

January 2020

### *IRA Loses Exempt Status*

Under the laws of many states, including Maryland, creditors may not collect debts from monies held in a properly established individual retirement account. As long as the owner of the IRA did not contribute in excess of the amounts permitted by IRS regulations, the funds in the account are exempt from creditor claims. However, a federal appellate court in Atlanta recently decided that an IRA could lose its exemption from creditor claims.

Keith Yerian expended funds in his IRA to purchase automobiles for his personal use and a condominium in the Caribbean for his personal travel needs. The IRS imposed more than \$100,000 in tax penalties for his abuse of the IRA. Mr. Yerian also filed a Chapter 7 bankruptcy case and claimed the monies in his IRA as exempt. On the objection of his trustee, the court held that he had forfeited his exemption when he engaged in self-dealing transactions prohibited by the IRA's governing documents. The money in the IRA would go to his creditors.

*Yerian v. Webber (in re Yerian)*, 927 F.3d 1223 (11<sup>th</sup> Cir. 2019).

### *Loan Modification Pitfall for Lender*

When a borrower is unable to pay his mortgage timely, the lender will often agree to a loan modification where the payment arrearages are added to the principal amount of the loan, the interest-rate is lowered and the maturity date is extended. However, Maryland real property law stipulates that where the loan modification increases the principal amount of the mortgage above the amount appearing on the face of the mortgage document, the lien priority of that increased amount is determined by the date of the modification -- not the date of the original mortgage document. Because lien priority is determined by date of

recording, a second mortgage or a judgment lien that was recorded after the initial mortgage but before the loan modification would have priority over the increased amount of the modification.

*In re Kim*, 2019 Bankr. LEXIS 2410 (Bankr. D. Md. 2019).

### *State Court Cannot Prevent Bankruptcy*

Pipeline-Westlake Hospital operated as a community hospital in Melrose Park, Illinois for more than 100 years. However, it experienced financial difficulties and took steps to close. The village obtained an injunction from state court prohibiting the hospital from discontinuing any medical services or terminating any employees.

The hospital responded by filing a voluntary Chapter 7 petition. The village sought to have the bankruptcy case dismissed as a violation of the state court injunction. The bankruptcy court ruled that the ability to seek bankruptcy relief was provided by federal statute that could not be overridden by state law or a state court injunction. The state court injunction did not prevent the Chapter 7 trustee from closing the hospital.

*In re Westlake Property Holdings, LLC*, 606 B.R. 772 (Bankr. N.D. Ill. 2019).



*This newsletter is intended to inform its readers of developments in the area of debtor/creditor relations. It is not legal advice or a legal opinion regarding any specific matter. You should consult a lawyer regarding any questions relating to your particular situation. Congress has required bankruptcy attorneys to state: "I am a debt relief agency. I help people file for bankruptcy relief under the Bankruptcy Code." 11 U.S.C. § 528. If you wish to receive Notes on Debtor/Creditor Relations by email, go to [www.jamesolsonattorney.com/newsletter.html](http://www.jamesolsonattorney.com/newsletter.html) and click on the link at the word "here".*