

## 50 STATE INHERITED IRA CHART

Date: *September 2018*

Clark held that an inherited IRA is not exempt under the federal bankruptcy exemption for “retirement funds” under 522(b)(3)(c). Thus a debtor using the federal exemptions in bankruptcy cannot protect an inherited IRA from creditors. “Opt Out” means the state allows a debtor in bankruptcy to use state exemptions. For states that do not allow opt out, Clark will apply and the inherited IRA will not be protected. For opt out states, the existence of a state exemption for inherited IRAs will be key. However, if state exemptions are so limiting they are never selected, this may not be a practical option. In a non-bankruptcy context, such as an execution by a creditor under state law, neither the federal bankruptcy exemptions nor Clark will apply. Therefore the existence of a state exemption for inherited IRAs will be key. State exemptions for inherited IRAs, particularly those adopted before Clark and which are worded similarly to the federal bankruptcy exemption, may be vulnerable to the same analysis used in Clark, although perhaps less so if the case is in state court (non-bankruptcy). The state of the debtor who is the owner of the inherited IRA is relevant for the purposes of this chart.

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
Alabama	Yes	Uncertain Ala. Code §19-3B-508	Uncertain. Ala. Code § 19-3B-508	Tom Garth	Ala. Code §19-3B-508, which exempts IRAs from garnishment does not explicitly protect inherited IRAs from garnishment or bankruptcy and is potentially vulnerable to a <u>Clark</u> analysis.	
Alaska	Yes	Yes	Yes	David Shaftel	The Alaska Legislature decided to provide protection for the beneficiary's interest. Amendments to Alaska Statute 09.38.017 provide very broad protection for an interest in a retirement plan, IRA, and money or other assets payable to a beneficiary from such an interest or account. "Beneficiary" is broadly defined to include a person, trust, or trustee who has, before or after the death of a participant or owner, a direct or indirect interest in a retirement plan or IRA (traditional or Roth). This protection from creditor claims for a beneficiary who succeeds to interests in an Alaska IRA (or Roth IRA) by reason of the death of the owner should apply even if neither the owner nor the successor beneficiary resided or resides in Alaska. This is a conflict of laws issue. Which state's law applies- Alaska's or the domiciliary state of the owner or beneficiary? The three courts that have considered this issue with respect to creditor rights in a self-settled trust have relied on the test provided by section 270 of the Restatement (Second) Conflict of Laws. This section provides that the law designated by the settlor applies as long as it does not violate a strong public policy of the state with which, as to the matter at issue, the trust has its most significant relationship. Assuming, for the sake of discussion, that the beneficiary's state	8/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					of residence has the most significant relationship to the IRA, it appears that no state has a strong public policy against such asset protection. This is because all states provide protection from creditor claims of an owner of an IRA (although in a few states the protection is limited to a dollar amount or other limitation). Hence, it does not seem that there is a viable argument that there is a strong public policy against IRA protection for an owner or beneficiary in that person's state of residence.	
Arizona	Yes	Yes	Yes	Susan Smith		
Arkansas	Yes	No	Uncertain	Dan Young	Comments: Ark. Code Ann. §16-66-218, which provides exemptions in bankruptcy proceedings, has been declared unconstitutional, see <i>In re Walter John Giller, Jr.</i> (127 B.R. 215 (Bankr. W.D.Ark. 1990)). Ark. Code Ann. §16-66-218 was held to be unconstitutional because it provides for exemptions in excess of the Arkansas Constitution. Ark. Code Ann. §16-66-220 is the statute that exempts individual retirement accounts in a non-bankruptcy setting. The Arkansas Supreme Court held that the exemption provided in it do not violate the Arkansas Constitution because the exemption only applies to certain funds. <i>Clinical Study Centers, Inc. v. Boellner</i> , 411 S.W.3d 695. There is not a decision of record as to whether Ark. Code Ann. §16-66-220 applies to an inherited IRA.	
