme Court held in *In re Golz* that inherited IRAs are not exempt from the bankruptcy estate because the Montana legislature distinguished

83. MINN. STAT. § 550.37(24)(a) (2020).

84. No Minnesota court has dealt with the statute in relation to inherited IRAs.

85. MISS. CODE ANN. § 85-3-1(e) (2020).

86. MO. REV. STAT. § 513.430.1(10)(f) (2020). ("Any money or assets, payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan, profit-sharing plan, health savings plan, or similar plan, including an inherited account or plan, that is qualified under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, *whether such participant's or beneficiary's interest arises by inheritance, designation, appointment, or otherwise, except as provided in this paragraph.*" (emphasis added)).

87. MONT. CODE ANN. § 25-13-608(1)(e) (2020).

traditional and Roth IRAs from inherited accounts due to the latter type's distinct legal characteristics, as discussed in *Clark*.⁸⁸ The issue of whether inherited IRAs are out of the reach of creditors outside of bankruptcy has not been decided in Montana, but it is likely state courts will apply the same rationale as the *Golz* court in determining the matter.

Nebraska

Nebraska is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While Nebraska law protects IRAs from both bankruptcy and judgment creditors,⁸⁹ the district court maintained in 2014 that inherited IRAs could not be exempted from bankruptcy estates because states with statutes similar to the one in Nebraska have rejected the expansion of exemption coverage to such inherited accounts.⁹⁰ The issue of whether inherited IRAs are out of the reach of creditors outside of bankruptcy has not been decided in Nebraska, but it is plausible that the courts will apply the same rationale and reach the same conclusion as the Montana Supreme Court in determining the matter, because of the similarities between the two jurisdictions.

Nevada

Nevada is an opt-out state that explicitly exempts inherited IRAs in both bankruptcy and judgment proceedings. Under Nevada law, IRAs and other pension plans, trusts, and deferred arrangement plans not exceeding \$1 million are protected from creditors.⁹¹ The legislature specifically dictates that inherited accounts are covered by the exemption.

88. *In re Golz*, 360 P.3d 1142, 1143–44 (Mont. 2015).

89. NEB. REV. STAT. § 25-1563.01 (2020) (“In bankruptcy and in the collection of a money judgment, the following benefits shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors: To the extent reasonably necessary for the support of the debtor and any dependent of the debtor, an interest held under a stock bonus, pension, profit-sharing, or similar plan or contract payable on account of illness, disability, death, age, or length of service . . .”).

90. *In re Jones*, No. 4:13CV3155, 2014 WL 1270093, at *5 n.5 (D. Neb. Mar. 26, 2014) (first citing *In re Trawick*, 497 B.R. 572, 589 (Bankr. C.D. Cal. 2013); then citing *In re Jarboe*, 365 B.R. 717, 723 (Bankr. S.D. Tex. 2007)) (“Several courts have interpreted state exemption statutes similar to the Nebraska statute and found that those statutes did not exempt an inherited IRA. . . . Thus, even if Mr. Jones had an interest in an inherited IRA, it is not clear that such an interest would be exempt under Neb. Rev. Stat. § 25-1563.01.”).

91. NEV. REV. STAT. § 21.090.1(r) (2020). The statute exempts “[a]n individual retirement arrangement which conforms with or is maintained pursuant to the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code . . . including, without limitation, an inherited individual retirement arrangement.” *Id.* (emphasis added).

New Hampshire

Debtors in New Hampshire may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. New Hampshire law exempts IRAs from bankruptcy and judgment processes, but the language does not speak to the status of inherited IRAs.⁹² If a New Hampshire debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the same debtor chooses to use the state's exemptions, there is currently no definitive answer as to whether such inherited funds can be protected both in and out of bankruptcy.⁹³

New Jersey

Debtors in New Jersey may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. New Jersey law exempts IRAs as qualifying trusts from bankruptcy and judgment processes, but the language of the statute does not speak to the status of inherited IRAs.⁹⁴ In *In re Andolino*, the bankruptcy court held that an IRA's status as a qualifying trust under the state exemption statute did not change upon converting to an inherited IRA; as such, the inherited IRA at issue was not part of the debtor's bankruptcy estate.⁹⁵ The court did not discuss whether an inherited IRA may be exempted in a non-bankruptcy proceeding.⁹⁶ If a New Jersey debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the same debtor chooses to use the state's exemptions, the funds in their inherited IRAs will be protected from the reach of bankruptcy creditors.

