

[Jeff Lydenberg](#) - Fri, 6/15/2018 - 11:49

PG Calc's [March Featured Article](#) discussed the practical challenges of making a charity the beneficiary of an IRA and other qualified plans upon the donor's death. The process of completing the beneficiary designation form is complicated and bureaucratic. And then there's the matter of collecting the proceeds after the donor's death.

If you haven't read it yet, check out Jeff Comfort's two-part series on collecting IRA proceeds that ran in 2016 in *Planned Giving Today*. As Jeff notes, the essential problem is that IRAs are designed generally for the benefit of individuals, not corporate or charitable entities. That is the root of the problem of collecting IRA beneficiary gifts at the death of the donor.

The path to collecting charitable distributions at the death of an IRA donor is littered with obstacles. Our March article noted that Vanguard and Fidelity disclaim the duty to notify the charity it is a beneficiary of an IRA when their customer dies. The executor or a relative may let you know, however. Following the death of a known IRA beneficiary donor, contact the administrator, if known, or the executor and inquire about your anticipated gift. The default position of most IRA administrators is that the charity must open an inherited IRA account to receive the funds from a deceased customer's IRA. After the inherited IRA account is opened in the charity's name, then the charity can instruct the administrator to distribute the proceeds to fulfill the donor's charitable intent. Let's unpack this process to see why it is intrusive, bureaucratic, and unnecessary. We'll offer some advice on how to smooth out the process.

Three Approaches to Receiving Testamentary IRA Gifts

There are three approaches to how to claim a charitable distribution from an IRA. First, complete the forms and provide highly confidential information on a charity employee. That is the path of least resistance but is unnecessarily intrusive and could expose the employee to identity fraud. The second approach is to open an inherited IRA and complete the forms on behalf of and in the capacity of receiving the distribution as a charitable entity. A charitable organization opening an inherited IRA is a square peg in a round hole problem. It doesn't fit. The third approach is to refuse to open an inherited IRA at all. This approach relies on the distribution from the IRA as a transfer-on-death transaction.

Approach 1: Bite the Bullet and Fill Out the Forms

You may learn of your donor's death and contact the IRA administrator to ask how to access the charitable distribution. This can be frustrating. The IRA administrator will not disclose any information about their client without proof you are legally entitled to the information. You can ask the executor or the estate attorney to make the contact on your behalf. The administrator will

send you a thick packet of forms to complete.

Alternatively, you may first learn your charity is the beneficiary of an inherited IRA when a package of forms from the administrator arrive in the mail. Fidelity's customer agreement and various disclosures runs to 62 pages and the account application is 11 pages. The application becomes a major stumbling block. The form requires information regarding the deceased account owner, including his or her social security number. You are unlikely to know that. Many administrators will also require a copy of the deceased account owner's death certificate. Most county probate courts will only send a death certificate to lineal descendants. A charity, by definition, cannot be a lineal descendent. Once again, the executor or lawyer for the estate should be able to get a death certificate and the decedent's social security number. An original death certificate, not a copy, is often required.

Immediately on opening the application, it becomes clear that the form anticipates it will be completed by a natural person, an individual, not an entity. The administrator wants the first, middle and last name, social security number, driver's license number, and date of birth of the applicant. The path of least resistance is to provide personal, sensitive information as if the signer were opening the account. Why would a charity do that? To get the money!

Approach 2: Open an Inherited IRA as a Charitable Beneficiary

The middle ground is to enter the name of your charity, its tax identification number, and the address and contact information for the person administering the distribution for your organization. Mark N/A for each field that is irrelevant or inapplicable. A charity's source of income or investment experience are obviously inapplicable but often requested!! It is good practice to have the application signed by an officer of the charity. You might also include a certificate of the Board Secretary showing that the signer has authority to engage in financial transactions on the part of your charity.

The administrator may (often!) reject the application and say they need personal information for an individual, that is a natural person, not an entity. The excuses for these rejections are varied and obscure. The administrator may say the Patriot Act, the Know Your Customer Laws, anti-money laundering laws, and anti-terrorist statutes require an individual to open the account. The administrator will be unable to provide citation to the relevant authority requiring highly personal information of a charity employee. Jeff Comfort notes in his articles that Section 326 of the Patriot Act (see [31 U.S.C. 5318 \(l\)](#)) and it's enabling regulations (See [C.F.R. §103.121\(a\)\(6\)](#)) permits an employer identification number as sufficient to meet its verification of identity requirements. The Know Your Customer laws are part of the Patriot Act so don't be deterred by the argument that an employer identification number is insufficient identification.

