

Thompson & Associates
on course for tomorrow
The RIFT Project: Eliminating Delays When Requesting IRA & Other Death Claims

Johni Hays, JD
Executive Vice President
 johni@ceplan.com
 www.ceplan.com

1

Today's Presentation

- **The problem defined**
- **Who, what, when, why?**
- **Steps you can take now**
- **National work done toward permanent solution**

2

RIFT Project – all pro bono

Release
IRA
Funds
Timely

3

Who and What and When?

Delays and draconian paperwork with some financial institutions when paying IRA death claims to charities

4

Key to Understanding

Some IRA custodians won't pay "beneficiaries."

They only pay "customers."

Thompson & Associates

5

Intense Procedures to Receive the IRA Death Proceeds

- Instead of paying a death claim on the IRA, some financial institutions require the charity apply for and open up a **new** account first & then they transfer the donor's IRA into it
- Called an Inherited IRA (aka Beneficiary IRA)
- In order to establish the new account, the Custodian interprets the charity as their **"new customer"**
- Enter the Patriot Act (Section 326 - Know Your Customer but only applies to NEW CUSTOMERS) – Bank Secrecy, etc. - the administrators claim these apply

6

Procedures for the New Account

- **Require personal SSN of certain staff**
- **Require personal information of staff (e.g., personal financial statements, home address, copy of driver's license, etc.)**
- **In light of today's serious identity theft crisis, WHY would charities send them their personal SSN???**
- **Don't they know charities have their own EIN?**

7

Impact

- **Won't tell you the amount: 10 cents**
- **Delays: 2 to 3 full-ride scholarships**
- **Delays: 6 years**
- **Never told they were a beneficiary: 16 years**
- **CFO's personal 401(k)**
- **Withholding taxes – how to get it back?**
- **Won't pay until all beneficiaries have ALL sent paperwork**

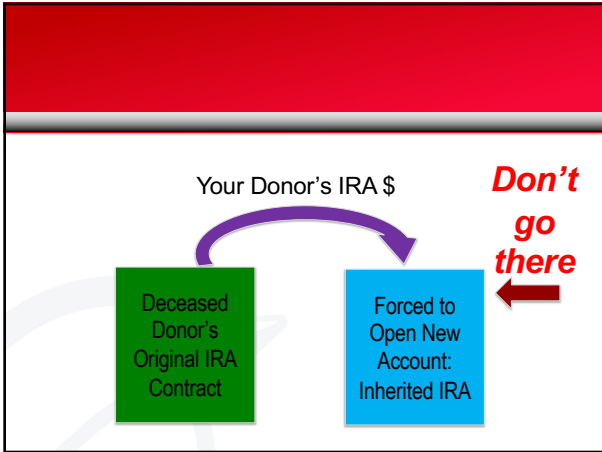
8

Opening the Inherited IRA

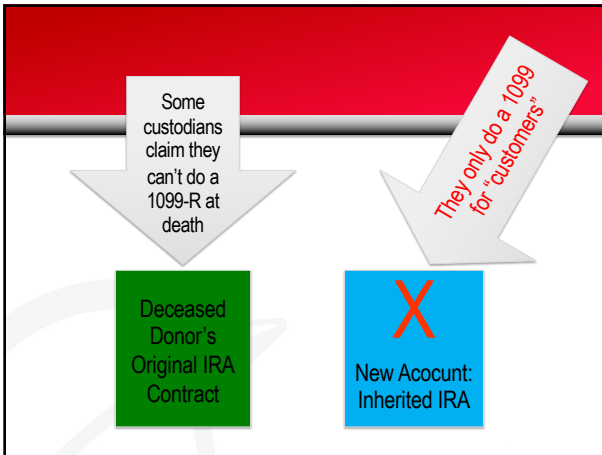
Two points of pushing back:

- 1) Charities don't want to open a "new" Inherited IRA account – instead want paid on donor's IRA contract without being a "new" customer. Don't like risk of identify theft or data breaches
- 2) **If** we have to open a new account - can't custodians access online IRS Publication 78 to realize the charity isn't a terrorist org?