New Mexico

Debtors in New Mexico may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. Bankruptcy and judgment debtors without dependents may exempt "any interest in or proceeds from" a retirement fund under section 42-10-2,⁹⁷ while those debtors who are married or are heads of households may

92. N.H. REV. STAT. ANN. § 511:2(XIX) (2020).

93. No New Hampshire court has dealt with the statute in relation to inherited IRAs.

94. N.J. STAT. ANN. § 25:2-1(b) (West 2020). The statute exempts any property within a "qualifying trust." *Id.* A qualifying trust is "a trust created or qualified and maintained pursuant to federal law, including, but not limited to, section 401, 403, 408, 408A, 409, 529 or 530 of the federal Internal Revenue Code of 1986." *Id.*

95. *In re Andolino*, 525 B.R. 588, 593 (Bankr. D. N.J. 2015); *see also In re Norris*, 550 B.R. 271, 278 (Bankr. D. N.J. 2016) (holding that a debtor's inherited IRA constitutes a "qualifying trust" and was therefore excluded from the bankruptcy estate).

96. *See generally, In re Andolino*, 525 B.R. 588.

97. N.M. STAT. ANN. § 42-10-2 (2020).

claim “any interest in or proceeds from” a retirement fund under section 42-10-1.⁹⁸ While no cases have discussed the issue of whether inherited IRAs are protected from creditors under New Mexico law, a court may decide that these exemption statutes are written broadly enough to encompass such inherited funds both in and out of bankruptcy.⁹⁹ If a New Mexico debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the debtor chooses to use the state’s exemptions, the funds in their inherited IRAs may be protected from the reach of both bankruptcy and judgment creditors.

New York

Debtors in New York may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state’s laws. While state law protects IRAs from both bankruptcy and judgment creditors,¹⁰⁰ the district court for the Northern District of New York ruled in 2019 that an inherited IRA cannot be exempted from the bankruptcy estate because it is neither a trust nor qualified as an IRA.¹⁰¹ The issue of whether inherited IRAs are out of the reach of creditors outside of bankruptcy has not been decided in New York, but it is plausible that future courts will apply the same rationale and reach a similar conclusion as the Northern District of New York did in determining the matter. When a New York debtor chooses to use the federal bankruptcy exemptions or state exemptions in bankruptcy proceedings, they will be precluded from claiming inherited IRAs as exempt. On the other hand, there is currently no definitive answer as to whether such inherited funds can be protected in proceedings outside of bankruptcy.

North Carolina

North Carolina is an opt-out state that explicitly exempts inherited IRAs in both bankruptcy and judgment proceedings. Under North Carolina law, IRAs are protected from bankruptcy and judgment

98. *Id.* § 42-10-1.

99. A similar argument was made successfully in an Idaho case, *In re Arehart*. See *In re Arehart*, No. 17-01678-TLM, 2019 WL 171466, at *3 (Bankr. D. Idaho Jan. 10, 2019) (holding that Idaho’s broadly-worded exemption statute does not impose limitations like those found in § 522(b)(3)(C)).

100. N.Y. C.P.L.R. 5205(c)(2) (McKinney 2020).

101. *In re Todd*, 596 B.R. 79, 82 (N.D. N.Y. 2019). In reaching its conclusion, the court first considered if an inherited IRA qualifies as an exemptible trust under section 5205(c)(1). *Id.* at 81–82. Finding that a debtor-beneficiary has actual control over such an account, the court ruled in the negative and turned to whether an inherited IRA can be considered as an account qualified as an IRA. *Id.* at 82–85. In determining this issue, the court referenced legislative history and noted that the legislature’s intent in enacting section 5205(c)(2) was to protect non-inherited savings. *Id.* at 84. Therefore, an inherited IRA does not qualify as an IRA under section 5205(c). *Id.* at 85.

creditors.¹⁰² The legislature specifically announced that inherited accounts are covered by the exemption.¹⁰³

North Dakota

North Dakota is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While North Dakota law protects IRAs from both bankruptcy and judgment creditors, no case has discussed whether the statute covers such inherited accounts.¹⁰⁴ Because the state statute contains substantially similar language to § 522(b)(3),¹⁰⁵ it is likely a future court may follow the *Clark* rationale and conclude that inherited IRAs are not protected against both bankruptcy and judgment creditors under North Dakota law.

