

## Is an inherited IRA safe from creditors?

Most states through their homestead exemption statutes provide protection for Individual Retirement Accounts for an owner of an IRA. However, the same creditor protection **does not** apply to an *inherited* IRA.

The Second District Court of Appeals in *Robertson v. Deeb*, (2D08-6428) found that when an IRA is distributed to its beneficiary, upon the death of the account **owner**, its tax exempt status changes.

The court concluded that

*"[t]he purpose of the . . . Legislature in exempting individual retirement accounts is to allow debtors to preserve assets which have been earmarked for retirement in the ordinary course of the debtor's affairs. Such a purpose would not be served by upholding [the beneficiary's] request to keep his interest in the IRA as exempt.*

Comment:

Federal Bankruptcy courts have determined that inherited IRA's are not exempt from creditor claims. In order to protect an IRA for your beneficiaries, a client should create a specially designed IRA Inheritance Trust, as discussed in detail on this website.