WRMarketplace
An AALU Washington Report

Thursday, August 28 2014 **WRM# 14-34**

The *WRMarketplace* is created exclusively for AALU Members by the AALU staff and Greenberg Traurig, one of the nation's leading tax and wealth management law firms. The *WRMarketplace* provides deep insight into trends and events impacting the use of life insurance products, including key take-aways, for AALU members, clients and advisors.

TOPIC: U.S. Supreme Court Confirms – Certain Retirement Plans Still Effective Asset Protection Vehicles.

MARKET TREND: With the ever increasing litigious nature of our society, individuals who are potential targets for liability claims, such as service professionals and business owners and officers, can protect assets through the use of qualified retirement plans.

SYNOPSIS: In *Clark v. Rameker, Trustee,* the U.S. Supreme Court held that inherited IRAs were not retirement funds within the meaning of the Bankruptcy Code and, therefore, not excludable from the claims of creditors. In the process of its decision, however, the Court confirmed that assets in qualified retirement plans, and limited assets in traditional and Roth IRAs, are exempt from creditor claims.

TAKE AWAYS: When advising clients about matters relating to their estate and retirement planning, advisors can add value by explaining the potential asset protection afforded by qualified retirement plans.

MAJOR REFERENCES: *Clark et. ux. v. Rameker, Trustee, et. al.,* No. 13-299, June 12, 2014.

INHERITED IRAS - LACK OF CREDITOR PROTECTION

This summer, the U.S. Supreme Court decided *Clark v. Rameker*, holding that funds in an individual retirement account ("**IRA**") inherited by a non-spouse bankruptcy debtor are not "retirement funds" that the debtor may exempt from her bankruptcy estate.

In this case, Ruth Heffron established an IRA, which passed to her daughter, Heidi, at her death. Heidi and her husband later filed Chapter 7 bankruptcy. They identified the inherited IRA as exempt from their bankruptcy estate under 11 U.S.C. § 522(b)(3)(C) of the Bankruptcy Code, which provides that a debtor may exempt "retirement funds to the extent those funds are in a fund or account that is exempt from taxation" under enumerated sections of the Internal Revenue Code. The bankruptcy trustee and unsecured creditors objected to the claimed exemption, arguing that the funds were not "retirement funds" within the meaning of the statute.

Although the bankruptcy court agreed and disallowed the exemption, the district court reversed on the grounds that the exemption covers any account containing funds that were "originally" accumulated for retirement purposes. The Seventh Circuit reversed the district court and disallowed the exemption, holding that the rules for inherited IRAs, unlike the rules for other IRAs, require the owner to withdraw the funds in the account either within five years of the original owner's death or through minimum annual distributions, so inherited IRAs "represent an opportunity for current consumption, not a fund of retirement savings."

The Supreme Court affirmed the Seventh Circuit's decision, holding that the funds in an inherited IRA are not set aside for the debtor's retirement and thus are not "retirement funds" under the Bankruptcy Code exemption. The Court emphasized three legal characteristics of inherited IRAs that support this conclusion:

1. Unlike traditional IRAs, which encourage additional investments, holders of inherited IRA may never invest additional money in the account.

2. Holders of inherited IRAs are required to withdraw money from the accounts, no matter how many years they are from retirement.

3. Holders of inherited IRAs may withdraw the entire balance of the account at any time and for any reason without penalty, which is not true of traditional IRAs.

Based on the above, the Court stated that the rationale for allowing a debtor to exempt retirement funds from the bankruptcy estate – to ensure that debtors will be able to meet their basic needs after age 59½ -- does not apply to inherited IRAs, which the debtor can withdraw in their entirety at any age for any purpose.

QUALIFIED RETIREMENT PLANS – MAY OFFER PROTECTION

Generally, the following qualified plans afford some asset protection to clients:

<u>SIMPLE (Savings Incentive Match Plan for Employees) and SEP (Simplified Employee Pensions)</u>

As the names imply, these are the simplest form of retirement plan to adopt, but with simplicity comes limits. The contribution amounts to a SIMPLE and SEP are lower than with a qualified plan.

<u>Defined Contribution Plan (DC)</u>

DC plans are the profit sharing and 401(k) plans with which people are most familiar, and they provide individual accounts for participants. The contributions to such plans are limited, $52,000 for 2014, and in order to achieve the maximum limit, it may be necessary to contribute for employees.

<u>Defined Benefit Plans (DB)</u>

Cash balance plans are the more common DB plan set up for higher earning individuals today, although traditional DB plans also can work to allow contributions significantly in excess of, and in addition to, the DC limits. Again, it may be necessary to contribute for employees to maintain the DB plan.

<u>IRAs</u>

Traditional and Roth IRA contributions and earnings up to $1,000,000, as indexed, are exempt from creditor attachment. This does not apply to rollovers from qualified retirement plans, which are not limited but fully exempt. Based on this, a best practice is to keep rollover amounts in a separate IRA.

TAKE AWAYS

- The *Clark* decision highlights the asset protection provided by retirement plans qualified under ERISA.
- There are a myriad of plan options to choose from for varying levels of tax deferral and asset protection purposes.
- Advisors must be familiar with a client's financial and business situation in order to provide complete planning recommendations.

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