Ohio

Ohio is an opt-out state that explicitly exempts inherited IRAs in both bankruptcy and judgment proceedings. Under Ohio law, IRAs are protected from bankruptcy and judgment creditors.¹⁰⁶ The legislature specifically dictates that inherited accounts are covered by the exemption.¹⁰⁷

102. N.C. GEN. STAT. § 1C-1601(a)(9) (2020).

103. *Id.* The statute exempts

[i]ndividual retirement plans as defined in the Internal Revenue Code and any plan treated in the same manner as an individual retirement plan under the Internal Revenue Code, including individual retirement accounts and Roth retirement accounts as described in section 408(a) and section 408A of the Internal Revenue Code, individual retirement annuities as described in section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in section 408(c) of the Internal Revenue Code. *Any money or other assets or any interest in any such plan remains exempt after an individual's death if held by one or more subsequent beneficiaries by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in section 408(d)(3) of the Internal Revenue Code.*

Id. (emphasis added).

104. N.D. CENT. CODE § 28-22-03.1(7) (2020).

105. *Compare id.* (exempting “[r]etirement funds that have been in effect for at least one year, to the extent 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”), with 11 U.S.C. § 522(b)(3)(C) (2018) (exempting “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”).

106. OHIO REV. CODE ANN. § 2329.66(A)(10)(e) (West 2020).

107. *Id.* The statute exempts:

[A] person's rights to or interests in any assets held in, or to directly or indirectly receive any payment or benefit under, any individual retirement account . . . *that a decedent, upon or by reason of the decedent's death, directly or indirectly left to or for the benefit of the person*, either outright or in trust or otherwise, including, but not limited to, any

Oklahoma

Oklahoma is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While Oklahoma law protects IRAs from both bankruptcy and judgment creditors,¹⁰⁸ the bankruptcy court held in 1999 that the exemption statute does not apply to inherited IRAs because once funds in such accounts become liquid assets which can be accessed without cost, an IRA is no longer “an interest in a retirement plan or arrangement qualified for tax exemption purposes.”¹⁰⁹ The issue of whether inherited IRAs are out of the reach of judgment creditors has not been decided in Oklahoma, but it is plausible that the courts will apply the same rationale and reach a similar conclusion as the bankruptcy court did in determining the matter.

Oregon

Debtors in Oregon may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state’s laws. IRAs are treated as spendthrift trusts protected from bankruptcy and judgment creditors regardless of whether such accounts are “self-settled.”¹¹⁰ No cases have discussed whether section 18.358(2) applies to inherited IRAs, but a future court may decide that the exemption statute is written broadly enough to encompass such inherited funds both in and out of bankruptcy. If an Oregon debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, if the same debtor chooses to use the state’s exemptions, their funds may be shielded from the reach of creditors in bankruptcy and other legal proceedings.

of those rights or interests in assets or to receive payments or benefits that were transferred, conveyed, or otherwise transmitted by the decedent by means of a will, trust, exercise of a power of appointment, beneficiary designation, transfer or payment on death designation, or any other method or procedure.

Id. (emphasis added). See also *In re Clark*, 601 B.R. 621, 625 (Bankr. N.D. Ohio 2019) (holding that payments from an inherited IRA are exempt under section 2329.66(A)(10(e)).

108. OKLA. STAT. tit. 31, § 1(A)(20) (2020). The statute exempts “any interest in a retirement plan or arrangement qualified for tax exemption or deferment purposes under present or future Acts of Congress . . .” *Id.*

109. *In re Sims*, 241 B.R. 467, 470 (Bankr. N.D. Okla. 1999).

