Practitioner's Viewpoint

INHERITED IRAS—HAVE WE GOTTEN TOO SMART FOR OUR CLIENTS? WHAT HAPPENS WHEN OUR "STRETCH IRAS" RUN INTO CREDITOR ISSUES?

By Kalman G. Goren, Esq.

Clients have more of their wealth tied up in retirement plans than ever before. The Federal Reserve estimates that as of the first quarter of 2010, there is over $8.4 trillion dollars in tax-favored retirement plans or 15.4 percent of the total net worth of all U.S. households.[1]

More taxpayers realize that they may not consume their entire "retirement savings." Planning for the twenty-first century revolves around deferral of receipt and therefore taxation of IRAs or other tax-favored investment. As planners, we must think about the possibility of creditors of the beneficiary. The courts have obfuscated whether an "inherited IRA" is protected from the claims of the beneficiary's creditors.[2]

There are separate laws that answer this question. The Internal Revenue Code of 1986, as amended ("Code") controls the tax deferral of employer provided retirement plans as well as IRAs. The Employee Retirement Income Security Act of 1974, as amended ("ERISA") controls the operation of employer provided retirement plans but not governmental plans. State law may control creditor rights and protection of debtors, but there is also the Bankruptcy Act, as amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("Bankruptcy Act").

State Law. At first blush, one would think that if assets are in an IRA or an employer plan, they would be protected from the claims of creditors. A quick reading of the Michigan statutes would seem to indicate that. MCLA 600.6023(1)(k) provides:

> …*an individual retirement* account or individual retirement annuity as defined in *Section 408 or 408(a)* of the Code and *the payments or distributions from such an account or annuity are exempt* from levy and sale under any exemption. This exemption applies to the operation of the Federal Bankruptcy Code as permitted by Section *522(b)(2)* of Title 11 of the United States Bankruptcy Code, 11 U.S.C. 522 (*emphasis supplied).*

MCLA 600.5451(1) exempts assets from a bankruptcy proceeding when the debtor elects to take advantage of the state exemption:

> A debtor-in-bankruptcy under the Bankruptcy Code, 11 USC 101 to 1330, *may exempt* from property of the estate, property that is exempt under federal law, or under 11 USC 522(b)(2), *the following property: (l) all individual retirement accounts, including Roth IRAs or individual* retirement annuities as defined in Section 408 or 408(a) of the Internal Revenue Code… and the payments or distributions from these accounts or annuities (*emphasis supplied).*

These statutes would seem to indicate that since payments to the beneficiary are a "payment or distribution" that they would be exempt from levy and sale in a state court proceeding and exempt property in a bankruptcy proceeding. The majority of courts confronted with this do not agree. They follow a long tradition of reviewing every word in an exemption and interpreting a phrase in light of what could have been included. One Michigan bankruptcy judge has gone so far as to read "an individual retirement account" in MCLA 600.6023(1)(k) to mean only one IRA could qualify for protection under the Michigan statute. *In re: Spradlin*.[3] Whether the same result would occur under the current version of MCLA 600.5451(l), which applies to "all individual retirement accounts" is beyond the scope of this article. (MCLA 600.5451 was amended by 2004 PA 575 to refer to "all IRAs.")

Should IRAs and interests in an employer's plan be creditor protected? Is this correct? Should an "inherited IRA" be protected from claims of creditors? It depends on what side of the "fence" you sit on. With proper planning, the author believes an IRA can be protected from creditor claims even after the original owner has died. If this is a legitimate objective, there are steps that should be taken.

The next question that should come to mind is how are tax-favored retirement plans (employer plans) creditor protected but IRAs do not seem to be. The answer to the creditor protection issue for employer provided plans stems from the U.S. Supreme Court's decision in *Patterson v. Shumate* and its progeny.[4]

There the U.S. Supreme Court held that if a plan is an "ERISA-qualified" plan, it is exempt from the claims of creditors. Specifically, it held:

> "Applicable nonbankruptcy law," within meaning of Bankruptcy Code provision excluding from bankruptcy estate debtor's interest in property subject to restriction on transfer enforceable under applicable nonbankruptcy law, was not limited to state law, but included federal law such as the Employee Retirement Income Security Act (ERISA).

