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COLLECTION AGAINST AN IRA IS GENERALLY PROHIBITED, EXCEPT...

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Generally, an IRA is protected from collection efforts.[1] What is less well known is that a consumer can assign his or her IRA to a financial institution as collateral for a loan and this act allows a non-custodial financial institution to collect what is due to them from the account upon delinquency because the consumer has waived their IRA protections.

Normally, an IRA "to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986" is protected from a bankruptcy proceeding up to a maximum of $1,711,975.[2] However, when the taxpayer engages in a prohibited transaction under 26 U.S.C.A. § 4975 such as the "lending of money or other extension of credit between a plan and a disqualified person" then the plan is no longer considered a tax-exempt qualified retirement plan by the IRS and is not protected from creditors.[3]

Multiple Ways to Lose IRA Protections

Multiple examples exist of prohibited transactions involving a

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traditional IRA, such as borrowing money from it, selling property to it, using it as security for a loan, and buying property for personal use (present or future) with IRA funds, to name a few.[4] Engaging in a prohibited transaction with your IRA account results in the account ceasing to be an IRA "as of the first day of that year."[5] Once an IRA ceases to be an IRS recognized retirement account, it loses the exemptions provided under 11 U.S.C. § 522 and some state laws. If through prohibited activity an IRA loses its tax exemption and creditor protection, then a non-custodial financial institution may recover from the account.

Personal Borrowing or Benefit From the IRA

One way a traditional IRA loses its tax-exempt status and creditor protection is when the holder borrows money temporarily from the IRA with the intention to repay it later with interest. An account holder borrowing money from their IRA is a prohibited transaction causing the IRS to treat the action as a full distribution of the funds, making the entire IRA's value taxable and subjecting the account holder to additional penalties.[6]

An IRA account holder can forfeit their IRA's tax-exempt status and protection against creditors when they sell to the IRA property they first owned as an individual. For example, an IRA, or an IRA owned entity, is not allowed to buy rental property from the account holder or the IRA will forfeit its privileges.

Another way an IRA can lose its tax-exempt status and protection from creditors is when the holder buys a commercial building with the IRA and rents out all but one office which they use for their personal business; a personal benefit of any kind is contrary to the investment for retirement purpose of the IRA and will result in the IRS disqualifying the entire account. An IRA account holder can also lose their IRA's tax-exempt status and protection against creditors when the holder makes a direct or indirect loan from the IRA to a disqualified third party.[7]

These four ways an IRA holder might forfeit their IRA's tax exemption and creditor protections, while perhaps the most common, are not an exclusive list. See 26 U.S.C.A. § 4975 (c)(1) for the statute that enumerates all of the prohibited transactions, including less common infractions, some of which occurred in the *In Re: Barry K.* case.

In the case In Re: *Barry K.*, Kellerman self-directed his IRA to make prohibited transactions to Panther Mountain Land Development, LLC, who was a disqualified person under 26 U.S.C.A. § 4975:

. . . Panther Mountain is a disqualified person. Any direct or indirect loan from the IRA to Panther Mountain is a prohibited transaction. . . . Furthermore, even if the transaction at issue were not a loan, the IRA would still have lost its tax exempt status because the Kellermans and Panther Mountain benefitted directly from the transactions in violation of 26 U.S.C. § 4975 (c)(1)(D) and (E).[8]

This case confirms a single not-strictly retirement focused transaction can cause an IRA to lose its tax-exempt status. Certainly making a loan from IRA funds, or using the account indirectly to secure a loan, suffices to sever the collection protections an IRA holder normally enjoys. Kellerman's IRA was a part of no less than three types of prohibited transactions (loan to a disqualified person, use for the benefit of a disqualified person, and a disqualified fiduciary engaging in serving self-interest), any one of which would have been sufficient to strip the IRA of its tax exempt status under 26 U.S.C. § 4975 (c)(1).[9]

