

IRA CUSTODIAL RESPONSIBILITIES

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Why have IRA accountholders
appointed your FI as custodian?

- Answer: Required by law
 - Must be trust company or bank (regulated)
 - See account documents naming Custodian

What must your FI “do” as IRA Custodian?

- Answer: It depends
 - Three business models

All Tasks Performed by Trust CO or Bank

- Regulated Entity
- Asset Types: CU discretion
- Assets titled in CU name/indicia of ownership held in CU vault*
- Open New Accounts
- Maintain Forms
- Perform OFAC/KYC
- Tax Reporting
- Distributions / RMD's
- Relationship w/ Accountholder
- Prepare and Send Statements
- Execute Purchases / Sales
- Admin Reviews (per statute)
- Bill for and collect Fees
- Approve Assets
- Post Dividends
- Trust system/ Recordkeeping
- Cash Management

* Quintessential Custodial Duties

Active Oversight Model

CU Contracts with 3rd Party Provider

CU contracts w/ Service Provider to perform tasks in Core box EXCEPT for those law requires CU perform*

- Asset Types: CU/TPA discretion
- Assets titled TPA as agent for CU/indicia of ownership held in CU Vault
- CU oversees all TPA activity
- Monthly oversight meetings w/ reports
- CU performs New Account and Admin Account Reviews
- Cash Reconciliation Oversight

Rent a Name Model

- CU in name only, provides little if any oversight
- Title to assets NOT in CU's name
- CU does not have physical custody of indicia of ownership



Quintessential Custodial Duties

- Title to all IRA Assets and Cash
- Indicia of Ownership held by CU in vault
- Oversight of Service Providers
- Account Documents
 - Original Paper vs. Electronic

Custodial Duties by Contract: the most important tool to limit liability and to define CU “duty”

- Limit duty to IRS reporting and executing AH orders
- No resp for investment decisions
- No resp for asset due diligence
- CU does not conduct appraisals or verify values
- See Mat Sorensen contract checklist
- The Self-Directed IRA Handbook

Revocation

- Right to Revoke: w/i 7 days of receipt of disclosure statement—26 CFR 1.408-6(4)(A)(2)
- Method: mail, telephone, electronic, hand-delivery
- Risk

Day 1	2	3	4	5	6	7	8	9
Acct open-start date						End Date	Make Purch	TPA receives Rev
						AH Mails Rev		

The Procedure may require that the notice be in writing or that it be oral, or it may require both a written and an oral notice. If oral, must permit delivery via telephone call during normal business hours. If written, must be deemed mailed on date of postmark.

Does your FI have a duty to inform AH's of the 60-Day RO rule?

- Answer: No!
 - New Interpretation of the rule: The Bobrow case
 - Publication 590: "One RO per IRA" 12 month period
 - Tax Court: "One RO per AH" (not per IRA)
 - Problem: your FI will not know if AH holds IRAs at other FI's: may rely on representation of AH
 - Transfer instead of RO: no limit on # of transfers

Is your FI required to withhold for federal income taxes on distributions?

- Answer: Sometimes
 - CU must give option to w/h 0%, 10% or > 10%
 - If AH doesn't choose, CU must w/h 10% unless distribution is less than \$200 (since 1983)
 - Should not tell AHs how much they should w/h
 - CU not responsible for w/h penalty taxes

RMD: Should your FI determine whether a beneficiary trust is a look-through trust so that oldest Bennie's life can be used to calculate RMD?

- Answer: No—that's the trustee's job
- 4 requirements:
 - Trust valid under state law
 - Irrevocable at death
 - Have identifiable beneficiaries
 - Trust cc provided to CU by 10/31 year after death

Is your FI required to calculate AH RMD?

- Answer: yes and no
 - CU must send a notification or statement by 1/31 each year (AH = 70 ½ +)
 - CU must notify IRS: 5498, box 11
 - Must calculate if AH requests
 - RMD can be taken across all IRAs
 - CU not responsible for making sure AH actually takes RMD

Is your FI required to notify beneficiaries about distribution?

