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DEAR FRIENDS AND COLLEAGUES: IRA'S CAN BE IN DANGER IN BANKRUPTCY, SAYS HOUSTON BANKRUPTCY COURT!

IF TAKE OUT MONEY FROM IRA- MUST ROLL IT OVER WITHIN 60 DAYS OR LOSE IT!

Chief U.S. Bankruptcy Judge Jeffrey Bohm sitting in Houston ruled on January 30, 2015 that money taken from an I.R.A. during a bankruptcy case loses its exempt status, and can be seized by a bankruptcy trustee to pay creditors, if the I.R.A. money is not “rolled over” into another retirement account within 60 days, as provided by Texas law. *In re Hawk*, Case No. 13-37713, Bankr. SD Texas 2015.

The debtors in that case filed a chapter 7 bankruptcy, and claimed their \$165,000 IRA as exempt under Texas Property Code §42.0021. The trustee allowed the exemptions, and filed a no-asset report. The deadline for objecting to exemptions passed. A creditor objected to discharge, so the case was not closed right away, as most no-asset chapter 7 cases are.

The Debtors then cashed in their IRA and began to spend it, instead of doing a “roll over.” The objecting creditor took their deposition and learned about the IRA being cashed in, and told the trustee.

The trustee then filed an expedited motion for turnover. The court ruled for the trustee, and ruled that the 5th Circuit’s decision in *Viegelahn v Frost* (*In re Frost*), 744 F.3d 384 (5th Cir. 2014) be extended to Texas Property Code §42.0021.

Texas Property Code §42.0021 says that IRA’s are exempt, but not if they are distributed and not rolled over into another retirement account within 60 days. So in other words if you take money out of the IRA and don’t roll it over, you could lose it to a creditor or to a bankruptcy trustee.

At the end of the opinion, Judge Bohm noted that the Frost case should be a “huge wake up call” for the debtor’s bar. Judge Bohm also said that counsel for debtors should carefully counsel their clients about preserving their exemptions, and that debtors should refrain from selling exempt assets until their bankruptcy case is closed.

I.R.A.’s are a great way to save for retirement. But if you file bankruptcy, don’t cash in an I.R.A. until your lawyer says it is OK to do so. Either wait until your case is discharged and closed with the court, or if you do take money out, roll it over into another retirement plan within 60 days.

Please note! This rule only applies if you have claimed exemptions under Texas law; many of our clients are able to claim their I.R.A. as exempt under federal law, and this rule doesn’t apply to them. ■



Quotes:

The first step before anyone else in the world believes it is that you have to believe it.

--Will Smith

Ninety-nine percent of the failures come from people who have the habit of making excuses.

--George W. Carve

"I always keep a supply of stimulant handy in case I see a snake--which I also keep handy."

--W. C. Fields

A LITTLE HUMOR – the “lawyer and two friends” edition

A lawyer and two friends--a Rabbi, and a Hindu holy man--had car trouble in the countryside and asked to spend the night with a farmer. The farmer said, “There might be a problem. You see, I only have room for two to sleep in the house. So one of you will have to sleep in the barn.”

“No problem,” chimed the Rabbi. “My people wandered in the desert for forty years. I am humble enough to sleep in the barn for one evening.” With that he departed to the barn, and the others bedded down for the night.

Moments later a knock was heard at the door. There stood the Rabbi from the barn. “What’s wrong?” the farmer asked him. He replied, “I’m grateful to you, but I just can’t sleep in the barn. There is a pig in the barn, and my faith believes that is an unclean animal.” His Hindu friend agrees to swap places with him.

But a few minutes later the same scene reoccurs. There is a knock on the door, “What’s wrong?” the farmer asks. The Hindu holy man replies: “I too am grateful for your helping us out, but there is a cow in the barn. In my country cows are considered sacred and I can’t sleep on holy ground!” That only left the lawyer to make the change. He complained, but went out to the barn.

Moments later there was a knock on the door. It was the pig and the cow. ■

Book Review: “Bad Paper”

In the new book *Bad Paper: Chasing Debt from Wall Street to the Underworld*, author Jake Halpern describes the nitty-gritty world of consumer debt collection, and two people Aaron Siegel and Brandon Wilson who become partners and go in quest of ‘paper’- the uncollected debts that are sold off by banks for pennies on the dollar. Ever collected from twice? The book explains how that (and a lot more) happens. It’s a good read, I recommend it. ■

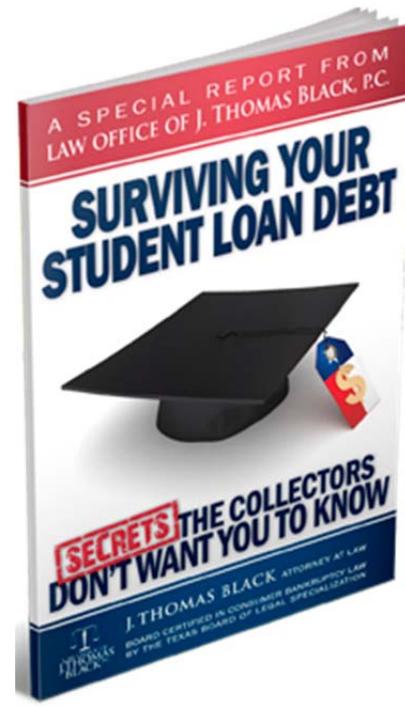
“Obamacare” penalty waiver available for hardship cases

If you can't pay for health insurance coverage so that you are now facing the penalty fee under the Affordable Care Act (ACA) or "Obamacare," and you filed bankruptcy or had certain other financial hardships in the last six months, you may be eligible for a hardship exemption.

A bankruptcy client from Houston called us on the phone and said that she will save almost \$700 by

not having to pay the penalty fee, because she filed bankruptcy with our firm in the past 6 months.

To get the hardship exemption for bankruptcy, you have to fill out an application, attach a copy of your bankruptcy documents, send it in, and if approved you will receive a number to put on your tax return. Go to www.healthcare.gov for details. ■



STUDENT LOAN PROBLEMS?

Get your free instant download of our Special Report: “*Surviving Your Student Loan Debt – Secrets the Collectors Don’t Want You to Know*” at www.jthomasblack.com or pick up your copy from the office!

Thank you for your referrals! We accept cases in the following areas-

Bankruptcy.
Debt Collection Defense.
Debt Collector Harassment.
I.R.S. Collection Defense.
Stop Foreclosure and Repossession.
Student Loan Help.

ARE YOU IN CHAPTER 13 NOW?

Always keep the law office updated with your current address, telephone numbers, and email address. We may need to reach you quickly. You can check on the status of your Trustee payments, how much you still owe on your case, etc., by going to www.ndc.org to set up your user ID and password.

Lose job or overtime? Expenses increase? Want to give up property to lower payments? Call the office for a Motion to Modify worksheet. Complete it and email it or fax it to the office at 713-772-5058. We’ll review it and contact you if a change to your plan is possible.

J. Thomas Black was licensed as an attorney in Texas by the Texas Supreme Court in May, 1982. Mr. Black is Board Certified in Consumer Bankruptcy Law by the Texas Board of Legal Specialization.

We are a federally designated Debt Relief Agency under the United States Bankruptcy Laws. We help people find answers to their debt and credit problems, including, when necessary, helping them file bankruptcy under the U.S. Bankruptcy Code.