Example From Minnesota Case Law

An IRA loses its tax-exempt status and creditor protection when the holder pledges the IRA as security for a loan since this is a type of indirect loan from the IRA. A Minnesota court decided an IRA holder had not violated his tax-exempt status and was thus safe from garnishment on the IRA account when he held up his IRA as an asset to help him get a loan, but it was made clear

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[1] *First Nat. Bank of Blue Island v. Philp's Est.,* 106 Ill. App. 3d 360, 362, 436 N.E.2d 15, 17 (1982) (the court explained that even after the death of the account holder a bank could not set off funds from the IRA balance to cover the depositor's debts to the financial institution).
[2] 11 U.S.C.A. § 522 (d)(12); 11 U.S.C.A. § 522 (n)(assets in IRA accounts are protected from bankruptcy creditors up to a combined $1,711,975, adjusted every three years for inflation, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005).
[3] 26 U.S.C.A. § 4975 (c)(1)(B); *In Re: Barry K.,* 538 B.R. 776, 779 (E.D. Ark. 2015).
[4] IRS Publication 590-B (2024).
[5] Id; see also 26 U.S.C.A. § 408 (e)(2).
[6] Roth IRAs are an exception to this prohibition against IRA borrowing insofar as you are allowed to remove post tax contributions to a Roth IRA, but not the growth, penalty free; these contribution withdrawals can be "borrowed" from the ROTH IRA if returned within 60 days via an IRA rollover (including back to the original account).
[7] *Peek v. Comm'r*, 140 T.C. 216, 225 (2013).
[8] *In re Barry K.,* 538 B.R. at 779.
[9] 26 U.S.C.A. § 4975 (e)(2)(definition of a disqualified person includes a corporation that owns 50% or more of "the total value of shares of all classes of stock of a corporation").

during the underwriting process that the financial institution involved was not free to cash out the IRA as collateral for the debt:

We conclude the letter guaranteeing that appellant would not cash the certificate before the maturity date did not give the bank any "security" as defined in the IRC. The letter did not grant the bank any rights in the IRA or in the CD but only a right to hold appellant to his agreement to delay cashing the CD until its due date. At no time did appellant or the bank state or imply that the bank would be able to use the CD to satisfy the loan if Machine Power defaulted. Thus, the only enforceable obligation appellant made was that he would not cash the 5–year certificate of deposit before five years had passed or until the loan was repaid. Perhaps this agreement was part of an enticement package necessary to obtain the loan on behalf of the company. Such a use of an IRA, however, is not prohibited. Only when the use becomes "security," is it prohibited. This promise alone is not sufficient to constitute a "use" of the IRA as "security for a loan" as required by the IRC.[10]

So, the question of whether an IRA owner assigned an account as security for a loan is sometimes a nuanced determination of what degree of commitment the assets incurred. Any doubt in the matter is likely to be decided in favor of the account holder. But if an IRA owner is found to have assigned the IRA account as security for a loan, they will lose their account's tax exemption and creditor protection.

Custodians Cannot Collect

Crucially, if the financial institution is a fiduciary or a custodian over the same IRA for which they hold an assignment, this prevents them from collecting against the account.[11] An IRA's custodian is the IRS approved financial institution that holds the IRA and ensures all governmental regulations concerning account administration are followed. It has been said, "where the liability of the one claiming a set off arises from a fiduciary duty or is in the nature of a trustee, the requisite mutuality of debts does not exist, and such person may not set off a debt owing from the debtor against such liability."[12] Because a financial institution cannot collect against an IRA they have custody over, there could be a scenario where a financial institution is assigned an IRA by the account owner as collateral for a loan, causing the IRS to automatically revoke the IRA's exempt status, but the custodial financial institution still cannot legally receive funds from the old IRA account.[13] This scenario should make a prudent administrator think long and carefully before accepting an IRA as collateral for a loan.