California	Yes	Uncertain	Uncertain	Steve Trytten	California has two mutually exclusive exemption schemes a debtor in bankruptcy can choose from. Under California law, IRAs may be exempted from creditor claims under either Cal. Code of Civ. Proc. §§703.140(b)(10)(E) or 704.115(a)(3). Cal. Code of Civ. Proc. §§703.140(b)(10)(E) has materially identical language to the federal exemption under 11 U.S.C. §522(d)(10). An interesting case, although it does not pertain to inherited IRAs, was recently decided by the California Court of Appeals. The Court ruled that a rollover IRA funded from a fully protected employer-sponsored retirement plan receives full creditor protection as if it was a fully protected retirement plan under California law. <i>McMullen v. Haycock</i> , 54 Cal.Rptr.3d 660 (2007).	8/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					This result also tracks the federal exemption that is extended to rollover IRAs that receive rollovers from ERISA retirement plans. The Ninth Circuit has not yet considered whether funds from an inherited IRA are exempt under §703.140(b)(10)(E) , but two decisions from California’s bankruptcy courts have reasoned that a debtor cannot exempt an inherited IRA under §§703.140(b)(10)(E). <i>See Diamond v. Trawick (In re Trawick)</i> , 497 B.R. 572 (Bankr. C.D. Cal. 2013); and <i>In re Greenfield</i> , 289 B.R. 146 (Bankr. S.D. Cal. 2003). Under Cal. Code of Civ. Proc. 704.115(a)(3), IRAs are exempt only to the extent necessary to provide for the support of the debtor, spouse, and dependents when the debtor retires, taking into account resources then available to the debtor. Similarly, the Ninth Circuit has not yet considered whether funds from an inherited IRA are exempt under §704.115(a)(3). However, the Ninth Circuit has held that for a debtor’s IRA to qualify under the §704.115(a)(3) exemption, the IRA must have been designed and used principally for retirement purposes. <i>See Dudley v. Anderson (In re Dudley)</i> , 249 F.3d 1170 (9th Cir. 2001). Thus, a debtor may face the same hurdles claiming an exemption in an inherited IRA under either §§703.140(b)(10)(E) or 704.115(a)(3).	
Colorado	Yes	Uncertain	Uncertain	Laurie Hunter	C.R.S. 13-54-102(s) exempts “any individual retirement account, as defined in 26 U.S.C. section 408.” Arguably, inherited IRAs are included in that Code section and would be exempt. The Trust & Estate Section of the Colorado Bar Association had attempted to clarify this statute by adding “inherited IRAs” to this subsection in 2016 as part of the probate Omnibus Bill, but there was vehement objection from the Colorado Trial Lawyers Association, and that section was pulled from the bill.	8/18
Connecticut	Yes	Yes	Likely	Peter Mott	C.G.S. section 52-321a exempts from attachment any interest in an IRA payable to the participant or a beneficiary to the extent funded by a rollover from a qualified plan or from deductible contributions. No distinction is made for an inherited IRA.	8/18
District of	Yes	Yes*	Yes*	Sarah Moore	D.C. allows a debtor to use exemptions in U.S. Bankruptcy Code	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
Columbia				Johnson	<p>or District of Columbia law, but the debtor must choose one system or the other. If the debtor chooses D.C. law, DC Code § 15-501(a)(9) places no cap on retirement accounts if all contributions to plan were within the IRC maximum contribution limits, but only for plans qualifying under IRC § 401(a), 403(a), 403(b), 408, 408A, 414(d), or 414(e) (Roth and traditional IRAs included). An inherited IRA should be included in this exemption under IRC § 408.</p> <p>* DC Code 15-501(a)(9)(A)(iii) states that the exemption does not apply to indebtedness, a liability or obligation owed to the District of Columbia.</p>	
Delaware	Yes	Yes	Yes	Will Lunger, Peter Gordon	<p>Delaware law states: There shall be exempt from execution or attachment process assets held or amounts payable under any retirement plan... 10 <u>Del. C.</u> § 4915(a). "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 (26 U.S.C. § 401, § 403, § 408, § 408A, § 409, § 414 or § 457), 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. 10 <u>Del. C.</u> § 4915(f)</p>	8/18
