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PROTECTING RETIREMENT BENEFITS

TABLE OF CONTENTS

Item Number	Topic/Question	Page

1. GENERAL RULE. 1
1.1. Anti-Alienation. 1
1.2. Implications. 1
2. ANALYSIS. 1
2.1. Claim. 2
2.2. Plan. 2
2.3. Creditor. 2
2.4. Categories Hard To Discuss Separately. 2
2.5. Table. 3
2.6. Most-To-Least Protected. 3
3. CLAIM. 4
3.1. Non-Bankruptcy. 4
3.2. Bankruptcy. 7
3.3. Garnishment. 12
4. PLAN. 12
4.1. Corporate Plans. 12
4.2. Are 1-Shareholder/1-Participant Plans Protected? 13
4.3. 401(K). 14
4.4. Keogh. 14
4.5. IRA. 16
4.6. Simplified Employee Plan. 16
5. CREDITOR. 16
5.1. Third Parties. 16
5.2. Family. 17
5.3. IRS. 18
6. OTHER HANDOUTS. **ERROR! BOOKMARK NOT DEFINED.**

September 18, 2000

PROTECTING RETIREMENT BENEFITS

1. GENERAL RULE.

1.1. Anti-Alienation.

Each employee plan must include the so-called "anti-alienation" restriction:

> "...benefits...may not be assigned or alienated [transferred]." IRC §401(a)(13); ERISA §206(d)(1).

In other words, the participant may not transfer ownership of the benefit.

1.2. Implications.

Standing alone, the "anti-alienation" rule concerns the plan's status under:

1.2.1. Tax Status.

Internal Revenue Code. A plan that does not include the anti-alienation restriction will lose the favorable tax benefits the IRC provides; and

1.2.2. Labor Laws.

U.S. Code Title 29. (Dept. Of Labor rules; often called "ERISA" even though that was the name of the Act of Congress that amended *both* the IRC & Labor Code).

> "If the plan fails to observe the anti-alienation [rule] its fiduciaries may be liable for [participants'] related losses...."

2. ANALYSIS.

To understand the extent to which retirement accumulations may be protected from creditors, analyze each situation under 3 categories:

2.1. Claim.

Does the claim arise:

2.1.1. outside of bankruptcy? or

2.1.2. in a bankruptcy proceeding?

2.2. Plan.

In what type of plan are the funds accumulated?

2.2.1. a corporate sponsored plan?

2.2.2. a plan not sponsored by a corporation (e.g., a plan sponsored by a proprietorship or a partnership)? or

2.2.3. an IRA?

2.3. Creditor.

Is the creditor:

2.3.1. an independent 3rd party?

2.3.2. a child or (former or current) spouse? or

2.3.3. the IRS?

2.4. Categories Hard To Discuss Separately.

Parts 3 (Claim), 4 (Plan) and 5 (Creditor) of this outline delineate the issues under each of the 3 categories.

In some situations, the categories are not easily separated. For example, in the 1st category (Claim), the basic division is between (i) non-bankruptcy and (ii) bankruptcy; when discussing non-bankruptcy claims, the 2nd category (Plan) must also be discussed since CA law (which governs non-bankruptcy claims) makes distinctions based on the type of plan.

2.5. Table.

Following is a table that attempts to illustrate the protection available to different types of plans from different types of creditors. The relevant abbreviations are:

(i) "Es" = rank and file employees participate in plan;

(ii) "SH-E" = only a shareholder-employee participates in plan;

(iii) "O-E" = Owner-Employee is only one in plan;

(iv) "Non-BK" = non-bankruptcy;

(v) "BK" = bankruptcy;

(vi) "X" = highest level of exemption;

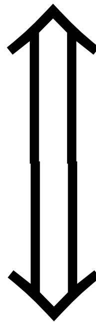
(vii) "PX" = partly exempt (exempt to the extent needed to retire; and

(viii) "A" = available to satisfy a judgment.

