

Effective Disclaimer of Anticipated Bequest by Beneficiary Saves the Day!

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A disclaimer filed in accordance with state law, including Rhode Island and Massachusetts, may prevent a beneficiary's creditors from accessing an inheritance, preserving it for other family members.

A woman was preparing to file an individual Chapter 7 bankruptcy petition when her father died. The father's will included a bequest of property to her. She refused to accept the anticipated bequest. As permitted under local Arizona state law, she timely and properly disclaimed the anticipated bequest. Less than one month later, she filed Chapter 7 bankruptcy.

The bankruptcy trustee attempted to avoid the beneficiary's disclaimer of the anticipated bequest on the theory that it constituted a fraudulent transfer under the Federal Bankruptcy Code. The United States Court of Appeals for the Ninth Circuit disagreed with the bankruptcy trustee and held that in order for the beneficiary's actions to have constituted a fraudulent transfer, which would have brought that asset into her bankruptcy estate and made it available for her creditors, she would have had to "own" that asset first. She could not fraudulently transfer an asset in which she had no legal ownership interest, and the Court determined that the filing of a disclaimer in compliance with the local Arizona state law prevented any "potential" ownership interest from vesting in her.