Florida	Yes	Yes	Yes	Rick Gans	Fla. Stat. Sec. 222.21	8/18
Georgia	Yes*	No	Yes, but only for undistributed interests. Distributions are exempt to extent necessary for support.	Stephanie Casteel	<p>*Under Georgia law, the debtor must use the state exemptions. Section §44-13-100(2.1)(D) allows a debtor to exempt "the debtor's aggregate interest in any funds or property held on behalf of the debtor, and not yet distributed to the debtor, under any retirement or pension plan or system [including] ... an individual retirement account within the meaning of 26 U.S.C. §408." <u>In Re Rhonda Marie Sobeck</u>, #15-42208-MGD (Bankr.N.D.Ga. 2015) (Georgia has opted out of the federal</p>	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					exemptions under 11 U.S.C. § 522(b)(1), however the exemption provided under Georgia law for IRAs incorporates federal law; accordingly, the court must apply federal law, and the <u>Clark</u> case applies only to inherited IRAs, as defined under 26 U.S.C. § 408(d)(3)(C)(2), which does not include IRAs inherited and rolled over by a surviving spouse). § 18-4-22. Funds or benefits from a pension or retirement program as defined in 29 U.S.C. Section 1002(2)(A) or funds or benefits from an individual retirement account as defined in Section 408 or 408A of the United States Internal Revenue Code of 1986, as amended, shall be exempt from the process of garnishment until paid or otherwise transferred to a member of such program or beneficiary thereof. Such funds or benefits, when paid or otherwise transferred to the member or beneficiary, shall be exempt from the process of garnishment only to the extent provided in Code Section 18-4-20 for other disposable earnings, unless a greater exemption is otherwise provided by law.	
Hawaii	?	?	?	Randall Yee Judy Lee	<b>§651-124</b> . The right of a debtor to a pension, annuity, retirement or disability allowance, death benefit, any optional benefit, or any other right accrued or accruing under any retirement plan or arrangement described in section 401(a), 401(k), 403(a), 403(b), 408, 408A, 409 (as in effect prior to January 1, 1984), 414(d), or 414(e) of the Internal Revenue Code of 1986, as amended, or any fund created by the plan or arrangement, or any ABLÉ savings account established pursuant to chapter 256B, shall be exempt from attachment, execution, seizure, the operation of bankruptcy or insolvency laws under 11 United States Code section 522(b), or under any legal process whatever.	
Idaho	No*	Yes	Yes	Stephen Martin	*Under Idaho law the debtor must use the State exemptions ,I.C, .section 55-1101.	
Illinois	Yes	No	No	Janet Montgomery	Illinois is an opt-out state (735 ILCS 5/12-1006). In <i>Marriage of Branit</i> (Ill.App. 1 <sup>st</sup> Dist 2015 #141297 Illinois Official Reports) the court reversed the decision of the trial court and instead found the Illinois exemption statute was intended to provide only the	9/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					same protections for an IRA as the federal exemption statute. The appellate court followed the <i>Clark</i> case in determining “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.” Accordingly, the court held that a non-spouse inherited IRA is not exempt under the Illinois exemption statute. <i>Clark</i> itself affirmed a 7 <sup>th</sup> Circuit decision (Illinois is in the 7 <sup>th</sup> Circuit) affirming a Wisconsin bankruptcy judgment that an inherited IRA is not exempt. A bankruptcy court held that an inherited IRA was not exempt under the Illinois bankruptcy exemption ( <i>In re Hamm</i> , (2018, Bkcty Ct IL), 122 AFTR 2d 2018-5384 ).	
Indiana	Yes	No	No	Pearson Smith	IC 34-55-10-1 (opt out statute); IC 34-6-2-131 (defines “retirement plan”); IC 34-10-2(c)(6) (exempts traditional IRAs, but only to extent attributable to non-taxable or deductible contributions made by or on behalf of the debtor or the debtor’s spouse); <i>In re Klipsch</i> , 435 B.R. 586 (Bankr.S.D.In.2010)( IRA inherited from someone other than a spouse isn’t a “retirement plan” under Indiana law and doesn’t qualify for exemption under Indiana’s exemption statute).	