Approach 3: Stand Your Ground!

This approach begins with the premise that opening an inherited IRA account to receive a charitable IRA distribution is a farce, a charade, and overreaching. Begin by writing a letter to the administrator, requesting a distribution. Include the deceased owner's identifying information your charity's full legal name, address, tax identification number and contact information. Provide wiring instructions and tell them you would accept a check made out to the charity. As with the second approach, include a Secretary's certificate to establish the signer of the letter is an officer of the charity.

Anticipate that you will hear from the Inherited IRA department that the administrator is legally required to transfer the decedent's IRA into an IRA for the benefit of your charity. This is where the work begins. Front line customer service representatives will insist such an arrangement is legally required. Work up the chain to a supervisor, department V.P., the compliance department, and sometimes the administrator's general counsel's office.

The administrator will continue to contend that legal requirements force them to comply with the Inherited IRA requirement. Ask them for legal authority that supports their position. The Patriot Act which includes the Know Your Customer laws requires financial institutions take reasonable measures to verify the identity of those with whom it does business. We've already established a charity's tax identification number is sufficient for this purpose. The Patriot Act requires a financial institution maintain records of the identifying information. The administrator must also consult lists of known or suspected terrorists or terrorist organizations. Cite [31 U.S.C. §5318\(l\)\(2\)\(A\) and \(B\)](#) of the Patriot Act and the regulations cited above.

Standing your ground comes at a cost. Negotiating with the IRA administrator will divert staff resources both in the development office and other offices. Engaging outside counsel if that is required is going to be expensive. The core role of the planned giving officer is to raise funds through deferred gifts. It's not a stretch to say administering IRA beneficiary gifts is also raising funds for charity. The decision as to how to manage an Inherited IRA situation can come down to an allocation of resources.

War (Horror?) Stories

Any planned giving officer has stories of managing difficult IRA beneficiary gifts. One of my most disappointing situations was an IRA administrator that would not accept an Inherited IRA application using the second approach described above. The charity provided all of its identifying information and the signature of an authorized officer. The negotiations dragged on for years - yes, I said years. Finally, the company turned over the funds (\$35,000) to the state unclaimed funds office. The state office of unclaimed funds could find no record of the distribution from the IRA. The client decided the cost of litigation far outweighed the gift at issue and dropped the matter.

In another situation, my charity client opened an Inherited IRA likewise using the second approach above. The gift was around \$350,000. The Chief Development Officer (CDO) signed the application and provided a Secretary's certificate. The CDO did not provide any other identifying information. A few weeks later, the CDO looked at his personal IRA account and the \$350,000 had been deposited in his account! How did they identify him? Why were the funds in his account? After a round of long, angry (I'm not proud of the fact I lost my temper several times) phone calls, they could never explain how they even found the CDO's account since we never provided a social, a driver's license number, or an address. Ultimately, the transaction was reversed, the money was deposited in the charity's account and we never got answers to our questions.

Conclusion

It turns out the "easy" end-of-life gift, the IRA designation, is not so easy after all. There are challenges to even naming a charity as beneficiary of an IRA discussed in the first article in this series. Educate yourself on what it takes to complete an IRA beneficiary designation form. Offer tips on completing the forms in your marketing materials or create simple letters on how to make your charity an IRA beneficiary.

The financial services industry needs coordinated, explicit instructions on how to manage IRA distributions to charity. The multi-step process of creating an Inherited IRA account and then immediately liquidating assets is unsustainable for the charitable community. Much of the advice in this article requires sophisticated planned giving resources to implement. The majority of charities that receive IRA beneficiary gifts are unlikely to have those resources.

Perhaps the solution is legislative. Advocacy efforts by the National Association of Charitable Gift Planners includes reforming the process of IRA distributions. If you aren't a member of CGP, consider joining to stay up to date on these initiatives. Reach out to your network of professional advisers and other development professionals to help with difficult IRA administrators. In short, stay educated and work to carry out your donor's intentions.

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