



RECENT EXEMPTION DEVELOPMENTS:
INCLUDING CLARK V. RAMEKER

Presented By:



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Panelists:

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Panelists:

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Inherited IRAs: Background

- *In re Clark*, 714 F.3d 559 (7th Cir. 2013)
- *In re Chilton*, 674 F.3d 486 (5th Cir. 2012)
- *In re Nessa*, 426 B.R. 312 (BAP 8th Cir. 2010)
- See Brown, Ahern & MacLean, Bankruptcy Exemption Manual, § 5:13, for history



Clark v. Rameker: What Happened?

- Inherited IRA lacks characteristics of “retirement fund” within meaning of § 522(b)(3)(C)
- § 522(d)(12) implicitly included, because of same statutory language
- Supreme Court did not distinguish, as did 7th Circuit, the IRA inherited from spouse



After *Clark*: What's Left?

- Supreme Court was not addressing state law exemptions
- Effect of opt out
- State exemptions for IRAs may not use term “retirement fund”
- State exemptions may refer to Internal Revenue Code—effect?



Transfers to Spouses in Divorce

- *In re West*, 507 B.R. 252 (Bankr. N.D. Ill. 2014)
- Distinguished 7th Circuit's *Clark*
- Applied state law and retention of retirement purposes behind transfer



Law v. Siegel

- *Law v. Siegel*, 134 S.Ct. 1188 (Mar. 4, 2014), surcharge not remedy when conflicted with § 522(k)
- *Law* being cited for its § 105(a) authority—
See, e.g., *In re Franklin*, 506 B.R. 765 (Bankr. C.D. Ill. 2014)



OTHER RECENT DECISIONS

- *Crawford v. Franklin Credit*, 758 F.3d 473 (2d Cir. 2014)
- *Javery v. Lucent*, 741 F.3d 686 (6th Cir. 2014)
- *In re Traverse*, 753 F.3d 19 (1st Cir. 2014)
- *In re Pfister*, 749 F.3d 294 (4th Cir. 2014)
- *In re Kim*, 748 F.3d 647 (5th Cir. 2014)
- *In re Frost*, 744 F.3d 384 (5th Cir. 2014)



Avoidance Developments

- ***In re Frates***, 507 B.R. 298 (BAP 9th Cir. 2014)—Proper service of lien avoidance motion
- ***Prangle v. Cokinis***, 509 B.R. 822 (D. Md. 2014)—valuation date for avoidance
- ***In re McCracken***, 509 B.R. 329 (Bankr. D. Ore. 2014)—foreclosure judgment



TURNOVER



- ***Shapiro v. Henson***, 739 F.3d 1198 (9th Cir. 2014)—
Turnover not limited to property of estate at time of motion



INHERITED PROPERTY

- ***In re Dale***, 505 B.R. 8 (BAP 9th Cir. 2014) — inheritance more than 180 days postpetition included in estate, following *Caroll v. Logan*, 735 F.3d 147 (4th Cir. 2013)
- ***Accord In re Roberts***, 2014 WL 3937456 (Bankr. E.D. N.Y. Aug. 12, 2014)
- ***Compare In re McAllister***, 510 B.R. 409 (Bankr. N.D. Ga. 2014)



Effect of Increased Exemptions

- **In re Dickey**, 2014 WL 4296003 (Bankr. D. Mass. Aug. 28, 2014)
- **In re Kyle**, 510 B.R. 804 (Bankr. S.D. Ohio 2014)

Debtors entitled to legislature's increase in exemption amounts shortly before bankruptcy filings.

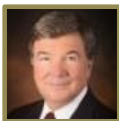


Amended Exemptions

- **In re Walker**, 505 B.R. 217 (Bankr. E.D. Tenn. 2014)—citing majority rule, amended exemptions only restarts objection period for those amended, not original, and not amended exemptions



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