The Supreme Court looked to whether a plan was "ERISA qualified." Unfortunately, there is no administrative determination as to whether an employer provided plan is "ERISA qualified." The U.S. Department of Labor has weighed in on this, providing in its Reg. Section 2510.3-2(d) that IRAs are not included in the definition of "employee pension benefit plan" or "pension plan" unless employer contributions are made to the IRA. Further complicating this is DOL Reg. Section 2510.3-3 which excludes employer-provided plans from being "ERISA-qualified" if the plan does not cover common law employees, e.g., self-employed plans, HR-10 or Keogh plans, or plans for LLCs that just cover members.

What is the problem? Federal law provides protection for most qualified plans, including 401(k), pension, and profit sharing plans. But creditor protection for IRAs is a matter of state law. Most, if not all, states provide that IRAs are exempt. But there is a growing body of case law questioning the exemption of inherited IRAs in a bankruptcy context.

In re: Russell Jarboe d/b/a RJ's Brokerage & Plants[5] was decided by the United States Bankruptcy Court for the Southern District of Texas, Houston Division. It interpreted Texas law and, in particular, Section 42.0021 of the Texas Property Code. In general, Subsection (a) exempts assets from seizure by creditors, whether vested or not, in "any stock bonus, pension, profit sharing, or similar plan, including a retirement plan for self-employed individuals, and under any annuity or similar contract purchased with assets distributed from that type of plan, and under any retirement annuity or account described in Section 403(b) or Section 408(a) of the…Code…, and under any Individual Retirement Account or any Individual Retirement Annuity, including a simplified employee pension plan, and under any health savings account described in (Code) Section 223…as exempt from attachment, execution, and seizure for the satisfaction of debts unless the plan, contract or account does not qualify under the applicable provisions of the…Code."

While Texas law was at issue in *Jarboe*, many states have similar provisions. In order to understand the opinions of courts that have addressed the issue of inherited IRAs, we must review the appropriate state statutes. For example, New York law, in Article 52, Section 5205(c)(2), exempts "all trusts, custodial accounts, annuities, insurance contracts, monies, assets or interests established as part of, and any payment from, either any trust or plan, which is qualified as an Individual Retirement Account under Section 408 or Section 408(a) of the…Code.…" Florida law, in Title XV, Chapter 222, Section 222.21(2)(a)(2) exempts any money "maintained in accordance with a plan or governing instrument that has been determined by the Internal Revenue Service to be exempt from taxation under Sections 401(a), 403(a), 403(b), 408, 408(a), 409, 414, 457(b), or 501(a) of the…Code.…"

The *Jarboe* Court noted that the statutes of the different states, while all having an apparently similar purpose, are different in their wording. The *Jarboe* Court cited cases from other bankruptcy courts, all of which have opened the door for creditors to seize inherited IRAs. One case was *In re: Kirchen*.[6] The *Kirchen* Court listed what it perceived to be the attributes of an IRA, concluding that if an IRA does not satisfy those requirements, it "will not qualify or comply with the Internal Revenue Code."[7] Using *Kirchen* as a guide, the *Jarboe* Court focused on: (a) the IRA could not be rolled over into another IRA (as the original participant or a beneficiary-spouse might be able to do and which has subsequently been broadened by the Worker, Retiree and Employer Recovery Act of 2008 to allow rollovers from qualified plans by non-spouse beneficiaries to an IRA set-up to receive the rollover on the non-spouse beneficiary's behalf); (b) contributions could not be made to the inherited IRA; (c) most importantly, the owner of an inherited IRA could remove funds from the IRA at any time, for any reason, and without penalty; and (d) the person inheriting the IRA was required either to start taking lifespan-measured withdrawals from the IRA within one year or to take the entire amount within five years, regardless of the beneficiary's age. The one thing the Court conceded that inherited IRAs have in common with other IRAs is tax deferral.

As a result of these key differences, the Court concluded "…that an IRA inherited from someone other than a spouse may not be claimed as exempt.…" As a result "…an inherited IRA does not 'qualify' under Texas Property Code Section 42.0021. The mere fact of temporary tax deferral is insufficient." And, thus, the creditors were allowed to reach the assets inside the inherited IRA.

From 1999 until as recently as January 2008, bankruptcy courts in Alabama, California, Illinois, Oklahoma, Texas, and Wisconsin have all decided against IRA beneficiaries claiming exemptions for their inherited IRAs. The first state to buck the trend was Idaho. This, despite state law in each state explicitly protecting IRAs. Why the one-for-seven record? Looking at the pre-death and post-death differences (such as the post-death minimum distribution rules, the pre-death pre-59½ withdrawal penalty, and the post-death prohibition against additional contributions), the courts have decided that inherited IRAs are not the same kind of IRA that their state legislatures had in mind for protection.