Iowa	Yes	Uncertain	Uncertain	Doyle Sanders	No Iowa or federal case law determining whether inherited IRAs are exempt as retirement funds under the Iowa exemptions.	
Kansas	Yes	No	Uncertain	Terry Fry	A Kansas Bankruptcy Court has held that the Kansas exemptions for retirement accounts do not to extend to inherited IRAs. <u><i>In re Mosby</i></u> , 532 B.R. 167 (Bankr. D. Kan. 2015)	
Kentucky	Yes	Uncertain	Uncertain, but not likely based on Clark	Gordon Wright	KRS 417.150 does not expressly exempt “inherited” retirement plans in the bankruptcy context, but this statute has been “entitled to an expansive reading” in the past. <i>In re Peklenk</i> , 106 B.R. 119, 120-121 (W.D. Ky. 1989). In has not been interpreted since <i>Clark</i> .	
Louisiana	Yes	Yes	Yes	Alton Bayard	But see <i>In re Everett</i> , 520 B.R. 498 (E.D. La. 2014).	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
Maine	Yes	Uncertain; if exemption available, it is limited	Uncertain; if exemption available, it is limited	Jay Young,	Recently passed legislation going into effect November 1, 2017 protects up to \$1,000,000 in retirement funds that are exempt from tax under IRC §§ 401, 403, 408, 408A, 414, 457 or 501(a) – this includes IRAs (14 M.R.S.A. § 4422(13-A). Until the new legislation is effective, 14 M.R.S.A. § 4422(13)(F) provides a payment or account under an IRA or similar plan or contract on account of illness, disability, death, age or length of service to the sum of \$15,000 or to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, whichever is greater, is exempt from attachment and execution. There is no statute or reported case on whether the exemption applies to an Inherited IRA. Under current law, the exact amount of exemption cannot be known until the judge determines how much of the IRA account is reasonably necessary for support of the debtor and the debtor’s dependents. A debtor bears the burden of making a prima facie showing of entitlement to a claimed exemption, following which the burden shifts to the creditor to show that an exemption is not properly claimed. See, e.g., <i>Doe v. Manson</i> , 773 F. Supp. 2d 183 - Dist. Court, D. Maine 2011 (citing <i>Steelstone Indus., Inc. v. McCrum</i> , 2001 ME 171, ¶¶ 8-9, 785 A.2d 1256, 1258-59). Under the new statute, query whether it reaches an inherited IRA because it is exempt from tax; or is it no longer considered “retirement funds” in the hands of the inheriting beneficiary?	
Maryland	Yes	Yes	Probably	Fred Franke	Md. Code Ann., Cts. & Jud. Proc. § 11-504(h)(1) exempts “any money or other assets payable to a participant or <b>beneficiary</b> from, or any interest of any participant or <b>beneficiary</b> in, a retirement plan qualified under ... §§ 408, 408A.” (Emphasis added.) No case addresses whether this provision exempts inherited IRAs but including beneficiaries as well as participants suggests it would exempt inherited IRAs.	
Massachusetts	Yes.	Uncertain	Uncertain	Susan Repetti	M.G.L. 235 § 34A holds in relevant part that “[t]he right or interest of any person in an annuity, pension, profit sharing or other retirement plan [subject to ERISA] . . . or Individual	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					Retirement Account or Annuity maintained by an individual . . . shall be exempt from the operation of any law relating to insolvency and shall not be attached or taken on execution or other process to satisfy any debt or liability of such person . . . .”Although there is no Massachusetts statute or case law that expressly addresses the issue of whether an inherited IRA would be protected, the Legislature’s use of the language “any person” with regards to the right protected, coupled with MA Bankruptcy courts’ views that “exemption laws should be liberally construed in favor of the exemption”, suggests an inherited IRA could be protected. <i>See In re DeVoe</i> , 134 B.R. 74, 76 (Bankr. D. Mass. 1991); <i>In re Goldman</i> , 192 B.R. 1, 7 (D. Mass 1996).	