	C Corp		S Corp		P'ship		Prop'ship		IRA
Creditor	**Es**	**SH-**	**Es**	**SH-E**	**Es**	**O-E**	**Es**	**O-E**	
3rd Party:									
Non-BK	X	X	X? PX?	X? PX?	PX	PX	PX	PX	PX
BK	X	X	X	PX	PX	PX	X	??	PX
Family:									
Non-BK	PX	PX	PX	PX	PX	PX	A	A	PX
BK	PX	PX	PX	PX	PX	PX	A	A	PX
IRS:									
Non-BK	A	A	A	A	A	A	A	A	A
BK	A	A	A	A	A	A	A	A	A

2.6. Most-To-Least Protected.

There is another way to portray, visually, the levels of protection, from highest to lowest. However, this applies to 3rd party creditor claims in a nonbankruptcy setting:

100% Protected		C Corp Plan covering rank & file C Corp Plan covering owner only
Unclear		S Corp Plans
Unclear		Partnership Plans
To Extent Needed To Retire		IRAs

3. <u>CLAIM</u>.

3.1. <u>Non-Bankruptcy</u>.

3.1.1. <u>Generally Exempt</u>.

CA law governs non-bankruptcy situations: creditors generally cannot reach the debtor's retirement plan interest:

> "All amounts held...or in process of distribution by a **private retirement plan** [to pay] benefits...**are exempt**." CCP §704.115(b) [emphasis added].

This is sometimes referred to in this handout as the normal CA rule regarding pensions.

3.1.2. <u>Key Term Unclear</u>.

The meaning of "private retirement plan" is unclear:

"`private retirement plan' means:

(1) Private retirement plans, including, but not limited to, union retirement plans.

(2) Profit-sharing plans designed and used for retirement purposes.

(3) Self-employed retirement plans [Keoghs] and individual retirement annuities or accounts [IRAs]...."

3.1.3. **Relevance Of Tax Exemption.**

The CA exemption quoted above has an important restriction: those plans are only exempt

> "to the extent the amounts held in the plans...do not exceed the maximum amounts exempt from federal income taxation...." §704.115(a).

"[E]xempt from federal income taxation['s]" meaning is unclear. However, amounts subject to IRC §4980A's 15% "Tax on excess distributions" are probably not exempt under CA law.

3.1.4. **Contrast Keoghs & IRAs.**

The CA rules governing Keoghs & IRAs are discussed in more detail below. Suffice it to say that they are only exempt to the extent actually needed for retirement.

With those rules as a contrast, CA's rule seems to be that ***corporate*** retirement plans are completely exempt from creditors. However, that is not entirely clear since a plan sponsored by an "S" corporation might be deemed, for purposes of the state law exemption, to be a "self-employed retirement plan".

3.1.5. **Self-Settled Trust.**

A trust of which the donor (creator) is also a beneficiary cannot restrict creditors. This is the so-called "self-settled trust" rule. Probate Code §15304

3.1.5.1. **Impact On Pensions.**

The "self-settled trust" rule "does not affect the protection of certain pension trusts by CCP §704.115." CA Law Rev'n Comm. Reports, Vol. 20 @ 1001.

3.1.5.2. **Case Protecting Plan.**

Creditors of a corporation's sole shareholder cannot attack a corporate retirement plan. As to the shareholder, the pension trust was **not** an ERISA qualified plan entitled to protection under Patterson v. Shumate, nor was it a "self-settled trust". As a result of the latter, it was entitled to protection under state law In re: Witwer, (Bankr. CD CA 12/92).

3.1.5.3. <u>Other Rules Permitting Invasion Still Available</u>?

Following are 2 rules permitting general creditors to potentially reach trust assets for a beneficiary's debts. They probably do not apply to any pensions protected by the normal CA pension rule (§704.115(b)). However, they probably do apply to other retirement funds. In result, they are similar to the CA pension rule for IRAs and Keoghs (only protected to the extent you can prove you need the funds to retire).

