

## Will you lose your IRA if you file bankruptcy?

The 2005 bankruptcy laws provided a \$1 million exemption (protection from your creditors) for your IRA (Individual Retirement Account) if you file bankruptcy. That's great, but you need to know more than that.



One thing you need to know is that a bankruptcy court in Tennessee held that **mere language in an IRA agreement could (and did) prevent an IRA from being exempt from creditors.** The person filed bankruptcy and lost his IRA. What was the offending language? Standard brokerage account language that provided that the securities in the account were subject to a lien by Merrill Lynch (like your auto loan lender has a lien, a security interest, in your car). **Bang, the IRA was lost to the trustee and creditors in the bankruptcy.**

Note that this happened even though ...

- Merrill Lynch had been issued a "favorable determination letter" regarding the IRA by the IRS prior to the bankruptcy filing. This was not enough to protect the IRA.
- There were no "bad acts" by the owner of the IRA or Merrill Lynch. The language in the agreement was enough to trigger the loss of the IRA exemption.

This is a relatively new case, so the full implications aren't yet known. **So what should you do?**

Have the language of your IRA agreement reviewed by an attorney or tax expert for the issues stated in this article. If offending language is found and the company won't change it, move the account to another company that has an agreement without the offending language. If your attorney or tax expert wants the citations to or copies of the court decisions of the case in question, have him or her contact me.

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