Introduction: Welcome to the Paragon Financial Partners Podcast, where we discuss the markets, our strategies, and how to live better today while planning for tomorrow.

Elean: Hello, and welcome to the Paragon Podcast. I'm Elean Mendoza and I'm here with Evan Shorten, the firm's founder and principal.

Evan: Hello, this is Evan Shorten, and I want to thank you for listening in. To stay up to date with our podcast, please subscribe on the Apple Podcast app or Stitcher Radio. You can also sign up for our updates by visiting our website at paragonfinancialpartners.com and signing up to our email list on the home page.

Elean: In our last episode, we discussed some of the most popular IRA beneficiary options and their different tax implications. If you haven't listened to it yet, I highly recommend you do after this episode. Now, in that podcast, we briefly mentioned that inherited IRAs do not receive the same creditor and bankruptcy protections that traditional and Roth IRAs receive. In today's episode, we want to follow-up on that and briefly discuss what type of protections IRAs do receive from creditors and judgments. I also want to clarify that we're specifically talking about IRAs and not employer sponsored retirement accounts like 401k, 403b, 457b plans and the like. Employer sponsored accounts have their own types of protections separate from IRAs.
So with that, let's start things off by specifically mentioning that IRAs have federal protections and state protections; and both differ significantly. Evan, what federal protections are in place when it comes to retirement assets in an IRA?

Evan: The federal government actually provides a good amount of bankruptcy protection over your traditional and Roth IRAs. The federal government sets an inflation adjusted limit, currently at $1,283,025, which cannot be accessed by creditors during a bankruptcy. This limit is adjusted every three years with the most recent adjustment having occurred on April 1st, 2016. In 2019, we can expect another adjustment increasing the protection limit a little bit higher. The important thing to note is that all rollovers from employer plans, such as 401k, 403b, and 457 plans are exempt from bankruptcy claims. Therefore, bankruptcy claims can only be made on contributions and earnings on those contributions that surpass the $1,283,025 protection limit. In other words, many people's IRAs are fully protected in bankruptcy.

Elean: Evan, you mentioned traditional and Roth IRAs, but what about SEP and SIMPLE IRAs?

Evan: Funds in your SEP or SIMPLE IRA are considered employer plans and are therefore exempt from bankruptcy claims regardless of the amount.

Elean: And as we mentioned in our last podcast, inherited IRAs are not protected in bankruptcy. Evan, can you give a little more detail into why inherited IRAs don't receive bankruptcy protection?

Evan: Sure. A Supreme Court decision in June of 2014, Clark v. Rameker, ruled that funds held within inherited IRAs are not considered retirement funds and therefore do not qualify for federal bankruptcy protections. Essentially, their decision can be summed into one sentence - *Inherited IRAs hold funds that can be freely used for current consumption, not funds objectively set aside for one's retirement.*

Elean: If you visit our blog post for this episode on our Insights page at paragonfinancialpartners.com/insights, we'll post the previous write-up we wrote regarding this decision along with the court's full published opinion. Now, even though there are federal protections in place for traditional and Roth IRAs against bankruptcy, there are still a couple of risk points where a creditor could still have access to your IRA.

Evan: Current federal protections protect your IRA in bankruptcy, but they don't protect you if you owe money to Uncle Sam. The IRS can actually place a levy against your IRA if you owe taxes. Now, the IRS is sensitive to the fact that IRAs are for retirement purposes and will typically go for other types of accounts first, such as your checking account and savings account. But ultimately, the IRS does have access to your IRA if needed. It's also important to note if the IRS does levy your IRA, the levied amount can be taxable to you as income in that year. You will not be subject to any early withdrawal penalties, but again, income tax may be owed on that amount.

Lastly, there is no federal protection against claims made by general creditors. Meaning, if someone were to fall on your property and hurt themselves, or if you injured someone in a car accident, your IRA is not protected by federal law and may be at risk. Protections from general creditors are granted at the state level and vary from state to state.

Elean: Okay. So having said that and given that we're in California, what protections does the state of California grant to traditional and Roth IRAs?

Evan: California's protections may not be the most comforting to learn about. Essentially, the amount necessary for support is protected. Meaning, the amount necessary for the support of you and your dependents at the time you retire. So in other words, there is no single rule or specified amount. Instead, the courts decide how to divide your retirement accounts between you and a general creditor based on individual circumstances.

For example, someone with $100,000 in their IRA who is 65 years old and retired may receive a great deal of protection from California state courts, while a person with the same $100,000 in their IRA who is 35 years old, fully employed, may be at risk of losing part of their IRA assets in a lawsuit. On the other hand, if you happen to live in a state like Florida, you can rest easy knowing that both your traditional and Roth IRAs are exempt from creditor claims.

Elean: Okay, we hope you enjoyed learning a little bit about IRA protections. Unfortunately, most protections beyond bankruptcy are governed at the state level and vary widely between states. We definitely recommend you reach out to your local estate planning attorney if you want to learn more about specifics regarding your state's protections. As we mentioned before, we'll post a downloadable PDF of our previous write-up regarding creditor access to inherited IRAs and the Supreme Court's opinion as well. We'll put that in the episode's blog post at paragonfinancialpartners.com/insights. Additionally, to stay up-to-date with our insights and thought pieces, you can sign up to our email list on our home page at paragonfinancialpartners.com. Thank you for listening.

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