3.1.5.3.1. <u>Trustee Decides Standard Of Living</u>.

A creditor is entitled to any amount paid to the beneficiary in excess of the beneficiary's standard of living as determined by the **trustee**.

Prob. Code §15307 ("*Income in Excess of Amount for Education and Support Subject to Creditors' Claims*") provides that, except for amounts needed to maintain the beneficiary's education and *standard of living:*

> "any amount to which the beneficiary is entitled...or that the trustee [may discretionarily] pay to the beneficiary ...may be applied to [satisfy the beneficiary's] money judgment.... [T]he court may...order...the trustee to satisfy...the judgment out of the beneficiary's interest...."

3.1.5.3.2. <u>Judge Decides Standard Of Living</u>.

Assume the trustee determines that you need all of the trust's distributions to maintain your standard of living.

In that case a judgment creditor can ask the **court** to determine your standard of living. Assume the judge determines you need **less** for "standard of living" than what the trustee decided. The judge can order the trustee to satisfy the judgment out of:

> "payments to which the beneficiary is entitled under the trust instrument or that the trustee, in the exercise of the trustee's discretion, has determined or determines in the future to pay to the beneficiary." Prob. Code §15306.5(a)

However, that order:

> "may **not** require that the trustee pay in satisfaction of the judgment an amount **exceeding 25%** of the payment that

> otherwise would be made to, or for the benefit of, the beneficiary." Prob. Code §15306.5(b).

3.1.6. Fraudulent Conveyance.

A transfer to a plan that is otherwise protected might still be a fraudulent conveyance. That would expose the transferred funds to creditors. However, that would probably not expose other funds already held by the plan. See FN 4 of 4th Circuit's Patterson v. Shumate opinion, echoed in the Supreme Court's decision.

3.2. Bankruptcy.

Filing a bankruptcy petition creates an estate of **"**all [of the debtor's] legal or equitable [property] interests...as of the [case's beginning]....**"** Bk. C. §541(a)(1).

A debtor's interest in a pension plan is property of the bankruptcy estate unless the interest is **excluded** or **exempted** by Bk. C. §§541(c)(2) or 522(b)(1).

3.2.1. Exclusion.

The bankruptcy estate excludes property subject to enforceable restrictions on transfer (thus protecting it from creditors):

> **"**A [transfer] restriction on [debtor's] beneficial interest...in a trust... enforceable under applicable nonbankruptcy law is **enforceable** in [bankruptcy]....**"** §541(c)(2). [emphasis added]

3.2.2. U.S. Supreme Court.

ERISA is **"**applicable nonbankruptcy law.**"** Therefore, an "ERISA qualified" plan (with the anti-alienation restriction) is excluded from the property of the bankruptcy estate under §541(c)(2) (and, therefore, is protected from creditors in a bankruptcy). Patterson v. Shumate, 502 US ____; 112 S. Ct. 2242 (6/92).

The Supreme Court set forth 3 reasons why ERISA qualified pension assets are excluded from the bankruptcy estate. "Bankruptcy's Impact On Retirement & Other Employee Benefits," Scialabba & Penberthy, J. Pen. Ben. (Summer, 1995), pg. 18.

3.2.2.1. Uniform Treatment In Bankruptcy.

Retirement benefits should have uniform treatment despite the participant's status in bankruptcy. The Court did not want to give creditors an incentive to place a debtor in bankruptcy involuntarily.

3.2.2.2. No Implied Exceptions.

Congress created the statutory structure, so an exception to the ERISA anti-alienation rule must also come from Congress. See Guidry v. Sheet Metal Workers Pen., 493 US 365 (1990): refused imposition of a constructive trust on pension benefits of a trustee who embezzled from the pension.

3.2.2.3. Uniform Treatment Despite State Law.

Wanted to eliminate the need to perform a determination of state spendthrift trust law or state bankruptcy exception analysis when a debtor has an interest in plan

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3.2.3. What Is An ERISA Plan?