Michigan	No	Yes	Yes	Keith Braun Nancy Welber	Inherited IRAs are probably not protected in bankruptcy if federal exemptions are elected unless structured as a trustee IRA or is payable to a trust with a spendthrift provision in the trust. <i>See In re Zott</i> , 225 BR 160 (Bankr ED Mich 1998). There have been no cases reported in Michigan involving inherited IRAs when state exemptions were elected. Also, two Michigan bankruptcy judges had held that only one IRA is protected under the general Michigan exemption statute. <i>See In re Katranji</i> , No. 93-CV-75304-DT (E.D.Mich. May 17, 1994) and <i>In re Spradlin</i> , 231 B.R. 254 (Bankr ED Mich 1999). However, a bankruptcy-specific exemption statute, MCL 600.5451(1)(k) was enacted effective in 2005 and it allows for an exemption of “all IRAs”. In contrast, MCL 600.6023(1)(j) provides only “(a)n individual retirement account...” is exempt from a judgment creditor outside of bankruptcy. Therefore, only one IRA is exempt from levy outside of bankruptcy in Michigan.	8/18
Minnesota	Yes	Yes	Yes		Minn. Stat. § 550.37 Subd 24 Cap of \$69,000 + proven needs	
Mississippi	Yes	Yes	Yes	David Marchetti	Mississippi Code Ann. Section 85-3-1(e)(iii) exempts assets held in, or moneys payable to the participant <u>or beneficiary</u> from...an individual retirement account...within the meaning of Section 408....No case addresses whether this provision exempts inherited IRAs, but since it includes amounts payable to	8/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					beneficiaries, as well as participants, it would appear to cover inherited IRAs. Potential legislative change to take away protection for non-spousal inherited IRAs.	
Missouri	Yes	Yes	Yes	Nancy Roush		
Montana	Yes	No	No	Bruce Bekkedahl	Inherited IRAs are not exempt pursuant to MCA § 25-13-608(1)(e), which follows federal law. In re Golz, 30 MONT 385, 360 P 3 <sup>rd</sup> 1142, 2015	
Nebraska	Yes	No	No	Kent Endacott	Held in <i>Jones v. Badami</i> (In re Jones), 2014 U.S. Dist. Lexis 40121, Bankr. L.Rep. (CCH) P82, 617, 2014 WL 1270093, that a debtor does not have an “interest” within the meaning of Neb. Rev. Stat. § 25-1563.01 in an inherited IRA and thus no creditor protection.	
Nevada	Yes			Michelle Rafferty	Inherited IRAs exempt up to \$1 million	
New Hampshire	Yes	Probably	Probably	Amy Kanyuk	RSA 511:2, XIX exempts from attachment and execution “any interest in a retirement plan or arrangement qualified for tax exemption purposes under present or future acts of Congress,” subject to the Uniform Fraudulent Transfer Act (UFTA) (RSA 545-A). No distinction is made for an inherited IRA. Any transfer or rollover contribution between retirement plans is not a transfer that is fraudulent as to a creditor under the UFTA. “Retirement plan or arrangement qualified for tax exemption purposes” includes, without limitation, trusts, custodial accounts, insurance, annuity contracts, and other properties and rights constituting a part thereof (for example, and not by way of limitation, defined contribution plans, defined benefit plans, individual retirement accounts including Roth IRAs and education IRAs, individual retirement annuities, simplified employee pension plans, Keogh plans, §403(a) annuity plans, §403(b) annuities, and eligible state deferred compensation plans governed under §457).	8/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
New Jersey	Yes*	Yes*	Yes with exceptions*	Jordan Weitberg	N.J.S.A. 25:2-1(b) excludes a “qualifying trust” from claims of creditors, with limited exceptions. A qualifying trust includes an inherited IRA. In the bankruptcy context, see <i>In re Norris</i> , 550 B.R. 271, 278 (Bankr. D.N.J. 2016) (“The Inherited IRA constitutes a ‘qualifying trust’ under N.J.S.A. 25:2-1(b), and is therefore excluded from Debtor’s bankruptcy estate.”); see also <i>In re Andolino</i> , 525 B.R. 588 (Bankr. D.N.J. 2015) (same); see also <i>Atkinson v. Nucci (In re Nucci)</i> , 2017 Bankr. LEXIS 3276, at *n.21 (Bankr. D.N.J. Sep. 25, 2017) (same).	