110. OR. REV. STAT. § 18.358(2) (2020) (“Subject to the limitations set forth in subsection (3) of this section, a retirement plan shall be conclusively presumed to be a valid spendthrift trust under these statutes and the common law of this state, whether or not the retirement plan is self-settled, and a beneficiary’s interest in a retirement plan shall be exempt, effective without necessity of claim thereof, from execution and all other process, mesne or final.”).

Pennsylvania

Debtors in Pennsylvania may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. While Pennsylvania law protects IRAs from both bankruptcy and judgment creditors, no case has discussed whether the statute covers such inherited accounts.¹¹¹ Because the state statute contains substantially similar language to § 522(b)(3),¹¹² it is plausible a future court may follow the *Clark* rationale and conclude that inherited IRAs are not protected against bankruptcy and judgment creditors under Pennsylvania law. It is likely that a bankruptcy or judgment debtor beneficiary will not be able to exempt inherited IRAs under either the federal bankruptcy exemption scheme or the Pennsylvania statutes.

Rhode Island

Debtors in Rhode Island may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. While Rhode Island law protects IRAs from both bankruptcy and judgment creditors, the language of the statute does not specifically reference inherited IRAs.¹¹³ The Supreme Court of Rhode Island partially clarified the issue in 2019, declaring that the protections provided by section 9-26-4(11) extend to inherited IRAs for debtors who have declared bankruptcy.¹¹⁴ The question of whether inherited IRAs are out of the reach of creditors in non-bankruptcy proceedings has not been decided in Rhode Island, but it is plausible that the courts will apply the same rationale and reach a similar conclusion as the state supreme court did in determining the matter. When a Rhode Island debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, their inherited IRAs will be protected against bankruptcy creditors should they choose to utilize the state exemption scheme.

111. 42 PA. CONS. STAT. § 8124(b)(1)(ix) (2020).

112. *Compare id.* (exempting “retirement or annuity fund[s] provided for under section 401(a), 403(a) and (b), 408, 408A, 409 or 530 of the Internal Revenue Code of 1986”), with 11 U.S.C. § 522(b)(3)(C) (2018) (exempting “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”).

113. 9 R.I. GEN. LAWS. § 9-26-4(11) (2020).

114. *In re Kapsinow*, 220 A.3d 1231, 1235 (R.I. 2019). The court found that it was not constrained by the *Clark* analysis because § 408 encompasses inherited IRAs as well as traditional IRAs, and because section 9-26-4(11) does not reference “retirement funds.” *Id.* at 1236.

South Carolina

South Carolina is an opt-out state. While state law protects IRAs from both bankruptcy and judgment creditors, the language of the statute does not specifically reference inherited IRAs.¹¹⁵ Nevertheless, section 15-41-30(13) of the South Carolina Code states that the exemption “shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent, annuitant, alternate payee, or otherwise.”¹¹⁶ The broad scope of this statute is similar to the Connecticut exemption law which was held to protect inherited IRAs.¹¹⁷ With that in mind, future courts may decide that the South Carolina statute shields a debtor’s inherited IRAs from creditors both in and out of bankruptcy.¹¹⁸

South Dakota

South Dakota is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While state law protects retirement benefits from both bankruptcy and judgment creditors, the language of the statute does not specifically reference inherited IRAs.¹¹⁹ It is worth noting, however, that section 43-45-16 restricts the exemption to incomes and distributions from an “employee’s benefit plans.”¹²⁰ This language seems to suggest that only the employee-owner of the IRA may exempt their account from bankruptcy and judgment creditors.¹²¹

Tennessee

Tennessee is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While the Tennessee Code protects IRAs from both bankruptcy and judgment proceedings, the statute does not specifically reference inherited IRAs.¹²² Nevertheless, section 26-2-105(b) states that the exemption applies to funds and interests of any “participants” and “beneficiaries” in a retirement plan.¹²³ The language

115. S.C. CODE ANN. § 15-41-30(13) (2020).

116. *Id.*

117. *In re Archambault*, No. 19-21021 (JJT), 2019 Bankr. LEXIS 3902, at *5 (Bankr. D. Conn. Dec. 26, 2019).