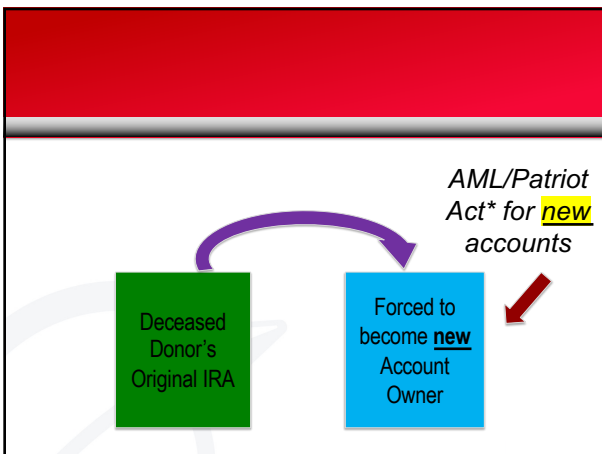
9



10



11



12

The Patriot Act*

Enacted to prevent terrorism after 9/11

Is the charity a “known terrorist?”

Why won’t they use IRS Publication 78?

* Know Your Customer, Customer Due Diligence, Customer Identification, Bank Secrecy, Etc.

13

Does the Patriot Act* Really Apply?

The Financial Crimes Enforcement Network (FinCEN) is the government agency that regulates compliance with the Patriot Act:

“If the beneficiary continues to maintain the account after the passing of the previous customer, the bank should treat them as a customer.”

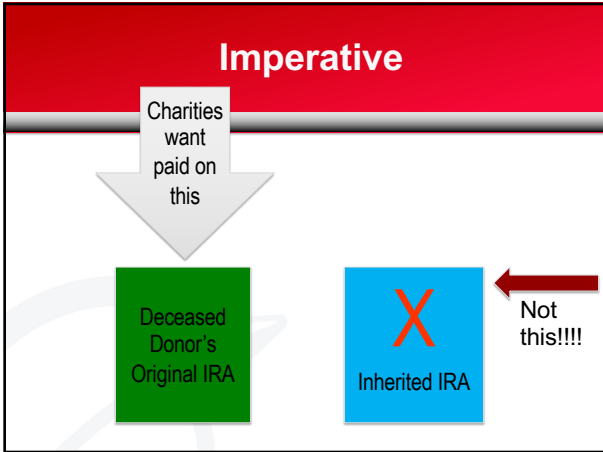
KEY! -FinCEN’s Resource Center
6/20/2019

14

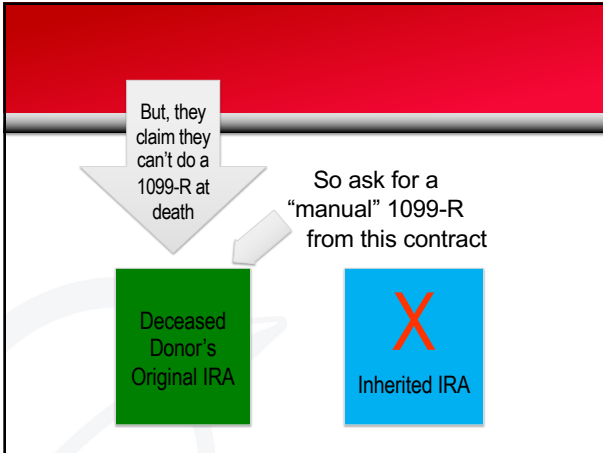
FinCEN

- **Reconfirmed in October 2022**
- **They’ll work on a resolution!!!!**

15



16



17


It's A Choice

Charities can provide the info if the charity wants to.

18

Why?

Why is this happening?




19

Why?


*“Asset Conservation”
Technique*

Used by Some IRA Custodians



20

Some charge multiple types of fees for opening the new account



21

Does the Charity Want to Leave Its Money There?

Why would any charity want to stretch out the receipt of their donor's gift?