New Mexico	Yes	Probably	Yes	Marjorie Rogers	N.M.S.A 42-10-01 and 02 are broadly written	
New York	Yes	Uncertain	Uncertain	Dan Rubin	NY Debtor and Creditor Law §285 gives the debtor the option to choose between New York State exemptions or those set forth under 11 USC §522 of the Bankruptcy Code. If the New York exemptions are chosen, NY Debtor and Creditor Law §282 exempts plans or contracts qualified under §§408 or 408A of the Internal Revenue Code, as well as other assets set forth under NY Civil Practice Law and Rules (“CPLR”) §5205 (which also governs exemptions outside of bankruptcy). The New York statutes are quite broad, citing only the statutory sections of the Internal Revenue Code, rather than referring more specifically to “retirement funds” as was the case in <i>Clark v. Rameker</i> , although no specific mention is made in either statute to inherited IRAs. However, in <i>In re Todd</i> , 2018 Bankr. LEXIS 855*, the Bankruptcy Court for the Northern District of New York found no exemption for an inherited IRA, holding that an inherited IRA is not qualified as an IRA under Code §408, within the meaning of CPLR § 5205(c)(2), since it was not established for the debtor’s own retirement.	8//18
N. Carolina	Yes	Yes	Yes	Randy Ogburn	NCGS 1c-1601(a)(9)	
N. Dakota	Yes	Yes	Yes	Scott Nelson	NDCC §28-22-03 \$100,000 per acct/\$200,000 aggregate + proven needs	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
Ohio	Yes	Yes	Yes	Michael Stegman	Ohio Rev. Code § 2329.66(A)(10)(E)	
Oklahoma	Yes	No	No	Jim Milton	Oklahoma opted out of federal exemptions under 31 Okla. Stat. 1(B). This statute was determined to be preempted on other issues unrelated to inherited IRAs. <i>See United States v. Wagoner County Real Estate</i> , 278 F.3d 1091 (10th Cir. 2002) (holding that Oklahoma law on forfeiture of homestead property was preempted by federal forfeiture laws). Inherited IRAs are not protected under Oklahoma exemption laws, at least with regard to an inherited IRA for which the five-year rule applies. In <u>In re Sims</u> , Dr. Sims, who inherited the IRA from his father, was subject to the five-year rule, and thus required to withdraw his entire interest within five years of his father's death. "Once in the hands of Dr. Sims, the IRA is no longer a tool to defer taxation on income in order to provide for retirement; instead, the IRA is a liquid asset which may be accessed by Dr. Sims at his discretion without penalty, and which he must take as income within a relatively short period of time without regard for his retirement needs. The Court concludes that the interest of Dr. Sims in the IRA is not an 'interest in a retirement plan or arrangement qualified for tax exemption purposes' under Oklahoma law. As such, Dr. Sims is not entitled to claim his interest in the IRA as exempt." <u>In re Sims</u> , 241 B.R. 467, 470 (Bankr. N.D. Okla. 1999).	
Oregon	Yes	Yes	Yes	Joshua Husbands	ORS 18.358(2) states "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." ORS 18.358(1)(d)(B) defines a "retirement plan," in relevant part, as an "individual retirement account or annuity, including one that is pursuant to a simplified employee pension, as described in section 408 or 408A of the Internal Revenue Code." The Oregon statute's reference to IRC § 408 would include regular and inherited IRAs. However, one should note that the	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					statute does not specifically reference inherited IRAs.	
