

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Patricia L. Tilford,

Case No: 04-30361 GFK

Debtor(s).

**NOTICE OF HEARING AND MOTION FOR TURNOVER**

TO: NATIONWIDE LIFE AND ANNUITY, DEBTOR, HER ATTORNEY STEVEN MURAKAMI, AND OTHER PARTIES IN INTEREST SPECIFIED IN LOCAL RULE 9013-3

1. Charles W. Ries, the duly appointed and acting trustee in the above captioned matter, moves the Court for relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 25, 2004 at 2:30 p.m., or as soon thereafter as counsel can be heard, before Honorable Gregory F. Kishel, in Court Room No: 228B, at the United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than 2:30 p.m. on October 20, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than October 14, 2004, which is seven before the time set for the hearing (excluding Saturdays, Sundays and holidays). **IF NO RESPONSE IS TIMELY FILED, THE COURT MAY IN ITS DISCRETION ENTER AN ORDER GRANTING TURNOVER WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion or this motion is authorized under 28 U.S.C. 157 and 1334, Federal Rules of Bankruptcy procedure 4002, and Local Rule 1070-1. The petition commencing the debtor's Chapter 7 case was filed on January 23, 2004. Charles W. Ries was appointed as Chapter 7 trustee on January 26, 2004. This case is now pending in this Court.

5. This motion arises under 11 U.S.C. §541 and 542 and Federal Rules of Bankruptcy Procedure 4002 and 7001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 9013-1. The Chapter 7 trustee requests turnover of property of the estate.

6. The Debtor was deceased prior to her scheduled 341 meeting, which was March 5, 2004.

7. Debtor's daughter, Teresa Marie Scharkey, was listed as the beneficiary of the scheduled asset Nationwide Life and Annuity, ("Nationwide"), account # 07-1087398, which was eventually determined to be an IRA ("IRA").

8. Teresa Scharkey cashed out the IRA. Funds in the amount of \$12,693.27 were allocated for tax purposes and the remaining amount of \$29,617.63 was put into a Nationwide Secure account.

9. Trustee objected to the exemption of the IRA under 11 U.S.C. § 522 (d)(10)(E).

10. By Bankruptcy Court Order dated June 24, 2004, the Court sustained the Trustee's objection to the IRA.

11. Nationwide has agreed to cooperate but is requesting a Court order to turn over the monies or proceeds of the IRA, including all funds allocated for tax purposes.

12. The trustee is unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704 until the IRA has been turned over to the bankruptcy estate.

13. This verified motion is based upon all of the files and records herein.

14. Pursuant to Local Rule 9013-2, a separate Memorandum of Facts and Law is submitted with this motion.

WHEREFORE, the undersigned requests an order of the Court:

1. Directing Nationwide to turnover to the Trustee the full amount of the Nationwide Life and Annuity, account # 07-1087398, including all funds allocated for tax purposes.

2. For such other relief as the Court deems just and equitable.

Dated this 11th day of October, 2004

/e/Charles W. Ries  
Charles W. Ries  
200 Union Square Business Center  
201 North Broad Street  
P. O. Box 7  
Mankato, MN 56002-0007  
Telephone (507) 625-6600  
Attorney License No: 12767X

VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Notice of Hearing and Motion for Turnover and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries  
Charles W. Ries

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No: 04-30361 GFK

Patricia L. Tilford,

Debtor(s).

**TRUSTEE'S MEMORANDUM OF FACTS AND LAW  
IN SUPPORT OF MOTION FOR TURNOVER OF PROPERTY**

Charles W. Ries, Chapter 7 trustee, submits the following Memorandum of Facts and Law in Support of Motion for Turnover in the above-captioned case, and as grounds therefore would respectfully show the Court:

FACTS

1. This Chapter 7 case was filed on January 23, 2004, and is pending before this Court.
2. Charles W. Ries was appointed as Chapter 7 trustee on January 26, 2004.
3. The debtor was deceased prior to her scheduled 341 meeting, which was March 5, 2004.
4. Debtor's daughter, Teresa Marie Scharkey, was listed as the beneficiary on the scheduled asset Nationwide Life and Annuity, account # 07-1087398, which was eventually determined to be an IRA ("IRA").
5. Teresa Scharkey cashed out the IRA. Funds in the amount of \$12,693.27 were allocated for tax purposes and the remaining amount of \$29,617.63 was put into a Nationwide Secure account.
6. Trustee objected to the exemption of the IRA under 11 U.S.C. § 522 (d)(10)(E).
7. By Bankruptcy Court Order dated June 24, 2004, the Court sustained the Trustee's objection to the IRA.
8. Nationwide has agreed to cooperate but is requesting a Court order to turn over the monies or proceeds of the IRA, including all funds allocated for tax purposes.
9. The trustee is unable to account for and administer all assets of the bankruptcy estate as required by 11 U.S.C. § 704 until the IRA has been turned over to the bankruptcy estate.

## DISCUSSION

The commencement of a bankruptcy case creates an estate. A bankruptcy estate is comprised of all legal and equitable interests of the debtor in property, wherever located and by whomever held. 11 U.S.C. § 541(a). On her Bankruptcy Petition, Schedule B, debtor listed the IRA that is the subject of this motion. Debtor claims an interest in this asset and there is no issue that the IRA is not property of the estate.

11 U.S.C. § 542(a) provides in pertinent part:

“ . . . an entity, other than a custodian, in possession, custody or control, during the case, of property that the trustee may use, sell or lease under section 363 of this title . . . shall deliver to the trustee, and account for, such property or the value of such property . . . .”

In this case, Nationwide is in possession and custody of the IRA which is property of the estate, and Nationwide is, therefore, subject to the requirements of this Code section and must account for and turnover the IRA to the trustee.

Dated this 11th day of October, 2004.

/e/Charles W. Ries  
Charles W. Ries  
200 Union Square Business Center  
201 North Broad Street  
P. O. Box 7  
Mankato, MN 56002-0007  
Telephone (507) 625-6600  
Attorney License No: 12767X

## VERIFICATION

STATE OF MINNESOTA

ss.

COUNTY OF BLUE EARTH

Charles W. Ries, declares under the penalty of perjury that he is the trustee in the above entitled action; that he has read the foregoing Trustee's Memorandum of Facts and Law in Support of Motion for Turnover with Exhibit A and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes them to be true.

/e/Charles W. Ries  
Charles W. Ries

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No: 04-30361 GFK

Patricia L. Tilford,

Debtor(s).

**DECLARATION RE: SERVICE BY MAIL**

The undersigned, being an employee of Maschka, Riedy & Ries, 200 Union Square Business Center, 201 North Broad Street, Mankato, Minnesota, declares under penalty of perjury that on the 11th day of October, 2004, she served the Notice of Hearing and Motion for Turnover and Trustee's Memorandum of Facts and Law in Support of Motion for Turnover by first class mail postage prepaid to each entity named below at the address stated below for each entity:

Nationwide Life and Annuity  
Attn: Processing  
PO Box 182008  
Columbus, OH 43218-2008

Patricia L. Tilford  
c/o Steven K. Murakami  
Bagniefski & Murakami  
PO Box 6  
Rochester, MN 55903

Teresa Marie Scharkey  
2505 Boulder Ridge Lane NW  
Rochester, MN 55901

Steven K Murakami  
Bagniefski & Murakami  
PO Box 6  
Rochester, MN 55903

United States Trustee  
1015 U S Courthouse  
300 S 4<sup>th</sup> St  
Minneapolis MN 55415

/e/Janet Anderson

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case No: 04-30361 GFK

Patricia L. Tilford,

Debtor(s).

ORDER

The above captioned matter came before the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, on motion by the Chapter 7 trustee Charles W. Ries seeking an order requiring Nationwide Life and Annuity to turn over information and certain assets.

Charles W. Ries appeared for the trustee. Other appearances are noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

Based upon the files and records, and arguments of counsel,

IT IS HEREBY ORDERED,

That Nationwide Life and Annuity turnover the monies or proceeds from annuity contract # 07-1087398 to the bankruptcy estate, including all funds allocated for tax purposes.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

---

Honorable Gregory F. Kishel  
United States Bankruptcy Judge