- Answer: No
 - Bennie is responsible for timely taking RMD
 - Some CU's will attempt to notify
 - No IRS rule that AHs name a Bennie, but some CU's require

Is your FI required to value IRA assets annually?

- Answer: Trick Question
 - CU's are responsible for *ENSURING THAT ALL IRA ASSETS ARE VALUED ANNUALLY* at FMV
 - Value may come from pricing source, public record, or the AH per account documents
 - Berks & Gist cases: CU can rely on source believed by it to be reliable but CU does not guarantee accuracy
 - CU not responsible for "pricing"
 - FMV definition: "FMV = zero" vs. "worthless"

Valuing Hard to Value Assets

- Real Estate
- Private Stock, LLCs
- Asset-related payments from account, not AH

Pricing Letters

Church Bond
Limited Liability Company
Limited Partnership
Private Stock
REIT

**1st Request
Valuation Letter**
November
Mailed to: Company Only

**2nd Request
Valuation Letter**
February
Mailed to: Company Only

**3rd Request
Valuation Letter**
May
Mailed to: Company,
cc. Account Holder & Rep

**Final Request
Valuation Letter**
June
Mailed to: Company,
cc. Account Holder & Rep

**Resignation
Letter**
September
Mailed to: Account Holder
& cc. Rep

Promissory Notes

To value, or not to value, that is the question

Substantiation

*To review for reasonableness, or not to review for
reasonableness, that is the other question*

Precious Metals:

- IRC Sec. 408 requires “a trustee” to maintain “physical possession” of precious metals held in IRAs
- Collectibles are prohibited-408(m)(1)
- Exemption: certain precious metals bullion products-408(m)(2)
 - (A) Certain described coins
 - (B) gold, silver, platinum, or palladium bullion coin or bar with a certain purity

If such bullion is in the physical possession of a trustee.

i.e. bank or trust company or non-bank entity with approval from US Treasury

- **Physical Possession**
 - A precious metals depository that stores bullion for IRAs has actual, physical possession
 - A CU that does not handle, store or otherwise take physical control has custodial possession but not physical possession
- **Industry Practice**
- **FI Concerns**
 - Quality of 3rd Party Depository
 - Due Diligence
 - Reconciliation/Statements
 - AH Instruction

Is your FI responsible if an IRA asset goes bad?

- Answer: No
 - Recent 11th Circuit case: Lamm (4/14/2014)
 - CU assumed no liability for losses arising out of acct transax except as caused by its negligence or willful misconduct
 - CU’s only duty is to follow AH’s instructions
 - CU’s perform zero “due diligence” for your benefit—Buyer Beware!

Recent Litigation

- Lamm IRA v. State Street
- Brown v. California Pension Administrators
- Paszamant v. Retirements Accounts
- Tucker v. Soy Capital
- Hines v. Fiserv
- Mandelbaum v. Fiserv
- Abbot v. Chemical Trust

Top Hot Button Issue: Reporting: New 5498 Asset categories

- Reporting for Hard-to-Value IRA Investments
- Optional for 2014/Due 5/31/2016
- Reportable investments include:
 - non-publicly traded stock,
 - partnership or LLC interests,
 - real estate, options, and
 - other hard-to-value investments.
 - This will affect issuers of:
 - **Form 5498**, *IRA Contribution Information*, and
 - **Form 1099-R**, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*

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- **New Box 15a—FMV of IRA investments**
- **New Box 15b--type of investments by category code:**
 - A - Stock or other ownership interest in a corporation that is not readily tradable on an established US or foreign securities market.
 - B - Short or long-term debt obligation that is not traded on an established securities market.
 - C - Ownership interest in a limited liability company or similar entity (unless the entity is traded on an established securities market).
 - D - Real estate.
 - E - Ownership interest in a partnership, trust, or similar entity (unless the entity is traded on an established securities market).
 - F - Option contract or similar product that is not offered for trade on an established US or foreign option exchange.
 - G - Other asset that does not have a readily available fair market value.
 - H - More than two types of assets (listed in A through G) are held in the IRA.

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