The Supreme Court did not determine what types of plans are protected. Therefore, lower courts have tried to resolve this important issue.

3.2.3.1. Unusual Phrase.

ERISA does not contain the phrase "ERISA qualified." Thus, a plan cannot "qualify" under ERISA. The phrase is also not used by practitioners.

"Qualified," as commonly used by practitioners, means "tax-qualified."

There are at least 2 possible interpretations:

3.2.3.2. Both Tax & DOL Rules.

One bankruptcy court held that "ERISA qualified" means:

"a plan that is:

(a) tax qualified under IRC §401(a);

(b) subject to ERISA; **and**

(c) has an anti-alienation provision as required by ERISA §206(d)(1)."

In re: Louis C. Hall (WD MI Bk. Ct. 2/93, app. to 6th Cir.), 1993 Bk. LEXIS 258. Accord: In re: Harline (10th Cir. 1991), *cert. den.* 1992; In re: Moore (4th Cir. 1990).

Most view this interpretation as likely to be the correct one. "Little chance exists that the Court, by happenstance, used a word so widely used among employee benefit practitioners to address the tax issues of retirement plans to apply only to ERISA." Pg. 19 of Scialabba & Penberthy article.

3.2.3.3. DOL Rules Only.

In re: Hanes, 162 BR 733 (Bk. ED VA 1994): (1) Shumate only acknowledges that the tax code contains an anti-alienation provision in addition to ERISA, and (2) "ERISA qualified" means subject to ERISA only because it is the only body of law that enforces the anti-alienation rule.

3.2.4. Keoghs.

The U.S. Bankruptcy Court (ED NY) held that a Keogh plan was not protected, despite the Supreme Court's Patterson decision.

In re: Lane (1/27/93): debtor was only Keogh participant even though he employed others. "Had the debtor [contributed] on behalf of at least a single employee, then his plan could potentially be subject to ERISA [protected from creditors]."[1]

3.2.5. Exemption.

States may "opt out" of the federal exemptions by restricting their residents to state law exemptions. Bk. C. §522(b)(1) CA has chosen to "opt out." CCP §703.130. Therefore, state law must be used to determine the applicable exemptions. In general, this means that the phrase "applicable non-bankruptcy law" could be limited to traditional spendthrift trusts under state law. However, CA has carved out exceptions for retirement benefits, including IRAs, that bring such funds outside the scope of traditional spendthrift trust analysis.

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1 Bankruptcy of Watson, BAP #NV96-01465 (9th Cir. 12/1/98): plan covering only the sole shareholder-sole employee is not an ERISA plan, and therefore the plan assets are not excluded from his bankruptcy.

CA gives residents the choice of:

(i) normal CA exemptions; or

(ii) exemptions which basically mimic the federal bankruptcy exemptions. CCP §703.140 largely follows Bk. C. §522(d).

CCP §703.140(b)(10)(E), which is based on Bk. C. §522(d)(10)(e), exempts the:

> "debtor's right to...payment under a stock bonus, pension, profit-sharing, annuity, or similar plan...to the extent reasonably necessary [to] support...the debtor and any dependent of the debtor, unless **all** of the following apply:
>
> (i) That plan...was established by or under the auspices of an insider that employed the debtor [when] the debtor's rights under the plan...arose.
>
> (ii) The payment is [due to] age or length of service.
>
> (iii) That plan...does not qualify under §§401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code...."

This only exempts benefits to the extent you can prove you need them to retire. Therefore, if a corp sponsors your plan, use the normal CA private retirement plan exemption, CCP §704.115 (completely exempts corporate plans).

3.2.6. <u>Cases</u>.

3.2.6.1. <u>Doctor Loses</u>.

An early bankruptcy case concerned a physician who:

(i) took unsecured loans from his pension;

(ii) failed to make necessary interest payments when due; and

(iii) 2 weeks pre-bankruptcy filing deposited all corp's cash ($39K) in plan, attempting to shield funds from creditors.