It is important to note that all of these cases applied the state exemptions rather than the federal exemptions which also protect IRAs.

What do the bankruptcy statutes provide? *Bankruptcy Section 541 defines what is included in the estate in a bankruptcy proceeding*. An overriding provision in Section 541(c)(2) is the restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is also enforceable in a bankruptcy case. This is an exception to the exception contained in Bankruptcy Code Section 541(c)(1) which provides that the interest of the debtor in property becomes property of the estate even though it includes a restriction or condition on the transfer of such interest by the debtor or that is conditioned on the insolvency or financial condition of the debtor on the commencement of a case in bankruptcy or on the appointment or taking possession by a trustee. This becomes important in that the bankruptcy judges appear to have created an exception as to what is included in the estate based upon the restriction of the transfer of a beneficial interest. They have looked to the 10 percent excise tax for distributions before age 59½ as such a restriction.

Bankruptcy exempt property. Bankruptcy Code Section 522[8] allows a state to exempt certain property from being caught up in the bankruptcy. If the federal exemption is taken advantage of, then retirement plans, so long as they are in a fund or account that is exempt from taxation under Code Sections 401, 403, 408, 408(a), 414, 457, or 501 are exempt from claims of creditors. This would include tax-qualified retirement plans, IRAs and Roth IRAs, as well as 403(b) annuities. Bankruptcy Code Section 522(b)(4) provides that if the retirement plan has received a favorable determination letter, then the plan will be presumed to be exempt from bankruptcy. Because of the difficulty courts have had in establishing what is a reasonable accumulation, Bankruptcy Code 522(n) identifies that IRAs and Roth IRAs can exempt $1,171,650 from bankruptcy in 2010 for IRAs and Roth IRAs that had contributions made directly to them as opposed to IRAs and Roth IRAs created with a rollover from a tax-qualified employer plan. Rollovers from a tax-qualified employer plan are fully exempt regardless of value.

Does the standard IRA custodial account or trust account contain language sufficient so as to prove or establish that its assets are exempt from creditors? Surprisingly, there is no language in either IRS Form 5305 for individual retirement trust accounts or 5305-A for custodial accounts that one can look to for either establishing creditor protection on behalf of the initial depositor or for the inherited IRA. The standard IRS form does allow "Article VIII" to be completed to include additional provisions. Michigan law authorizes a source for what should be attached to the standard IRA adoption agreement in Article VIII. MCL 600.6023 deals with property which is exempt from levy and sale under execution; specifically, Subsection 1(k) provides: "The following property of the *debtor and the debtor's dependents* shall be exempt (emphasis supplied) from levy and sale under any execution:… (k) an individual retirement account or individual retirement annuity as defined in Section 408 or 408(a) of the…Code… and *the payments or distributions from such accounts or annuities*. This exemption applies to the operation of the federal bankruptcy code as permitted by (Bankruptcy Code) section 522(b)(2) ... ." A second exemption is contained in 600.6023(1)(l) which provides: "The right or interest of a person in a pension, profit sharing, stock bonus or other plan that is qualified under Section 401 of the…Code…, or an annuity contract under Section 403(b) of the…Code…, which plan or annuity is subject to the Employee Retirement Income Security Act of 1974…. (Note, this last exemption does not apply to teachers' annuities under Section 403(b) unless 403(b) annuity is subject to ERISA)." This section should be relied upon by debtors in non-bankruptcy litigation to protect their interest in ERISA qualified plans. In a bankruptcy setting, MCL Section 600.5451 provides at (1)(l): "A debtor-in-bankruptcy under the Bankruptcy Code, 11 USC 101 to 1330, *may exempt* from property of the estate property that is exempt under federal law, or under 11 USC 522(b)(2), the following property: (l) all individual retirement accounts, including Roth IRAs or individual retirement annuities as defined in Section 408 or 408(a) of the…Code…in the payments or distributions from these accounts or annuities." Not only does this exempt the property or individual retirement account from creditors claims in bankruptcy, but Section

600.5451(3) provides: "If property that is exempt under this section is sold, damaged, destroyed or acquired for public use, the right to receive proceeds or, if the owner receives proceeds and holds them in a manner that makes them identifiable as proceeds, the proceeds received are exempt from the property of a federal bankruptcy estate in the same manner and amount as the exempt property. An exemption under this subsection may be claimed up to one year after receipt of the proceeds by the owner." (Emphasis supplied).