Best Practices

For financial institutions considering taking an IRA assignment as collateral, the best practice is (1) to require the borrower to clearly assign the IRA to the lending institution as security for the loan, (2) the lending institution should not be the custodian of the IRA or a fiduciary towards the account, and (3) the customer should sign (out of an abundance of caution and in keeping with ethical standards) a disclosure indicating they understand they are waiving their IRA protections (which will mean not only a creditor risk to the account assets, but also immediate taxation as ordinary income, plus stiff penalties ranging from 15% to 125% of the amount involved in the prohibited transaction).[14]

Furthermore, there are state-specific statutes that relate to IRA collection concerning situations beyond federal bankruptcy (lawsuits, divorce, etcetera); so knowing the applicable law in your jurisdiction is always crucial when contemplating accepting an IRA as collateral.[15]

Conclusion

In summary, as a matter of federal law, a financial institution can only collect on an IRA portfolio worth less than $1,711,975 in an exceptional circumstance. If the holder of an IRA has waived the account's federal tax-exempt status by engaging in an IRS prohibited transaction, such as making an assignment of the account to a financial institution, a disqualified person under 26 U.S.C.A. § 4975, then a non-custodial financial institution may collect on the IRA. Since the best lending practices would require a clear assignment of the IRA by an informed consumer to a non-custodial financial institution, in practice this exception to the rule that financial institutions generally cannot collect against IRAs will likely rarely be used; but it may be helpful knowledge to have in some lending and bankruptcy scenarios.

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[10] *Est. of Jones by Blume v. Kvamme,* 481 N.W.2d 94, 97 (Minn. Ct. App.)(further litigation occurred here which visited the Minnesota Supreme Court twice on appeal, but it was concerning the constitutionality of certain state statutes under the Minnesota constitution and did not examine the federal law matters addressed here).

[11] *In re Sopkin,* 57 B.R. 43, 49 (Bankr. D.S.C. 1985)(discusses how an "IRA custodian is precluded from asserting any claim to the assets in an IRA").

[12] 4 Collier on Bankruptcy Sect. 553.04 at page 26.

[13] IRS Code § 408(e)(2).

[14] *Sopkin*, 57 B.R. at 49 (speaking on "penalty imposed by IRS for any such withdrawal");
IRC § 4975(a)-(b)(discussing 15% excise tax on amount involved in prohibited transactions which increases to 115% if not corrected in tax period); 26 U.S.C.A. § 72(t)(2)(A)(i)(early withdrawal penalty is normally 10% for those under age 59.5).

[15] *IRA Asset and Creditor Protection by State*, IRA FINANCIAL (Apr. 18, 2025), https://www.irafinancial.com/blog/ira-asset-and-creditor-protection/.

GRAIN FRONTING: WHAT IT IS, WHY IT IS A PROBLEM, AND WHAT YOU CAN DO ABOUT IT.

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Grain and other commodities often serve as important collateral for farm loans. With declining commodity prices and rising expenses, many farmers may be feeling increased financial pressure following the end of the 2025 crop year. Poor cash flow may have producers looking to sources of cash, and that may lead some to deceptive practices like grain fronting. Grain fronting is a tactic used to circumvent legal requirements intended to protect a lender's security interest in grain and therefore can present a significant risk to agricultural lenders. Even if the funds can be recovered, litigation will often be unavoidable. It is important to understand what grain fronting is and what steps you can take to prevent yourself from falling victim to the fraud.

Commonly, farm operating loans are secured in part by crops grown, to be grown, or stored by the borrower. A security interest in farm products, including grain, is perfected by filing a UCC-1 financing statement.[1] However, under the Food Security Act of 1985, a buyer of farm products takes the crops free of a security interest created by the seller unless the buyer has (1) direct notice of the security interest or (2) the lender files an Effective Financing Statement ("EFS") in a central filing system.[2] What this means is that a grain elevator or similar buyer would be able to purchase the grain free of the lender's security interest unless one of those steps is followed. In the direct notice or the EFS, the lender follows a statutory method of providing notice to the grain buyer and can specify conditions for the release of the security interest, often the issuance of a two-party check listing the lender as one of the parties.[3] By providing direct notice or filing an EFS where available,[4] lenders can generally ensure that their collateral is not sold without their knowledge and that they receive the proceeds they expect. But grain fronting circumvents the protections afforded by the notice and perfected security interest.

