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INHERITED IRA'S ARE NOW CREDITOR EXEMPT IN FLORIDA

Section 222.21(2)(a) of the Florida Statutes protects "money or other assets payable to an owner, a participant or a beneficiary" from garnishment if held in a fund or account maintained as an Individual Retirement Account ("IRA"). To qualify, the IRA must be exempt from taxation under the Internal Revenue Code. Prior to May 31, 2011, the same creditor protection did not apply to an *inherited* IRA.

On May 31, 2011, Florida Governor Scott signed into law House Bill 469. The law overturns the 2009 Second District Court of Appeals ruling in *Robertson v. Deeb*, (2D08-6428) which had held that when an IRA is distributed to its beneficiary, upon the death of the account owner, its tax exempt status changes. The court interpreted that the legislative intent of exempting individual retirement accounts, to allow debtors to preserve assets designated for retirement, would not be served by protecting an inherited IRA too.

BACKGROUND:

In the 2009 case of *Robertson v. Deeb*, the creditor (Deeb) obtained both a judgment and writ of garnishment against Robertson on an unpaid promissory note. In response to the writ, RBC Wealth Management ("RBC") identified an inherited IRA with cash and securities. Robertson claimed the inherited IRA was exempt from garnishment pursuant to section 222.21(2)(a) of the Florida Statutes. Robertson argued reliance on an RBC letter informing him of his rights to the IRA and options (an inherited IRA or distributions pursuant to the "five year death rule") as its beneficiary.

The trial court found that section 222.21(2)(a) was not applicable to an inherited IRA and denied the claim of exemption. The court held that "[i]t is not an IRA. It is not like an IRA in terms of taxing and penalty for early withdrawal and things of that nature, so I don't think that's what [the legislature] meant." Subsequently, in

2010, the Bankruptcy Court for the Middle District of Florida, ruled similarly in the case of *In re: Ard*, 435 B.R. 719 24 (Bkrcty. M.D. Fla. 2010).

COMMENT:

Section 408 of the Internal Revenue Code ("IRC") provides that an IRA is exempt from income tax until a distribution is taken by the account owner. IRA owners are also required to take distributions (subject to limitations), may roll over his or her account and incur a ten percent penalty for early account withdrawals. Section 222.21(2)(a) of the Florida Statutes further provides that an account's tax exempt status determines its exemption from garnishment. In contrast, upon the IRA owner's death the tax exempt status of the inherited account changes. Account distributions become exempt from any early withdrawal penalty (I.R.C. § 72(q)(2)) and the inherited account loses its entitlement to rollover treatment (I.R.C. § 408(d)(1)).

LEGISLATIVE INTENT:

By signing the law, Governor Scott clarified that the Florida legislature intended section 222.21(2)(c) of the Florida Statutes to exempt from creditor claims the owner, beneficiary, or participant of a regular and inherited individual retirement account. In addition, the law applies retroactively to all inherited individual retirement accounts without regard to the date an account was created.