118. No South Carolina court has dealt with the statute in relation to inherited IRAs.

119. S.D. CODIFIED LAWS § 43-45-16 (2020).

120. *Id.*

121. No South Dakota court has dealt with the statute in relation to inherited IRAs.

122. TENN. CODE ANN. § 26-2-105(b) (2020) (“Except as provided in subsection (c), any funds or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under §§ 401(a), 403(a), 403(b), 408 and 408A, or an Archer medical savings account qualified under § 220 or a health savings account qualified under § 223 of the Internal Revenue Code of 1986, as amended, are exempt from any and all claims of creditors of the participant or beneficiary, except the state of Tennessee.”).

123. *Id.*

of this statute is similar to the Connecticut exemption law which was held to protect inherited IRAs.¹²⁴ With that in mind, courts may find in the future that Tennessee protects debtors' inherited IRAs both in and out of bankruptcy.¹²⁵

Texas

Debtors in Texas may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. Texas explicitly exempts inherited IRAs in both bankruptcy and judgment proceedings.¹²⁶ When a Texas debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, their inherited IRAs will be shielded from the reach of creditor in and out of bankruptcy proceedings should they choose to utilize the state exemption scheme.

Utah

Utah is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. While the Utah Code protects IRAs from both bankruptcy and collection proceedings, the statute does not specifically reference inherited IRAs.¹²⁷ Nevertheless, section 78B-5-505(a)(xiv) states that the exemption applies to funds and interests of "participants" and "beneficiaries" in a retirement plan.¹²⁸ The language of this statute is similar to the Connecticut exemption law which was held to protect inherited IRAs.¹²⁹ With that in mind, courts may find in the future that Utah protects debtors' inherited IRAs both in and out of bankruptcy.¹³⁰

124. *In re Archambault*, No. 19-21021 (JJT), 2019 Bankr. LEXIS 3902, at *4-5 (Bankr. D. Conn. Dec. 26, 2019).

125. No Tennessee court has dealt with the statute in relation to inherited IRAs.

126. TEX. PROP. CODE ANN. § 42.0021(a)(4)-(5) (West 2020). The statutes exempt "inherited individual retirement account[s] or annuit[ies]" and "inherited Roth IRA[s]." *Id.* See *In re Kara*, 573 B.R. 696, 702 (Bankr. W.D. Tex. 2017) (announcing that a "broader and more protective statute can allow for exemption of an inherited IRA without violating the holding in *Clark*.").

127. UTAH CODE ANN. § 78B-5-505(1)(a)(xiv) (West 2020). The statute exempts any money or other assets held for or payable to the individual as a participant or beneficiary from or an interest of the individual as a participant or beneficiary in a retirement plan or arrangement that is described in Section 401(a), 401(h), 401(k), 403(a), 403(b), 408, 408A, 409, 414(d), 414(e), or 457, Internal Revenue Code.

Id.

128. *Id.*

129. *In re Archambault*, 2019 Bankr. LEXIS 3902, at *4-5.

130. No Utah court has dealt with the statute in relation to inherited IRAs.

Vermont

Debtors in Vermont may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. While Vermont law protects IRAs from both bankruptcy and collection proceedings, the statute does not specifically reference inherited IRAs.¹³¹ It is worth noting, however, that section 2740(16) restricts the exemption to a debtor's interest in "self-directed retirement accounts of the debtor."¹³² This language seems to suggest that only the employee-owner of the IRA may protect their account from bankruptcy and judgment creditors.¹³³ When a Vermont debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. Similarly, their inherited IRAs might not be shielded from the reach of creditors in and out of bankruptcy proceedings should they choose to utilize the state exemption scheme.

Virginia

Virginia is an opt-out state with no specific statute regarding the exemption status of inherited IRAs. Nevertheless, section 34-34(B) allows debtors to exempt retirement plans from bankruptcy and judgment creditors "to the same extent permitted under federal bankruptcy law for such a plan."¹³⁴ Because Virginia only allows IRA exemptions to the extent permitted by § 522, *Clark* dictates that inherited IRAs are not exempted from bankruptcy creditors and judgments in the state.