Grain fronting is a type of fraud. In a typical grain fronting scheme, a farmer who has pledged grain as collateral will sell that grain in the name of a third party, such as a relative, friend, or business associate, often having that third-party deliver the grain, representing that it belongs to them. This tactic allows the borrower to access the proceeds of the sale and hide those proceeds from their lender. The grain buyer, ostensibly without knowledge that the owner of the grain is someone else, would not see the security interest when reviewing the direct notices or EFS list when searching for the purported "seller's" name,

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[1] Minn. Stat. §§ 336.9-308, .9-310.
[2] 7 U.S.C. § 1631(e).
[3] *Id.*
[4] Nineteen states have a central notification system including Minnesota, Nebraska, North Dakota, and South Dakota. *Clear Title*, U.S. DEP'T OF AGRICULTURE, https://www.ams.usda.gov/rules-regulations/food-security-act/clear-title (accessed Nov. 24, 2025). In states where there is no central notification system, such as Iowa, Wisconsin, and Illinois, direct notice is required. 7 U.S.C. § 1631(e).

and would not. As a result, the buyer issues payment without the bank's name listed on the check and without the bank's consent or release. The third party then remits some or all of the proceeds to the borrower.[5]

The loss of collateral, particularly with a borrower that is insolvent or nearing insolvency, which is likely the case if someone is resorting to grain fronting, significantly undermines a lender's ability to recover in the event of a default and reduces the lender's secured position. While the bank may still be able to recover from the buyer or even the third parties involved in the fraud, often that recovery will involve significant time-consuming litigation. In Minnesota, the Supreme Court has ruled that 7 U.S.C. § 1631(e) does not protect buyers in grain fronting situations from potentially being liable to a secured lender.[6] In *Fin Ag, Inc. v. Hufnagle, Inc.*, an agricultural lender successfully brought an action for conversion against a grain buyer in a grain fronting situation, resulting in the buyer being liable to the lender for the value of the fronted grain, plus costs and interest.[7] In *Star Bank v. Anderson*, the Minnesota Court of Appeals more recently upheld an agricultural lender's right to recover from a grain buyer where the lender gave proper notice of its interest and can show that the grain purchased by the buyer was subject to the lender's security interest.[8] The *Star Bank* Court further clarified that the buyer does not need to have actual knowledge of who owned the corn.[9] Thus, even an oblivious grain buyer may be responsible to a lender for the value of fronted grain. A word of caution, however, that not every state comes to the same conclusion in grain fronting cases.

Grain fronting transactions can often be difficult to detect, particularly if the borrower provides inaccurate or fabricated records or information. Agricultural lenders must be vigilant to detect grain fronting because it directly impacts their ability to recover the collateral and reduces the lender's secured position. Lenders should regularly conduct audits of both on-farm and off-site storage facilities. Often, lenders should ensure that they, or a third party acting on their behalf, engage in those inspections, and not simply rely on the borrower's representations. Lenders may also wish to require their borrowers to disclose intended sales and provide clear documentation of all sales, which in turn should be scrutinized for authenticity.

If grain fronting is suspected, swift legal action may be required to stop the outflow of collateral. This may take the form of seeking the appointment of a receiver to take control of and sell any remaining grain[10] or an order for claim and delivery of personal property[11] (aka replevin). In Minnesota, if informing a borrower that the lender is seeking possession of its security "would endanger the ability of the [lender] to recovery the property[,]" and the borrower has or is about to remove the property from the state or conceal, damage or dispose of the property "with the intent to hinder, delay, or defraud" the lender, lenders can apply to a court, without notice to the borrower, for an order authorizing the lender to seize the collateral and liquidate it in a commercially reasonable manner in accordance with the UCC.[12] After the order is issued, the matter is set for a hearing and the borrower has an opportunity to contest the order.[13] Generally, the occurrence of fraud, including grain fronting, is grounds for proceeding to immediate litigation without first turning to farmer-lender mediation.[14] Once the immediate risk that additional grain is sold illicitly is handled, lenders can proceed through traditional collection methods against the borrower, and can bring actions against the buyers and involved third-parties.[15]

Grain fronting presents a significant risk to agricultural lenders, particularly when borrowers become cash-strapped and lenders are not carefully monitoring their collateral. By understanding the risks and looking out for missing collateral and other concerning behaviors, lenders can mitigate the consequences of grain fronting. In particular, early detection and swift legal action to gain control over the remaining collateral may help prevent the need to engage in extensive litigation involving third parties to recover loan amounts.