Pennsylvania	No	Uncertain	Uncertain	Jack Terrill	There is no Pennsylvania statute or case law that expressly addresses inherited IRAs. However, Pennsylvania exempts from the reach of creditors “any retirement or annuity fund provided for under section 401(a), 403(a) and (b), 408, 408A, 409 or 530 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 401(a), 403(a) and (b), 408, 408A, 409 or 530), the appreciation thereon, the income therefrom, the benefits or annuity payable thereunder and transfers and rollovers between such funds,” subject to certain exceptions. 42 Pa.C.S. §8124(b)(1)(ix). Section 408 of the Internal Revenue Code defines the term “individual retirement account,” which arguably includes an inherited IRA as a subset.	8/18
Rhode Island	Yes	Yes	Yes with exceptions	John Harpootian	Under R.I. Gen. Laws § 9-26-4 (12), the exemption does not apply to an order of court pursuant to a judgment of divorce or separate maintenance, or an order of court concerning child support.	8/18
S. Carolina	Yes*	Yes	Yes	Tod Hyche	Inherited IRA likely protected for debtors who have been residents of SC for over two years* based on exemption being available “whether the beneficiary has an interest in the retirement plan as a participant, beneficiary, or otherwise.” S.C. Code Ann. §15-41-30(13).	8/18
S. Dakota	Yes	No	No	Thomas Simmons	S.D. Codified Laws 43-45-16, 17 exempt IRAs, Roth IRAs, and other retirement accounts “from the employee’s benefit plan” up to \$1 million (subject to the state or its subdivisions as creditors). The exemption does not expressly extend to inherited accounts and the language restricting the exemption to an “employee’s” account suggests there would be no exemption for an inherited IRA. There is no interpretative case law on point, however.	
Tennessee	Yes	Uncertain	Uncertain	Jeff Thompson	T.C.A. 26-2-105(b) protects assets “payable to a participant or beneficiary from, or any interests of any participant or beneficiary in,” section 408 and 408A retirement plans. It is open	9/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					to interpretation whether this applies to a beneficiary who has already inherited the IRA, or whether it applies only while the initial participant is alive. Adding to the uncertainty is T.C.A. §26-2-111(1)(D), which protects from claims of creditors "payments under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of death, age or length of service," except that "assets of such funds or plans are not exempt if the debtor may, at the debtor's option, accelerate payment so as to receive payment in a lump sum or in periodic payments over a period of sixty (60) months or less." Presumably, the carveout for funds that may be withdrawn in lump sum applies only to this provision, and not to assets otherwise protected by T.C.A. §26-2-105(b), but no Tennessee authority confirms this interpretation. Furthermore, the carveout in §26-2-111(1)(D) may be evidence of legislative intent not to protect inherited IRAs through §26-2-105(b) as well.	
Texas	Yes	Yes	Yes	Al Golden	Tex. Property Code section 42.0021(a) exempts from claims of creditors "a person's right to the assets held in or to receive payments, whether vested or not, under any...an individual retirement account or individual retirement annuity, <i>including an inherited individual retirement account, individual retirement annuity Roth IRA or inherited IRA</i> ...to the extent the plan is exempt from federal income tax or to the extent federal income tax is deferred until actual payment of benefits to the person under Section 223, 401(a),403(a),403(b), 408(a), 408A, 457(b) or 501(a), including a government plan or church plan...." (emphasis added.) The section goes on to provide that any interest acquired by death of a person is entitled to the same protections as such interest had in the hands of the decedent. Section 42.0021(b) protects qualified rollovers for 60 days following distribution. The intent of the legislature is very clear that IRAs and inherited IRAs are protected from claims of creditors.	8/18
Utah	Yes	Uncertain	Uncertain	John Madsen	Utah Code Section 78B-5-505(1)(a)(xiv) generally protects an individual's interest as "a participant or beneficiary" from or in	

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					“a retirement plan or arrangement” described in Sections 408 and 408A of the Internal Revenue Code. The exemption does not expressly mention inherited IRAs.	
Vermont	Yes	Uncertain	Uncertain	Mark Langan	12 V.S.A. § 2740(16) protects “the debtor’s interest in self-directed retirement accounts of the debtor; including . . . all individual retirement accounts . . . [h]owever, an individual retirement account . . . is only exempt to the extent that contributions thereto were deductible or excludable from federal income taxation at the time of contribution.” The statute is broad enough to apply to the plan participant and beneficiaries. There has been no case interpretation of this statute.	