Washington

Debtors in Washington may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. While Washington law protects IRAs from both bankruptcy and judgment proceedings, the statute does not specifically reference inherited IRAs.¹³⁵ It is worth noting, however, that section 6.15.020(5) designates all employee benefit plans as exemptible spendthrift trusts "regardless of the source of funds," the relationship between the owners and beneficiaries of the trusts, and debtors' ability to withdraw funds

131. VT. STAT. ANN. tit. 12, § 2740(16) (2019). The statute exempts the debtor's interest in self-directed retirement accounts of the debtor, including all pensions, all proceeds of and payments under annuity policies or plans, all individual retirement accounts, all Keogh plans, all simplified employee pension plans, and all other plans qualified under sections 401, 403, 408, 408A or 457 of the Internal Revenue Code.

Id.

132. *Id.*

133. No Vermont court has dealt with the statute in relation to inherited IRAs.

134. VA. CODE ANN. § 34-34(B) (2019).

135. WASH. REV. CODE § 6.15.020(3) (2020). The statute exempts a debtor's right to "any employee benefit plan" and "any fund created by such a plan." *Id.*

prior to retirement.¹³⁶ The vast scope of the statute seems to suggest that the Washington legislature considered the changing characteristics of inherited IRAs contemplated in *Clark* and nevertheless decided to exempt such inherited accounts. Thus, when a Washington debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. On the other hand, their inherited IRAs are likely shielded from the reach of bankruptcy and judgment creditors should they choose to utilize the state exemption scheme.¹³⁷

West Virginia

West Virginia is an opt-out state with two exemption schemes. West Virginia Code section 38-10-4(j)(5) provides bankruptcy exemptions for IRAs¹³⁸ while section 38-83-1(a)(5) protects IRAs against levies.¹³⁹ Neither section explicitly references inherited IRAs. The bankruptcy provision exempts a debtor's right to receive funds in an IRA, and the levy provision exempts an individual's assets in an IRA "in the name of such individual." The additional limitation in the levy provision leads to the conclusion that inherited IRAs might not be exempted in a non-bankruptcy action. Meanwhile, the more generous wording in section 38-10-4(j)(5) may indicate that inherited IRAs are exempted from bankruptcy estates.

Wisconsin

Debtors in Wisconsin may choose to employ either federal bankruptcy exemptions under § 522 or exemptions under the state's laws. While Wisconsin law protects IRAs from both bankruptcy and judgment proceedings, the statute does not specifically reference inherited IRAs.¹⁴⁰ However, the bankruptcy court found in *In re Kirchen* that funds from inherited IRAs are not distributed "on account of age" as required by section 815.18(3)(j).¹⁴¹ As a result, inherited IRAs are not exempted from the bankruptcy estate.¹⁴² The issue of whether inherited IRAs are out of the reach of non-bankruptcy judgments has not been decided in Wisconsin, but it is plausible that the courts will apply the same rationale and reach a similar conclusion as the *Kirchen* court did in determining

136. *Id.* § 6.15.020(5).

137. No Washington court has dealt with the statutes in relation to inherited IRAs.

138. W. VA. CODE § 38-10-4(j)(5) (2020) (exempting a debtor's right to receive "funds on deposit in an [IRA] . . . regardless of the amount of funds.").

139. *Id.* § 38-8-1(a)(5) (exempting an individual's "[f]unds on deposit in an [IRA] . . . in the name of such individual.").

140. WIS. STAT. § 815.18(3)(j) (2020) (exempting funds held in IRAs and other plans "providing benefits by reason of age, illness, disability, death or length of service").

141. *In re Kirchen*, 344 B.R. 908, 912 (Bankr. E.D. Wis. 2006).

142. *Id.*

the matter. When a Wisconsin debtor chooses to use the federal bankruptcy exemptions, they will be precluded from claiming inherited IRAs as exempt. Similarly, their inherited IRAs might not be protected against creditors in and out of bankruptcy should they choose to utilize the state exemption scheme.