They don't!

Thompson & Associates

22

Overlooked

Some custodians never considered charities' needs when they created their computer systems. They assumed all beneficiaries want to "stretch."

We are a small % of their business.

Thompson & Associates

23

Assess the Risk

- Charities - "low" risk for money laundering and terrorist activity
- Regulated into absurdity
- Beyond common sense!

Thompson & Associates

24

KEY!

- No law requires a charity to open new account or provide an employee's SSN

Thompson & Associates

25

Ponder This.....

If all these IRA custodians were **REALLY** interpreting the law correctly, how is it that all the **other** IRA custodians aren't requiring the "new account" and the invasive information to pay the claim?????

It is just their internal company policy.

Thompson & Associates

26

Reason? Or Excuse?

- "Our computer system won't allow us to pay without opening the Inherited IRA"
- "We can't issue a manual 1099-R" (note that's not true!)
- "All custodians do it this way" (not true)
- "We'll never make an exception"
- "The IRS requires it" (not an Inherited IRA!)

Thompson & Associates

27

What Custodians Have Said

“Just do as we say and you’ll get your money faster than complaining....”

Thompson & Associates

28

What Custodians Have Said

- *“We aren’t going to compromise.”*
- *“Let the death claim sit with us until it goes to a statewide unclaimed property fund. Then try to get the money.”*
- *“Go see a judge and get a court order if you don’t like how we do it.”*

Thompson & Associates

29

The Problem is Expanding

Some custodians won’t EVEN tell you you’re a beneficiary in the first place!!!!

“Schwab has no obligation to locate or notify any beneficiary or to independently verify any information submitted either by your Authorized Party or any person claiming an interest in your account.”

– From Schwab’s Beneficiary Account Terms ©2019 Charles Schwab & Co., Inc. (“Schwab”). All rights reserved. Member SIPC. 00234269
CC2711121 (0519-9GXP) APP10149-19 (12/19)

Thompson & Associates

30

The Problem is Expanding

- Some Financial Institutions require a 2nd account for non-IRA accounts – “TOD accounts”
- See RIFT Database on CGP website for sample “TOD” letter

Thompson & Associates

31

The Problem is Expanding

- Some Financial Institutions require a 2nd account for charitable beneficiaries of a CRT and other trusts
- RIFT has sample “trust beneficiary” letter

Thompson & Associates

32

*Nationwide
working on a
permanent solution*

Thompson & Associates

33

RIFT Database

Database of IRA Administrators

- How to work through each IRA Administrator's process
- Who to contact
- What paperwork is required
- Sample letters and when to use each one
- NACGP gives charities and advisors free access

Thompson & Associates

34

Free Access to Database

Don't need membership of national CGP to use website

www.charitablegiftplanners.org/ira-distribution-resource-center

Thompson & Associates

35

Charitable Beneficiary IRA Distribution Resource Center

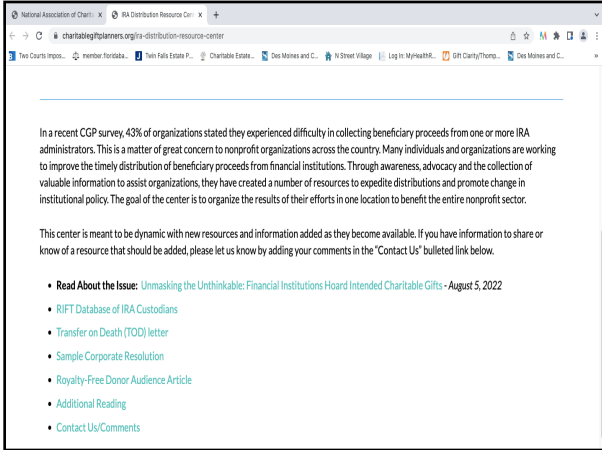
In a recent CGP survey 43% of organizations stated they experienced difficulty in collecting beneficiary proceeds from one or more IRA administrators.