Virginia	Yes	Uncertain	Uncertain	Jim Boring	VA Code §34-34 exempts an IRA from creditor process to the same extent permitted under federal bankruptcy law.	8/18
Washington	Yes	Yes	Yes	Joshua Husbands	<i>See</i> RCW 6.15.020(3) – (5). RCW 6.15.020(5) states, in relevant part: “An employee benefit plan shall be deemed to be a spendthrift trust, regardless of the source of funds, the relationship between the trustee or custodian of the plan and the beneficiary, or the ability of the debtor to withdraw or borrow or otherwise become entitled to benefits from the plan before retirement.” RCW 6.15.020(4) defines “employee benefit plan” to include “an individual retirement account or an individual retirement annuity described in section 408” of the Internal Revenue Code. This would include regular and inherited IRAs, though the statute does not specifically reference inherited IRAs.	
W. Virginia	Yes	Generally yes. <u>See</u> W. Va. Code §38-10-4(j)(5)	Yes. <u>See</u> W. Va. Code §38-8-1(a)(5)	Christopher Winton, John Allevato,	W. Va. Code §38-10-4(j)(5) provides that a bankrupt debtor may exempt from the property of the estate his or her right to receive, <i>inter alia</i> , funds on deposit in an individual retirement account (IRA), including a simplified employee pension, regardless of the amount of funds. Similarly, W. Va. Code §38-8-1(a)(5) provides that resident of W. Va. may set aside as exempt from execution and other process funds on deposit in an IRA, including a SEP, in the name of such individual, but the amount is exempt only to the	8/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					extent it is not, or has not been, subject to an excise or other tax on excess contributions under Section 4973 or Section 4979 of the Internal Revenue Code of 1986, or both sections, or any successor provisions, regardless of whether the tax is or has been paid.	
Wisconsin	Yes	No	Probably No	John Bannen, John Herbers	Wis. Stat. Section 815.18(3)(j) protects retirement assets. A literal reading could be argued to exempt inherited IRA accounts as an IRA is specifically referenced in the statute as a plan to be protected. A requirement for protection is that the account must be governed by the IRC. Clearly an inherited IRA is governed by the IRC with regard to minimum distributions and some other administrative rules but clearly not for all IRA purposes. However, the exemption statutes require that retirement benefits be provided by reason of age. While it is possible in bankruptcy court to argue that <u>Clark</u> could be distinguished, it is the consensus that a bankruptcy judge would construe otherwise because the benefits of an inherited IRA are not provided by reason of age. See <u>In Re Kirchen</u> 334 B.R. 908 (E.D. Wis. 2006) interpreting the Wisconsin Exemption Statute and denying on this basis. Outside of bankruptcy, the consensus seems to be that there is at least a chance for the IRA account owner to convince a state court judge that Wisconsin has an interest in protecting these assets from creditors, but it is by no means certain that the state exemption statute would protect the inherited IRA.	8/18
Wyoming	Yes	Yes	Yes	Tim Beppler	W.S. § 1-20-109 (opt out provision); W.S. § 1-20-110(a) provides that the following, inter alia, are exempt from execution: (i) the interest of an individual or beneficiary in a retirement plan; (ii) money or other assets payable to an individual from a retirement plan; (iii) the interest of a beneficiary in a retirement plan if the beneficiary acquired the interest as the result of the death of an individual; and (iv) money or other assets payable to an individual from a retirement plan if the beneficiary acquired the interest as the result of the death of an individual; W.S. § 1-20-110(d)(iv) defines “retirement plan” as a plan, account or annuity	8/18

State	Bankruptcy		Non-Bankruptcy	Author	Comments	Updated
	Opt Out	State exempt.	State exempt.			
					that is qualified under 26 U.S.C. section 401,403,408, 408A, 409, 414 or 457 as amended. There has been no Wyoming or federal caselaw interpreting these provisions since the <i>Clark</i> decision. However, according ACTEC fellows and others involved in the legislative process the language mentioned above was proposed and adopted by the Wyoming Legislature to address the conclusions reached in <i>Clark</i> and with the intent that inherited IRA accounts would be exempt under Wyoming law.	