



IRA's-Unique Assets and Other Current Risks

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**For purposes of our discussion, any reference to “IRA” generally includes:
Individual Retirement Accounts (Traditional & Roth), SEPs and SIMPLEs**

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IRA prohibited transactions

- Borrowing from the IRA
- Pledging assets as collateral
 - Portion used as security will be deemed a distribution and taxable
- Life insurance
- Investment in collectibles
 - Artwork, rugs, stamps, gems, metals, antiques
- Transaction with disqualified persons



Who is a “disqualified person”?

- Family member (descendent/spouse/parent)
- Any fiduciary, includes account holder
- Any service provider
- Entity owned 50% or more by any of the above
- Officer/director/10% owner of such entity

Transactions with “disqualified persons”

- Fiduciary conflicts
 - Exercising authority over IRA administration
 - Exercising authority for a fee
 - Exercising discretionary authority over management
- Lending of money
 - Indirect use of assets to benefit family member or account holder
- Furnishing goods or services
- Sale, exchange or leasing of property
 - Interest in other persons (business partners, in-laws, siblings)
 - Buying for personal use (present or future)

How to prevent a possible Prohibited Transaction:

- Account pre-acceptance
 - Asset breakdown upon transfer/funding prior to acceptance
- 5498 report from operations
 - Detail of asset type, valuation, last price
- Automated pricing update form
 - Stale price beginning at 11 months
- Amendment account acceptance
 - Change in market value substantial

What to look for with possible Prohibited Transaction:

- Transaction with a disqualified person
 - Account owner, family member (spouse, lineal descendent, and any spouse of a lineal descendent)
 - Ownership of desired investment, position at such entity
 - You should not sale, lend, furnish, transfer, or lease any interest or property held within the IRA to the persons described above
- Radio advertisement
 - Buy gold and silver
 - Buy real estate
- Checkbook IRA LLC
 - Shares of LLC held in IRA, opens checking account in name of LLC, signs the checks accordingly

Compliance and Audit

- Account pre-acceptance
 - Asset breakdown upon transfer/funding prior to acceptance
- 5498 report from operations
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Potential consequences

- To the custodian/trustee
 - 15% excise tax with 100% additional tax if not corrected
 - Reputational risk
 - Obligation to correct transaction
- To the accountholder
 - Loss of tax qualification first day of year in which prohibited transaction occurs
 - Entire IRA is taxable

Unique assets

- Real estate
 - Personal use, or use by disqualified person
- Private notes
 - Potential for self-dealing
- Oil and gas
- U.S. gold coins in one, one-half, one-quarter, or one-tenth ounce, or one-ounce silver coins minted by the Treasury Department. It can also invest in certain platinum coins and certain gold, silver, palladium, and platinum bullion.

Why NOT in my IRA?

- Valuation
 - Current standard of valuation, appraisal value, independent
- Liquidity Issues
- Required Minimum Calculation and Payment
 - Under or over valuation
- Sweat Equity
- UBIT/990-T Excise

References/Research/Credit

- Natalie Choate, *Life and Death Planning for Retirement Benefits*
- American Bankers Association Professional Development
- Code section for reference 408 prohibitions, 4975 prohibitions, PTE 91-55, DOL Adv. Op. 2001-10A, 2009-09A, 2006-01A
- Ascensus Ascend, varied materials
- www.irs.gov

Questions/Comments

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