In a recent CGP survey 42% of organizations stated they experienced difficulty in collecting beneficiary proceeds from one or more IRA administrators. This is a matter of great concern to nonprofit organizations across the country. Many individuals and organizations are working to improve the timely distribution of beneficiary proceeds from financial institutions. Through awareness, advocacy and the collection of valuable information to assist organizations, they have created a number of resources to expedite distributions and promote change in institutional policy. The goal of the center is to organize the results of their efforts in one location to benefit the entire nonprofit sector.

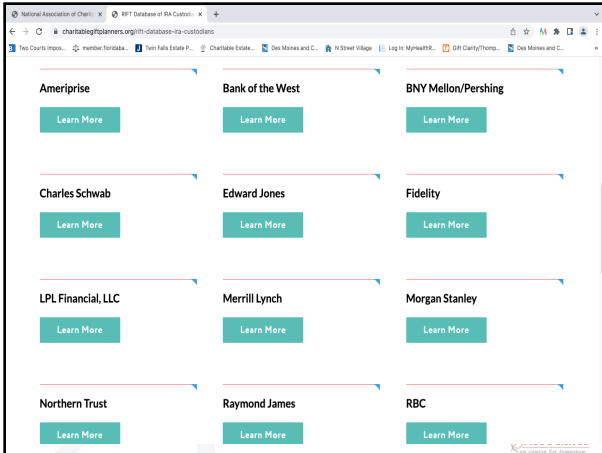
This center is meant to be dynamic with new resources and information added as they become available. If you have information to share or

Thompson & Associates

36



37



38

Who Does Not Require an Inherited IRA

As of 1/1/2023:

• BNY Mellon/Pershing	• TD Ameritrade
• Edward Jones	• UBS
• Merrill Lynch	• US Bank
• Morgan Stanley*	• Vanguard*
• Raymond James	• Wells Fargo Bank

*Yet TOD's require opening a new account

Thompson & Associates

39

Who'll Make an Exception?

As of 1/1/2023: **KEY!** Charities have to ask for the exception—it is not automatic. Use the RIFT letter made especially for this exception. Always get the most up-to-date RIFT information first as each has different requirements:

- Charles Schwab – very easy to work with

Thompson & Associates

40

Other National Efforts

FinCEN agency needs to get involved with a formal pronouncement or allow for a safe-harbor

- www.fincen.gov/contact
- Email to FRC@fincen.gov
- Leave message @ 703-905-3591 hotline
- Himamauli "Him" Das – Acting Director