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[5] *See generally Fin Ag, Inc. v. Hufnagle, Inc.*, 720 N.W.2d 579, 583–84 (Minn. 2006) (describing a grain fronting scheme).
[6] *Id.* at 585 (7 U.S.C. § 1631(e) "does not provide protection for buyers in a fronting situation where the security interest from which protection is sought was not created by the fronting parties.").
[7] *Id.* at 584.
[8] No. A23-1802, 2024 WL 3405400 (Minn. App. July 15, 2024).
[9] *Id.* at *5
[10] *See* Minn. Stat. §§ 576-.21–.53.
[11] *See* Minn. Stat. §§ 565.21–.29.
[12] Minn. Stat. § 565.24, subd. 2.
[13] *Id.* at subd. 3–4.
[14] *See* Minn. Stat. § 583.27, subd. 7. Grain fronting makes a debtor "ineligible" for farmer-lender mediation, but a lender must still petition the court for an order permitting the lender to proceed with its remedies notwithstanding the Farmer-Lender Mediation Act.
[15] *See, e.g., Fin Ag*, 720 N.W.2d 579; *Star Bank*, 2024 WL 3405400.

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HIDDEN AGRICULTURAL LIENS UNDER MINNESOTA LAW: WHAT LENDERS NEED TO KNOW

Under Minnesota law, there are multiple instances where liens can attach to a borrower's livestock or crops that will result in priority over a financial institution's first-in-time perfected security interest in the same livestock (Minn. Stat. § 514.966) or crops (Minn. Stat. § 514.94). These types of liens are often referred to as "hidden" liens because they arise automatically once the service is provided without any notice. Understanding how hidden liens can attach, how they are perfected, and when they take priority is important for agricultural lenders to properly assess any credit risk.

The hidden liens that can attach to livestock include: (1) veterinarian liens; (2) breeder liens; (3) livestock production input liens; (4) temporary livestock production input liens; and (5) feeder liens. There are also several hidden liens that can attach to crops such as: (1) landlord liens; (2) harvester's liens; and (3) crop production input liens.

Hidden Liens on Livestock.

The purpose of the hidden liens are to protect those who provide essential services for livestock and crops. For example, veterinarians, breeders, and feeders are automatically granted a secured interest in all animals serviced. Depending on the service provided, the veterinarian, breeder, or feeder has between 60-180 days from the last date of service to perfect their secured interest by filing a financing statement in accordance with the Uniform Commercial Code (UCC). Once perfected, the secured interests of a veterinarian, breeder, and feeder will take priority over a lender's secured interest in the very same livestock regardless of when the lender's interest attached and regardless of whether the lender perfected its interest. However, the liens are limited to the value of the services provided.

Hidden Liens on Crops.

Similarly, a landlord's lien and a harvester's lien automatically attach to the crops grown on the leased property or to the crops serviced by the harvester. Such harvester services include combining, picking, harvesting, hauling, baling, drying, or storing crops. Like the livestock liens, the harvester lien is in the amount of the value of the services provided, and the landlord's lien is for the amount of unpaid rent. After the liens attach, a landlord has 30 days to perfect, and a harvester has 15 days from the last date of service to perfect. Once perfected, the secured interests of the landlord and harvester take priority over a lender's secured interest in the very same crops regardless of when the lender's

interest attached and regardless of whether the lender perfected its interest.

Production Input Liens: An Important Distinction.