Even though debtor's transactions did not violate the IRC or ERISA, the plan was not used for retirement. Therefore the plan was not eligible for the CA exemption for "Profit-sharing plans designed and **used for retirement** purposes." In re: Daniels, 771 F. 2d 1352 (9th Cir. 1985), cert. den. (1986) 475 U.S. 1016.

Even though Daniels was decided before Patterson v. Shumate, its rationale may have some continuing vitality.

3.2.6.2. Another Doctor Wins.

In another case the plan made numerous unsecured loans to the debtor-physician. None of the principal was repaid. However, the physician:

(i) followed trust's terms in making the loans;

(ii) paid a reasonable rate of interest; and

(iii) made regular, periodic principal payments when due.

Although transactions with plan may not have been prudent, the "plans were not so abused as to lose their retirement purpose." Bloom, 839 F2d 1376 (9th Cir. 1988).

3.2.6.3. Loss Since Nonworking Family Member Covered.

Stochastic Decisions v. Wagner, 34 F3d 75 (2d Cir. 1994): participant was required to turn over PSP funds to levying judgment creditor; W participated in plan but was not an employee. Warning to smaller companies where family members may be "on the books" but not actually working for the business.

3.2.7. Preferential Transfer.

A transfer to an otherwise protected plan might still be a preferential transfer under Bankruptcy Code §548. See In re: C. Polk, #90-B-06156-J (Bank. D. CO 3/20/91); B.F.P. v. RTC, 114 S. Ct. 1757 (1994). That would be the case if they are made within 12 months of the filing with the intent to hinder, delay or defraud creditors.

3.2.7.1. Choice Between State & Federal Law.

A trustee or debtor-in-possession could use either the preferential transfer provision or the CA fraudulent conveyance rule discussed earlier. Bk. C. §544 is the so-called

"strong-arm" provision that allows the trustee to use any applicable state law to enhance the bankruptcy estate's value.

A bankruptcy trustee will generally use §548 if he or she brings the action within 1 year of the transfer. Otherwise, the state fraudulent conveyance act provides a 4 year, up to 7 year, statute of limitations to attack transfers to non-insiders.

3.2.7.2. Bankruptcy vs. ERISA.

However, there is a conflict between the policies behind ERISA and the Bankruptcy Code: a plan participant who is a fiduciary and who is in a position to make contributions to a plan could take the position that he or she carried out a "fiduciary duty" because the plan's terms required the contributions.

3.3. Garnishment.

Once you determine a plan is not protected, and the claim has been reduced to a judgment, the next issue is how to execute. Garnishment is a remedy available in other situations to judgment creditors, but not for ERISA plans. CCP §704.115(a), (b), (d).

By contrast, welfare benefit plans, though covered by ERISA, may not be exempt. Mackey v. Lanier Collection Agency, 486 US 825 (1988).

IRAs, which are not ERISA plans by definition, are not exempt from garnishment.

4. PLAN.

The 1st part below (¶4.1) discusses rules for corporate plans in general. The 2nd part (¶4.2) discusses rules applicable to a special type of corporate plan: only the shareholder-employee participates. The 3rd part (¶4.3) concerns 401(k) plans, which are exempt or not depending upon the type of plan sponsor and participation. The 4th part (¶4.4) discusses "Keogh" plans, concluding that the critical requirement for protection is the coverage of rank and file employees. The last 2 parts (¶¶4.5 & 4.6) concern IRAs, which have the least protection.

This analysis only applies to 3rd party creditors. Two other classes of creditors - family & IRS - are discussed in more detail below, and may invade even plans in the otherwise most protected category: corporate plans covering rank and file employees.

4.1. Corporate Plans.

4.1.1. CA (Non-Bankruptcy) Purposes.

As discussed above, corporate plans are exempt for CA purposes. The only issue is whether plans sponsored by S corps are eligible for that same level of protection, or whether they are relegated to the lower level of protection provided to "self-employed retirement plans".