Thompson & Associates

41

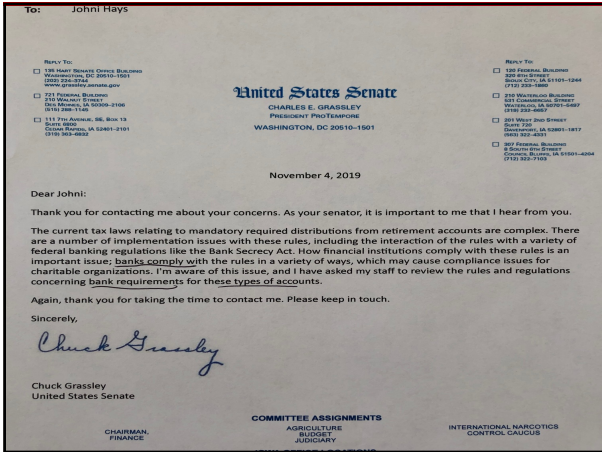
National Efforts

**Former
Chair of Senate Finance
Committee**

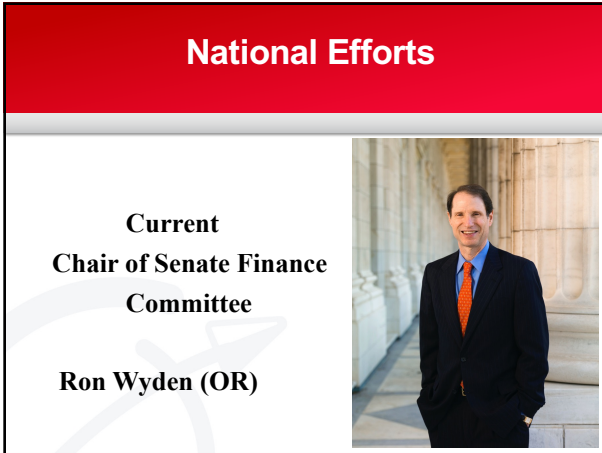
SFC investigator



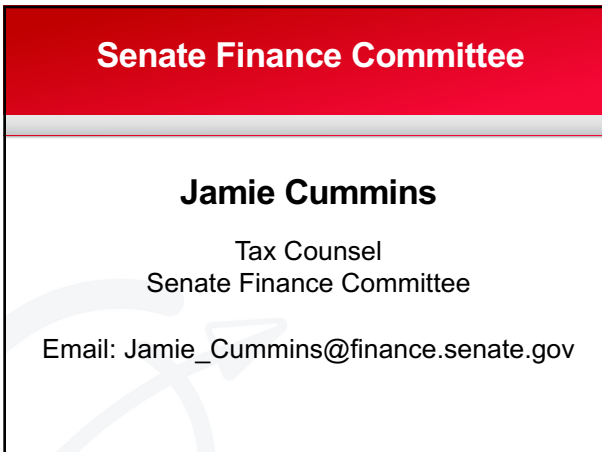
42



43




44



45

Other National Efforts


Contacted
Congresswoman
Maxine Waters,
Chairwoman - House
Financial Services Committee



46

National Articles


- Jonathan Tidd, "Giving or Leaving IRA Assets to Charity," *Trust & Estates* magazine, 9/21/2018
- Christopher Hoyt, "Obstacles When Charities are Named as Beneficiary of a Retirement Account," *Trust & Estates* magazine, 5/21/21
- Michael Taylor, "Bequests from IRAs end up in limbo often," *Houston Chronicle*, 5/15/2021



47


Other National Efforts

- FinCEN meeting – Oct 2022
- Waiting on still.....FinCEN Request for Ruling due by early Nov. 2022
- Met with Fidelity lawyers in summer and fall 2021 (Thanks to Doyle Sanders and Professor Chris Hoyt) and Spring of 2022
- Possible WSJ Op-ed
- Nationwide litigation – class action



48

What Can A Charity Do Now?




49

What Can A Charity Do?

Imperative: communicate with general counsel of Financial Institution – as *the local advisor, agent, clerk, manager, etc., may not have the authority to make the exception you need. KEY!!*

Jonathan Tidd recommends charity's counsel to the custodian's counsel.




50

Keys to Success

Use RIFT sample letters.....

And send to the CC.....it is working to get their attention!



51

First Steps

When notified the charity org is a beneficiary, go to RIFT Database online **first!**

1. If the IRA custodian **DOES NOT** require an Inherited IRA, ok to work with local office/agent
2. If Schwab, who **needs an exception**, send specific Schultz Letter B
3. If they **require an Inherited IRA**, Hays IRA letter as shown on RIFT Database. Critical to bypass LOCAL OFFICE/AGENT to get the relief.

Thompson & Associates

52

Talk to Donors About The Benefits of Disclosing

- Explain why during planned giving conversations
- Write articles on the benefits of donor disclosure
- Website information why it is important to disclose
- Disclose which custodian, account number, etc.

Thompson & Associates

53

Talk to Donors

- The benefits of having a separate IRA account for charities than for individuals

Thompson & Associates

54

Can you get involved?

Would you email me your experiences?

55

Take Action!

- **Contact Senator Wyden & Jamie Cummins**
- **Contact FinCEN**
- **Use RIFT letters**

56

Take Action!

- **Got results – good or bad? Let me know!**
- **Working together we are definitely making a difference!**

57

Thompson & AssociatesSM
on course for tomorrow

Questions?

Johni Hays, JD
Executive Vice President
johni@ceplan.com
www.ceplan.com