Wyoming

Wyoming is an opt-out state that explicitly exempts inherited IRAs in both bankruptcy and collection proceedings. Under Wyoming law, IRAs are protected from both bankruptcy and judgment creditors.¹⁴³ Furthermore, the legislature specifically dictates that inherited accounts are covered by the exemption.¹⁴⁴

III. EXEMPTION STATUS OF INHERITED IRAS IN ILLINOIS

Illinois, like the majority of states, has opted-out of the federal bankruptcy exemption scheme. Section 12-1006 of the Illinois Code of Civil Procedure governs retirement plan exemptions under Illinois law and applies to debtors facing bankruptcy, judicial, administrative, and other proceedings.¹⁴⁵ The statute exempts

[a] debtor's interest in or right, whether vested or not, to the assets held in or to receive pensions, annuities, benefits, distributions, refunds of contributions, or other payments under a retirement plan . . . if the plan (i) is intended in good faith to qualify as a retirement plan under applicable provisions of the Internal Revenue Code of 1986 . . .¹⁴⁶

“Retirement plans” under the Illinois statute includes IRAs.¹⁴⁷

A. In re Marriage of Branit

Three decisions regarding the exemption status of inherited IRAs in Illinois have been issued since section 12-1006 was enacted, the first of which involved a collections proceeding for awarded contribution and attorney's fees.¹⁴⁸ In *In re Marriage of Branit*, the Illinois Appellate Court examined whether the IRA of an ex-spouse inherited from his deceased mother was exempt from collection efforts by his former

143. WYO. STAT. ANN. § 1-20-110(a)(i) (2020).

144. *Id.* § 1-20-110(a)(iii) (exempting “[t]he interest of a beneficiary in a retirement plan if the beneficiary acquired the interest as the result of the death of an individual. The beneficiary's interest is exempt to the same extent that the individual's interest was exempt immediately before the death of the individual.”).

145. 735 ILL. COMP. STAT. 5/12-1006 (2020).

146. *Id.* § 12-1006(a).

147. *Id.* § 12-1006(b)(3).

148. See generally *In re Marriage of Branit*, 41 N.E.3d 518 (Ill. App. Ct. 2015) (holding that inherited IRAs are not exempt from section 12-1006(a)).

wife.¹⁴⁹ In conducting its analysis, the court engaged in the statutory interpretation of section 12-1006.¹⁵⁰

The court began its analysis with a thorough review of *Clark*. It first declared that *Clark* was controlling even though the law at issue in that case was the federal bankruptcy exemption statute. It reached this conclusion because section 12-1006 was the state equivalent of § 522 under the Bankruptcy Code.¹⁵¹ Agreeing with the Supreme Court that funds in inherited IRAs “are not objectively set aside for the purpose of retirement,”¹⁵² the court asserted that such inherited accounts have “literally nothing to do with retirement.”¹⁵³

Furthermore, the court held that inherited IRAs cannot fulfill the good faith requirement of section 12-1006(a). Section 408 of the Illinois Code distinguishes IRAs from inherited IRAs especially in relation to their tax treatments, thus inherited IRAs are not “treated as . . . an IRA for certain tax purposes” and cannot qualify in good faith as retirement plans.¹⁵⁴ To that end, the court ruled that funds held in inherited IRAs are not protected against collection actions under section 12-1006.¹⁵⁵

B. In re Smith

The second decision that discussed the exemption status of inherited IRAs under section 12-1006 was *In re Smith*, a case which involved Chapter 7 debtors’ attempted exemption of inherited IRAs from their bankruptcy estate.¹⁵⁶ The bankruptcy court discovered no substantial discrepancies between section 12-1006 and Bankruptcy Code § 522(b)(3)(C) and declined to depart from the reasoning in *Clark*.¹⁵⁷ On

149. *Id.* at 519.

150. *Id.* at 521–22.

151. *Id.* at 523. The court clarified that the Illinois legislature’s intent in using section 12-1006 in bankruptcy cases “indicate[d] that [the section] was meant to be the Illinois equivalent of section 522 of the Bankruptcy Code.” *Id.*

152. *Id.* at 524 (citing *Clark v. Rameker*, 134 S. Ct. 2242, 2247 (2014)).

153. *Id.* (“Simply put, an IRA has literally nothing to do with retirement once it achieves the status of an inherited IRA; it is merely a discretionary fund, no different from a checking account.”).