Inherited IRA Qualified as Exempt Under Section 522(d)(12). *In re: Nessa*[9] deals with an IRA that a Chapter 7 debtor inherited from her father before her filing. The Eighth Circuit Bankruptcy Appellate Panel ("BAP") held this qualified as exempt under the Bankruptcy Code's exemption for retirement funds. The BAP disagreed with the Texas bankruptcy court in *Jarboe*. Before the debtor's bankruptcy filing, her father had established an IRA pursuant to Code Section 408 and named the debtor as the account's beneficiary. After her father died, and before filing her bankruptcy petition, the debtor made a direct "trustee-to-trustee" transfer of the IRA to an IRA at her bank. Pursuant to Code requirements, the debtor did not treat the inherited account as her own by contributing any of her own funds to it or by "rolling over" the account to her own IRA, nor did she take any distributions from the inherited account. The debtor subsequently claimed the inherited IRA as exempt under 11 U.S.C.A. § 522(d)(12), and the trustee objected.

The bankruptcy court overruled the trustee's objection, noting that the transfer of the contents of the father's account to the inherited account was a proper trustee-to-trustee transfer, and concluded that the transferred funds retained their character as retirement funds. The trustee appealed.

Section 522(d)(12) provides that a debtor may take an exemption for "[r]etirement funds to the extent those funds are in a fund or account that is exempt from taxation under Code Sections 401, 403, 408, 408(a), 414, 457 or 501(a)." Thus, the BAP explained, "section 522(d)(12) imposes two requirements before a debtor may claim an exemption under that section: (1) the amount the debtor seeks to exempt must be retirement funds; and (2) the retirement funds must be in an account that is exempt from taxation under one of the provisions of the Code set forth therein."

The BAP first determined that the bankruptcy court correctly found that the amounts in the debtor's inherited account were "retirement funds." The trustee did not dispute that the amounts in the debtor's father's IRA were his retirement funds prior to his death, but suggested that, to retain their status as retirement funds under Bankruptcy Code Section 522(d)(12) in the inherited account, the contents of the inherited account would have to have been contributed by the debtor or have been part of the debtor's retirement plan. The BAP disagreed, finding that Bankruptcy Code Section 522(d)(12) has no such requirement. "Section 522(d)(12) requires that the account be comprised of retirement funds, but it does not specify that they must be the *debtor's* retirement funds," the BAP observed, adding that the trustee's definition of retirement funds would impermissibly limit the statute beyond its plain language. "In accordance with the terms of Bankruptcy Code section 522(d)(12), even though the contents of the Debtor's inherited account were the Debtor's father's retirement funds, not the Debtor's own retirement funds, they remain in form and substance, 'retirement funds.'"

The BAP also found that the second requirement for a Bankruptcy Code Section 522(d)(12) exemption was satisfied, as the debtor's inherited account was exempt from taxation under Code Section 408. While the trustee conceded that the debtor's inherited account would not be taxed until the debtor made a withdrawal, he argued that the inherited account did not meet the requirements of Bankruptcy Code Section 522(d)(12) because the rules are different regarding the use, distribution, and taxation of funds in an IRA versus an inherited IRA. The BAP was not persuaded. "It is irrelevant whether a traditional IRA and an inherited IRA have different rules regarding minimum required distributions," the BAP stated. Code Section 408(e) provides that "[a]ny" IRA is exempt from taxation, and "does not distinguish between an inherited IRA and traditional types of IRAs."

The BAP acknowledged that a second Texas bankruptcy court came to a contrary conclusion regarding the exempt status of funds in an inherited account in *In re: Chilton.*[10] The *Chilton* court held that, when read in context, the words "retirement funds" in Bankruptcy Code Section 522(d)(12) "cannot reasonably be understood to authorize an exemption of an inherited IRA." The BAP found the *Chilton* court's conclusion to be erroneous because, inter alia, "it fail[ed] to take into account section 522(b)(4)(C) of the Bankruptcy Code…and in fact it would make that section totally meaningless." Neither the BAP nor either of the parties was able to locate any other cases dealing with the exemption of an inherited IRA under Bankruptcy Code Section 522(d)(12) since the amendment of the Bankruptcy Code in 2005, the BAP noted.

