

# The “Daily Plan-It™”

ESTATE & BUSINESS LAW GROUP, P.C.

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## Protect Your Client’s Beneficiaries with a Creditor-Proof IRA Trust

The combination of tax deferral and asset protection is a potent, long-term legal and financial strategy.

In many states, IRAs and other retirement plans are exempt from the claims of creditors of the IRA’s owner. In other states, they are not.

The question that many advisors are watching is a critical but different issue.

### Inherited IRAs at Risk of Creditors

If an original owner dies, and the IRA is not liquidated but instead becomes an inherited IRA by the beneficiary, will the IRA be protected from the claims of the beneficiary’s creditors?

This can be a significant concern for an owner of an IRA, such as a parent or grandparent, who wants to leave the IRA to a beneficiary, but who also is worried that it may be snatched up by a creditor. The key question to examine is how your state’s law addresses this issue.

In Florida, the court decided that inherited IRAs are **not** protected from creditor claims. The court reasoned that the IRA exemption applied only to the original owner and did not extend to the beneficiary (Robertson v. Deeb - <http://bit.ly/c3jdIr>).

Texas bankruptcy courts reached the same conclusion in *In re Jarboe*, 2007 WL 987314 (Bkrtcy. S.D. Tex. 2007). In this case, Mom died leaving her IRA to Son. Several years later, Son filed for bankruptcy, and claimed that the IRA was exempt under the state property code.

The bankruptcy trustee, however, asserted that the inherited IRA was not exempt and the court agreed.

### Minnesota Says IRAs are Protected

In a recent case, *In re: Nessa*, 105 AFTR 2d 2010-XXXX, 01/11/2010, the bankruptcy court ruled the opposite. It said that it was protected.

The key difference in this decision is that Minnesota adopted the federal property exemptions from bankruptcy law, whereas Florida and Texas used state

exemptions.

Even if your clients live in a state that protects IRAs, their children might one day move to a state such as Texas or Florida that does not.

### What Can Be Done?

Don’t let clients take chances with their hard earned retirement money. Our recommendation is to leave IRAs to beneficiaries in a standalone IRA Trust to ensure maximum protection from creditors.

If your client dies without establishing a standalone IRA Trust, there may still be options available.

A beneficiary who receives an IRA from anyone other than a spouse, and is concerned about its availability to creditors upon bankruptcy, may wish to reinvest the proceeds in exempt assets such as a homestead.

As always, I hope this article has been of help to you and your clients. If you have a specific concern or case you’d like to discuss, please contact our office.

## Workshop Schedule

### The Truth about Estate Planning

Usually Tuesday nights, 7:00 pm  
(Please call for current dates)

### IRA Preservation Planning

Learn how to properly protect your IRAs and what the IRA Preservation Trust can do!  
(Please call for current dates)



On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005 (DRA 2005), which included the most sweeping changes to [Medicaid](#) laws ever enacted.

### Medicaid Planning Workshop

The new Medicaid laws and some of the planning options that are still available, even in light of these sweeping changes.

Usually Tuesday nights, 7:00 pm  
(Please call for current dates)

Registration: Contact Mary Lang at (847) 367-4460  
<http://eblawgroup.com>

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We invite you also to direct your clients to  
[http://eblawgroup.com/FAQ\\_medicaid.htm](http://eblawgroup.com/FAQ_medicaid.htm)  
for more information on Medicaid Planning.