154. *Id.* at 524–25 (citing 26 U.S.C. § 408(d)(3)(C)(i)(II) (2011)) (“In other words, if the beneficiary takes a distribution from an inherited IRA, that distribution will be treated as gross income for the beneficiary even if it is transferred immediately into another retirement account or annuity; the beneficiary does not receive the benefit of favorable tax treatment for regular IRA rollovers.”).

155. *Id.* at 526.

156. *In re Smith*, No. 17-71371, 2018 WL 494415, at *1 (Bankr. C.D. Ill. Jan. 19, 2018).

157. *Id.* at *2 (“Only if there were some meaningful difference between the Illinois exemption and § 522(b)(3) or some evidence that the Illinois legislature intended to include inherited IRA accounts in the retirement plans exemption, would this Court be free to ignore *Clark*.”).

that basis, the court held that inherited IRAs are not exempt from debtors' bankruptcy estates under Illinois law.¹⁵⁸

C. *In re Hamm*

The most recent decision discussing the exemption status of inherited IRAs under section 12-1006 is *In re Hamm*, another case involving a Chapter 7 debtor's attempted exemption of an inherited IRA from her bankruptcy estate.¹⁵⁹ In the instant case, the debtor claimed as exempt an account she created with funds from an inherited IRA.¹⁶⁰ Instead of agreeing with the rationale in *Branit* and *Smith*, the bankruptcy court in the Northern District of Illinois indicated that section 12-1006 and § 522(b)(3)(C) contained "markedly different language" and suggested that the *Branit* court gave *Clark* undue deference.¹⁶¹ Chastising the reasoning in *Branit*, this court pointed to the fact that "retirement plan" is defined more broadly under section 12-1006 than "retirement funds" under § 522.¹⁶² In the end, however, this court resolved the issue without determining whether section 12-1006 applies to an inherited IRA, as the debtor had already transferred funds from the decedent's IRA into her own account without presenting evidence that the latter account qualified as a retirement plan.¹⁶³ While *Hamm* is instructive, its grievances towards *Branit* are effectively dicta.

Illinois residents seeking to protect their non-spousal inherited IRAs should not rely on section 12-1006. The law is clear that funds from such accounts are not exempted from a debtor's bankruptcy estate nor from the reach of judgment creditors in judicial, administrative, or other proceedings.

158. *Id.* at *4.

159. *See generally In re Hamm*, 586 B.R. 745 (Bankr. N.D. Ill. 2018).

160. *Id.* at 747–48.

161. *Id.* at 751 ("The Illinois statute states that the exemption applies to interests which are subject to bankruptcy proceedings, not that the scope of the exemption shall be determined solely by reference to bankruptcy law.").

162. *Id.* at 751–52. *Compare* 735 ILL. COMP. STAT. 5/12-1006 (2020) ("Retirement plan includes the following: (1) a stock bonus, pension, profit sharing, annuity, or similar plan or arrangement, including a retirement plan for self-employed individuals or a simplified employee pension plan; (2) a government or church retirement plan or contract; (3) an individual retirement annuity or individual retirement account; and (4) a public employee pension plan created under the Illinois Pension Code, as now or hereafter amended."), with 11 U.S.C. § 522(b)(3)(C) (2018) ("retirement funds" are exempted "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").

163. *In re Hamm*, 586 B.R. at 752.

CONCLUSION

Under Illinois's exemption scheme, funds in an individual's non-spousal inherited IRAs are not shielded from the reach of creditors in bankruptcy and other legal proceedings. Unless the state legislature amends section 12-1006 to explicitly exempt inherited IRAs reflecting those laws in Alaska, Arizona, Delaware, Florida, Missouri, Nevada, North Carolina, Ohio, Texas, and Wyoming, Illinois debtors are encouraged to consider other avenues to protect assets in their inherited IRAs.¹⁶⁴

164. Golden, *supra* note 41, at 19–20. Mr. Golden suggests that debtors may be able to protect their interests in inherited IRAs by paying benefits to spendthrift trusts, using trustee IRAs or using IRA annuities.