"Bankruptcy Code section 522(b)(4)(C) reinforces our conclusion that the funds in the Debtor's inherited account are exempt under Bankruptcy Code Section 522(d)(12)," the BAP stated. Section 522(b)(4)(C) provides that direct transfers from an account under Code Section 408(A) are exempt under Bankruptcy Code Bankruptcy Code Section 522(d)(12). Pursuant to § 522(b)(4)(C), "[a] direct transfer of retirement funds from one fund or account that is exempt

from taxation under section…408…of the Code,…shall not cease to qualify for exemption under…subsection (d)(12) by reason of such direct transfer." Accordingly, the direct transfer of funds from the father's account to the debtor's inherited account did not destroy the debtor's ability to claim the funds as exempt under Bankruptcy Code Section 522(d)(12).

What have non-bankruptcy courts done? Up until 2009, only bankruptcy courts have awarded inherited IRAs to creditors. Now, a civil court has awarded an inherited IRA to a judgment creditor. The Florida Second District Court of Appeals decision in *Robertson v. Deeb*[11] was handed down on August 14, 2009.

The question before the court was whether the $75,372 IRA that Richard Robertson inherited from his father was exempt from garnishment by Kevin Deeb. Deeb garnished Robertson's inherited IRA after Robertson defaulted on a loan from Deeb. Though Florida statutes section 222.21(2)(a) exempts "any money or other assets payable to an owner, participant, or beneficiary from, or any interest of any owner, participant, or beneficiary in [an IRA] fund or account…from all claims of creditors of the owner, beneficiary, or participant." The Court of Appeals affirmed the trial court's opinion that this exemption had only the original IRA owner (i.e., Robertson's father in this case) in mind. Therefore, Deeb got Robertson's inherited IRA but Robertson got the tax bill.

When it comes to protecting inherited IRAs in civil courts (non-bankruptcy), a spendthrift trust may not be enough. There is no simple exclusion for spendthrift trust assets in civil law as there is in bankruptcy law. In addition, unlike Chapter 7 bankruptcy, judgment creditors can have a "continuing garnishment," effectively waiting for trust distributions to be made. Under Michigan law, judgment creditors have 10 years to collect their Judgment. MCL 600.5809(3). To counter this, a spendthrift trust that gives the trustee the discretion to hold back or "accumulate" distributions is needed. Fortunately, with careful drafting, such a trust can qualify for a stretch-out. Thus, when creditor protection for inherited IRAs is a concern—and it should be in light of these continuing court losses—careful trust planning to both preserve the IRA stretch-out and the IRA itself should be used.

Why have Chapter 7 bankruptcy trustees been so successful? What are the bankruptcy judges looking at that distinguishes inherited IRAs from "regular" IRAs? The bankruptcy trustees have been able to persuade judges that the statutory protection afforded regular IRAs should not extend to inherited IRAs.

Why? A Pennsylvania bankruptcy judge, *In re Tabor*[12] delineated the differences between "inherited IRAs" and "ordinary IRAs" as: (1) funding is different—no contributions can be made to inherited IRAs at any time; while contributions can be made to "ordinary IRAs" until the year the IRA owner attains age 70½; (2) there is no additional 10 percent excise tax under Code Section 72(t) that applies to distributions to IRA inheritors who are under age 59½; although there are exceptions, the same tax generally applies to all distributions to regular IRA owners who are under age 59½; (3) mandatory withdrawals must be taken from inherited IRAs; no mandatory withdrawals must be taken from regular IRAs before the year the IRA owner attains age 70½; and (4) an IRA acquired by the death of a non-spouse owner cannot be treated as the account of the beneficiary. These, and other differences, led one court to declare that "fundamental changes in the nature of the IRA occurred upon the death of [the owner]."[13]

It should be noted that these cases do not represent a breach in creditor protection for regular IRA owners. In fact, most of the cases are careful to point out that, had the original IRA owner filed for bankruptcy, the IRA in question would certainly have been protected. The same should be true for spouses who have rolled over their deceased spouse's IRAs to their own.

On the other hand, since most 401(k)s and 403(b)s ultimately wind up as non-spouse inherited IRAs, these bankruptcy court decisions can be fairly said to have implications for those types of accounts as well.