4.1.2. In Bankruptcy.

The key phrase for bankruptcy exemption is not whether a plan is sponsored by a corporation, but whether or not it is an ERISA plan. Corporate plans which cover rank and file employees are ERISA plans. Corporate plans covering only shareholder-employees may or may not be ERISA plans. If they are not, then they are only protected to the extent the debtor can prove the funds are needed for retirement.

4.2. Are 1-Shareholder/1-Participant Plans Protected?

The answer is not yet clear. There are cases going both ways.

4.2.1. Supreme Court's Hint.

Reed v. Drummond, #92-26 (U.S. Sup. Ct. 10/13/92) involved a decision by the 9th Circuit Court Of Appeals, the federal App. Court governing CA. That court held against a doctor (meaning his creditors could seize his interest in the retirement plan). Why did the 9th Circuit rule against him? He was:

(i) his corporation's sole shareholder;

(ii) the plan's sole trustee; and

(iii) the sole plan beneficiary.

The Supreme Court vacated the 9th Circuit decision due to Patterson. That suggests, but does not authoritatively decide, that protection is available to sole shareholders of small corporations who are the sole participants.

4.2.2. Compare Keoghs.

In re: Lane, discussed above, indicates a Keogh is not protected unless common law employees are also covered.

4.2.3. Case Protecting 1 Shareholder Plan.

Favorable decision under CA law, see In re: Cheng, 943 F2d 1114 (9th Cir. 1991): corp plan fully exempt even though debtor solely controlled corp & plan.

4.2.4. Cases Indicating No Protection.

Witwer excluded plan from bankruptcy estate. Court indicated a 1-shareholder plan (in this case, an "S" corp), by itself, would ***not*** be protected. For an anti-debtor decision, see In re: Hall, 2/18/93, WD MI. Bk. Ct. (app. to 6th Cir), 1993 Bk. LEXIS 258.

4.3. 401(K).

A 401(k) ("cash or deferred arrangement") is a profit sharing plan. Therefore, if sponsored by a corp it should be completely protected.

4.4. Keogh.

4.4.1. CA Law.

CA's law for Keoghs is the same as for IRAs: only protected to the extent you can prove you actually need the money to retire. CCP §704.115(e).

4.4.2. Federal Law.

Federal law does not protect the business owner's interest in a Keogh. See the discussion re: In re: Lane.

By contrast, a non-owner employee's interest in the Keogh is protected.

4.4.3. No Employees.

Assume you:

(i) own an unincorporated business,

(ii) have no employees; and

(iii) are the only participant.

The plan is excluded from ERISA Title I ("Protection Of Employee Ben. Rights"):

> "...`employee benefit plan' shall not include any plan...under which no employees [participate]. [A] `Keogh' or `H.R. 10' plan under which only partners or only a sole proprietor are participants...will not be covered.... However, a Keogh...under which 1 or more common law employees [and] the self-employed individuals are participants...will be covered...." ERISA Reg. §2510.3-3(b)

Therefore, federal law does ***not*** protect the plan from creditors.

4.4.4. Spouse As Employee.

The plan is not covered by ERISA Title I even if both the business owner and the owner's spouse participate:

> "An individual and his or her spouse shall not be deemed to be employees [of] a trade or business, whether [or not] incorporated...which is wholly owned by [either of them]."

4.4.5. Child As Employee.

The Regulation's restrictive language re: the owner's spouse suggests that employing a child should suffice to bring the plan under Title I (& protect the plan).

4.4.6. Is "S" Corp's Plan Subject To Keogh Rules?

4.4.6.1. Probably Not Creditor Protection.

An interest in a retirement plan sponsored by an "S" corp is probably not subject to the limited creditor protection available to a Keogh.

4.4.6.2. Other Keogh Rules Cover "S" Plans.

Plans sponsored by "S" corps. are subject to other Keogh rules, e.g., the prohibited transaction rules:

> "...a shareholder-employee (as defined in §1379...on the day before...enactment of the Subchapter S Revision Act of 1982)...shall be deemed...an owner employee." §4975(d).