While liens such as the veterinarian, breeder, feeder, landlord, and harvester liens automatically take priority once perfected, production input liens function differently. For livestock and crop production input liens, lenders can preserve priority—but only by taking prompt and proper action upon receiving notice.

A supplier furnishing livestock production inputs—such as feed or labor—has a lien for the unpaid retail cost of those inputs. The lien attaches when the inputs are furnished and may not exceed the greater of the livestock's fair market value or purchase price. The supplier can perfect its interest by filing a financing statement within 6 months after the last input was furnished.

Now, unlike the veterinarian's lien, breeder's lien, and feeder's lien, a livestock production input lien does not automatically take priority over the lender's lien once perfected. Instead, if the lender has a secured interest in the livestock being raised by the input supplier, the supplier must notify the lender of their livestock production input lien by delivering via certified mail or other verifiable method a lien-notification statement. Minnesota law requires that the envelope be marked as: "IMPORTANT – LEGAL NOTICE." If a lender receives this notice, it must respond within 10 days to preserve the lender's priority.

In the lender's response, it may either (1) agree to issue the supplier a letter of commitment for the amount stated in the lien-notification statement or (2) refuse to issue a letter of commitment. The lender's response must be written and mailed to the supplier. If the lender provides a written response extending a letter of commitment, then the supplier cannot obtain a lien for the amount of the letter of commitment. If the lender refuses to extend a letter of commitment, then the lender's and the supplier's rights are not affected, and the lender retains its superior position. However, if the lender fails to respond to the lien-notification statement within 10 days, the perfected livestock production input lien has priority over any security interest the lender may have in the same livestock or their proceeds. The supplier's priority can only be for the lessor of the amount stated in the lien-notification statement or the unpaid retail cost of the livestock production input identified in the lien-notification statement. **Note**, if the lender does respond to the lien-notification statement and retains its current position, any subsequent value given to the debtor will be second in priority to the supplier holding a perfected livestock production input lien.

Generally, a lender will preserve their rights by promptly responding within 10 days, but there is one exception. If the borrower has filed a mediation request under Minn. Stat. Ch. 583, then a supplier who furnishes inputs for livestock production during the 45 days following the date of the mediation request shall have a *temporary* livestock production input lien. If a lender receives a notice of a *temporary* livestock production input lien, then the lender is not required to deliver a written response. The supplier of a temporary production input lien automatically obtains priority on the livestock it provided inputs during the 45-day period following the debtor's mediation request. However, after the 45-day period, then the lien attaches as a standard livestock production input lien as detailed above. **Note,** if the lender is not certain about whether the notice is for a temporary production input lien, best practices dictate that the lender provide a written response as described above.

Finally, a supplier furnishing crop production inputs, which includes agricultural chemicals, seeds, petroleum products, the custom application of agricultural chemicals and seeds, and labor, has a lien for the unpaid retail cost of the crop production inputs. A crop production input lien attaches when the inputs are furnished by the supplier, and it attaches to the crops serviced. This lien can be perfected by filing a financing statement within 6 months of the date the last production input was furnished. Similar to the livestock production input lien, a crop production input lien does not automatically take priority over a lender's validly perfected security interest in the same crops. The supplier must provide the lender with a lien-notification statement as described above, and the lender has 10 days to respond in writing to maintain its first priority position.

Compliance and Best Practices.

Suppliers of crop and livestock inputs must strictly comply with the Minnesota Statute requirements when providing lenders notice of their production input liens. A lien-notification statement that does not meet Minnesota's formal requirements—such as not marking the envelope with "IMPORTANT – LEGAL NOTICE"—may be invalid and prevent the supplier from obtaining priority even if the lender does not respond timely. Therefore, lenders should:

- Retain the original envelope containing any lien-notification statement.

- Promptly respond in writing within 10 days to all production input lien notices.

- Understand that any subsequent advances made to the borrower after a perfected production input lien is filed will be subordinate to that lien.

A good working understanding of these "hidden" liens is key to protecting the lender's secured position and the lender generally.

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