

Stradley Ronon Stevens & Young, LLP  
2005 Market Street, Suite 2600  
Philadelphia, PA 19103-7018  
215.564.8000 Telephone  
215.564.8120 Facsimile  
www.stradley.com

With other offices in:  
Malvern, Pa.  
Harrisburg, Pa.  
Wilmington, Del.  
Cherry Hill, N.J.  
Washington, D.C.  
New York, N.Y.



www.meritas.org

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## SUPREME COURT DECISION: Inherited IRAs Are Subject To Claims of Creditors

*By David J. Winkowski and Robert J. Stern*

**W**e normally think of retirement funds, such as individual retirement accounts (IRAs), as not being subject to the claims of creditors. Federal and state laws provide creditor protections for these funds to encourage savings, among other reasons. However, in a unanimous opinion, the U.S. Supreme Court recently held that inherited IRA assets not received from a spouse are not protected in bankruptcy proceedings. Most types of retirement accounts are protected from creditors, whether in bankruptcy or otherwise, but the Court ruled that certain distinctions in the attributes of inherited IRAs allow creditors to reach these accounts in the bankruptcy context and presumably even where there is no bankruptcy.

**What can be done about it?** Distributions from an IRA account are governed by the terms of the IRA plan which normally permit the participant to designate a beneficiary at death. That beneficiary can be a spouse, another individual, a charity or a trust. For non-spousal beneficiaries, one could build into the designation protections against claims of creditors, even in bankruptcy. For example, the designated beneficiary could be a trust with a “spendthrift clause” that would provide protection against creditors. The trust has to be carefully crafted to deal with the minimum distributions rules and to make sure the tax consequences are minimized. ■



David J. Winkowski



Robert J. Stern

If you would like more information regarding this decision, contact David J. Winkowski at 484.323.1347 or [dwickowski@stradley.com](mailto:dwickowski@stradley.com), or Robert J. Stern at 484.323.1348 or [rstern@stradley.com](mailto:rstern@stradley.com).

# PA Recognizes Same-Sex Marriages

By David J. Winkowski

On May 20 in Whitewood v. Wolf, the U.S. District Court for the Middle District of Pennsylvania held that two provisions of the Pennsylvania Domestic Relations Code violated both the Due Process and Equal Protection clauses of the U.S. Constitution. The Court recognized that there is a fundamental right to marry protected by the U.S. Constitution that extends to same-sex couples. The decision struck down the provisions of the Pennsylvania statute that (1) held that marriage is between a man and a woman; and (2) held that same-sex marriages recognized in other states are void in the Commonwealth of Pennsylvania.

The next day, Gov. Tom Corbett announced that he will not appeal the Whitewood decision on behalf of the Commonwealth. As a result, Pennsylvania has become the 19<sup>th</sup> state in the United States, along with the District of Columbia, to recognize same-sex marriages, both those celebrated in Pennsylvania and those celebrated in other jurisdictions where same-sex marriages are permitted by state law. This recognition allows same-sex married couples to access various rights and benefits previously unavailable to them, such as tax benefits, inheritance rights and property rights, among others. ■



If you would like more information, contact David J. Winkowski at 484.323.1347 or [dwickowski@stradley.com](mailto:dwickowski@stradley.com).

## Trusts, Estates and Personal Planning Practice Group

Russell J. Ressler, Chair	.....484.323.1346	.....	rressler@stradley.com
James R. Beam	.....484.323.1344	.....	jbeam@stradley.com
Edwin R. Boynton	.....484.323.1345	.....	eboynton@stradley.com
John C. Hook	.....215.564.8057	.....	jhook@stradley.com
Stephanie E. Sanderson-Braem	.....856.414.6356	.....	ssanderson-braem@stradley.com
Robert J. Stern	.....484.323.1348	.....	rstern@stradley.com
Tara M. Walsh	.....484.323.1357	.....	twalsh@stradley.com
David J. Winkowski	.....484.323.1347	.....	dwinkowski@stradley.com