Practical effect: S corp's owner cannot borrow from the pension plan.

4.4.6.3. Conclusion Necessarily Tentative.

This conclusion is, at best, tentative. The Regulation suggests that even a corporate plan is not covered by Title I (protected from creditors) if the only "employees" are the owner and the owner's spouse.

4.4.7. Independent Trustee Protects Plan?

The law does not specifically protect a plan more with a bank or trust company trustee. But a court is more likely to protect your retirement assets if you are not the trustee. Having a bank trustee probably offers the highest level of protection.

4.5. IRA.

An IRA is protected, under both state and federal law, only to the extent you prove you actually need the money to retire. See, for example, CA CCP §704.115(e).

What if you are 45 years old & have $500K in an IRA? A judge can easily decide you do not need that money to retire since "you can earn it back."

In re: Dalaimo, 88 BR 268 (BC SD CA 1988): $11,706 IRA exempt as reasonably needed to support retired couple with no contingency reserve and income approximately equal to their expenses.

4.6. Simplified Employee Plan.

A SEP is essentially an IRA. Therefore, it is not an ERISA plan and not completely protected from creditors. This is partly based on a 2/23/93 conversation with David Ganz, Area Director, of the DOL's Pen. & Welf. Ben. Adm'n.

5. CREDITOR.

5.1. Third Parties.

3rd party creditors have been discussed at length in the parts of this handout above concerning the type of "Claim" and the type of "Plan." In general, plans of all sorts have the highest level of protection against this type of claimant.

Now we move to claimants who are more protected by the law.

5.2. **Family**.

5.2.1. **CA Law**.

Support for a spouse, former spouse or minor child can be taken from a trust even if the trustee has complete discretion as to income & principal distributions:

> "Whether or not the beneficiary [can] compel the trustee to pay income or principal or both to...the beneficiary, the court may, [as] it [deems] equitable and reasonable..., order the trustee to satisfy all or part of the support judgment out of all or part of future payments that the trustee, [in] the trustee's discretion, determines to make to or for the...beneficiary." Prob. Code §15305(c).

A related issue is whether or not a family law judge can base a spousal and/or child support order, in part, on trust distributions. The answer is probably as follows:

(i) if the trust has regularly distributed an amount in prior years to the beneficiary, the judge probably can take that into account; by contrast

(ii) if the trust has only made irregular distributions, the judge probably should not take that into account.

5.2.2. **Federal Law**.

There is an exception to the anti-alienation rule:

> "[It] shall not apply to [to an] order...determined to be a qualified domestic relations order." §401(a)(13)(B)

"Domestic relations order" means:

> "any judgment, decree, or order (including approval of a property settlement agreement) which -- (i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant...." §414(p)(1)(B)(i).

That order is "qualified" if it:

> "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant...." §414(p)(1)(A)(i).

5.3. IRS.

5.3.1. CA Law.

Non-bankruptcy matters are subject to CA law, and the IRS is **not** bound by CA law. Under **federal tax** law, which binds the IRS, only railroad or military pensions are exempt from IRS seizure. §6334 ("Property Exempt From Levy").

In re: Raihl (BAP 9th Cir., 4/6/93, 93-1 USTC 50,290): bankrupt debtor's interest in a retirement plan is property subject to a federal tax lien.

Hyde v. U.S., (DC-AZ. 8/93): IRS may levy 1/2 of a participant's plan interest to satisfy delinquent taxes participant's spouse owes if, under state law, plan interests are community property. The fact that the spouse cannot exercise any present rights in the plan does **not** put the plan beyond reach of an IRS levy.

5.3.2. Federal Bankruptcy Law.

Debtors fare no better under federal bankruptcy law. A pension plan included in a debtor's estate was held **not** exempt from IRS levy. §401(a)(13)'s anti-alienation rule did not bar the IRS' tax lien. In re: Jacobs, 93-1 USTC 50,118 (BC-DC Pa.).