What to do? Since it is not covered by ERISA, whether the IRA can be creditor protected depends on the terms of the IRA and the applicable state law. An often overlooked section of the standard IRA form is "Article VIII." This allows the IRA to be customized. This should be used to provide "see attached language" to be included in the custodial or trust account agreement. Nothing in the Code or the Bankruptcy Code precludes use of the authority of the Michigan Trust Code to use a section 7103(j) "spendthrift provision," i.e., a restriction on either the voluntary or involuntary transfer of a trust beneficiary's interest. This could be along the lines of:

> To the extent permitted by law, a designated beneficiary's interest in this IRA shall not be subject to liabilities or creditor claims or assignment or anticipation.

The second step to protect the IRA beneficiary's interest from creditors may be to create a separate IRA trust to be the beneficiary of the IRA. Because of the logic of the *Bolander* case (see note 2) the separate IRA trust may have to be irrevocable. That does not mean that the designation of the trust is irrevocable. The owner of the IRA can always change the designated beneficiary during their life time. Just the IRA trust may have to be irrevocable. This could impose

limitations on distributions to the beneficiary and include a "trust protector" as authorized by the Michigan Trust Code Section 700.7809 to exercise such rights as are authorized by law, e.g., accelerating payments to the beneficiary in the event of a need over the otherwise required minimum distributions. The "see attached language" would make it clear that the account is set up as a "spendthrift trust."

Another avenue that has not been explored by the bankruptcy courts is the nature of the investments owned by the IRA. MCLA Section 500.2207(2) provides that payments from an annuity contract issued on the owner's life or another person is not subject to claims of creditors. If the underlying IRA was invested in annuity contracts and distributions made in the form of an annuity, arguably it would be entitled to protection from creditors under MCLA Section 500.2207(2).

The Bankruptcy Code specifically excludes assets held by spendthrift trusts from the bankruptcy estate. Of course, if a "stretch-out" is desired, be sure that the spendthrift trust qualifies as a "see-through" trust (either "conduit" or "accumulation") so that the life expectancy of the trust beneficiary can still be used to calculate the required minimum distributions from the now better protected retirement plan account.

About the Author

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Endnotes

1 Board Of Governors of the Federal Reserve System, Federal Reserve Statistical Release Z.1, Flow of Funds Accounts of the United States, June 10, 2010, available at http://www.federalreserve.gov/releases/z1/Current/.

2 See the case of *Commerce Bank N.A. v. Bolander*, 154 P.3d 1184, 2007 WL 1041760 addressing whether an IRA was protected from creditors under the Kansas statutes. The decedent created her estate plan by implementing a revocable living trust in 1998. In 2000 she implemented a pour-over Will but did not amend the Trust. The Trust was beneficiary of two (2) IRAs that were not subject to Probate Court administration. The probate estate was insolvent. The estate argued that the IRAs were exempt from claims of creditors of the decedent during her lifetime pursuant to Kansas statute and, therefore, could not be reached by a creditor after death. The Kansas Appellate Court found the IRAs were subject to creditors after death because the beneficiary of the IRAs was a revocable living trust. The estate claimed that a revocable living trust becomes irrevocable upon the death of the settlor and therefore should not be subject to creditors. However, the Kansas Appellate Court relied upon a statute stating that the property of a trust that is revocable at the settlor's death is subject to claims of the settlor's creditors. The Court specifically noted that the exemption from creditors was a right the decedent was entitled to during her lifetime but did not survive death. Hopefully other courts won't follow this logic or the entire concept of spendthrift trusts for the "next generation" will be negated.

3 *In re: Spradlin*, 231 B.R. 254 (Bankr. E.D. Mich. 1999).

4 *Patterson v. Shumate*, 504 U.S. 753, 112 S.Ct. 2242, 119 L. Ed.2d 519 (1992).

5 *In re: Jarboe*, 365 B.R. 717 (Bankr. S.D.Tex 2007).

6 *In re: Kirchen*, 344 B.R. 908 (Bankr. E.D. Wisc. 2006).

7 7Id. at 913.

8 11 U.S.C.A. §522(b)(3)(A) (West Supp. 2010).

9 *In re: Nessa*, 426 B. R. 312 (B.A.P. 8th Cir.).

10 *In re: Chilton*, 426 B.R. 612 (Bankr. E.D. Tex. 2010).

11 *Robertson v. Deeb*, 16 So.3d 936 (Fla. Dist. Ct. App. 2009).

12 *In re: Tabor*, Case No. 1:09-bk-05277MDF (June 18, 2010)

13 *In re: Sims*, 241 B.R. 467 (Bankr. N.D. Oklahoma, 1999)