


PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS




**Calming Troubled Waters:
Getting IRA Death Proceeds
in a Timely Manner**

Date: June 27, 2024
Time: 1:00 – 2:00 Eastern
Presenter: Johni Hays
Executive Vice President
Thompson & Associates

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**Release
IRA
Funds
Timely**



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PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS **Agenda**

- The problem
- National work done toward permanent solution
- State work done toward a permanent solution
- Steps you can take today to assist your donors

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Who and What and When?

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

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Key to Understanding

Custodians pay death claims either one of two ways:

Door #1 or Door #2

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Key to Understanding


It's up to each custodian how they pay the claim

No consensus or uniformity

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PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS **Key to Understanding**

 **Door #1 (the right way, IMHO)**

After receiving basic info on the deceased and beneficiary, they pay the claim usually in 30 days

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- Name of deceased
- Death certificate
- Tax exempt status/articles of incorporation
- Corporate resolution
- W-9

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PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS **Key to Understanding**

 **Door #2**

Some IRA custodians won't pay claims to "beneficiaries."

They only pay if beneficiary (i.e., your charity) [†] becomes their new "customer."

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Procedures for the New Account

- Door #2 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 Door #2 Custodian *interprets* the charity as their **"new customer"**
- That's where things fall off the rails

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Procedures for the New Account

Require personal information of charity employee(s)/board members:

- Social Security Number
- personal financial statements
- home address
- driver's license
- credit checks
- spouse's maiden name

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How Do You Know Which Door?

- They may never tell you!
- They just send 50 pages of forms
- New Business Form
- New Owner Form
- Tax ID number of control person
- Then you have to liquidate this new account with a whole new set of forms to cash it in
- Delays, delays, delays

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Most Important!

- **No law requires a charity to open a new account**
- **NO LAW REQUIRES DOOR #2**
- It's the financial company's business/compliance own choice/policy

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Impact on Charities

- Takes 1-2 years to pay
- Waited 6 years
- Resent the paperwork 8 different times
- Placed on "hold" by custodian more than 8 hours
- Happens with every single death claim every single time – no exceptions
- Never told it was beneficiary – 16 years went by
- Received 10 cents
- Fees to open account/close account
- Custodian staff turnover
- Custodian 'loses' paperwork

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Impact

- Delays: 2 to 3 full-ride scholarships
- CFO's personal 401(k)
- First ladies of the US
- Withholding taxes – how to get it back?
- Won't pay any charity until all beneficiaries have ALL sent in paperwork

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“Asset Conservation” Technique

Used by Some IRA Custodians

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Some charge multiple types of fees for opening the new account or closing accounts.

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In light of today's serious identity theft crisis and constant data breaches WHY would charities send their personal SSN???

Don't they know charities have their own EIN?

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Charities can provide the personal info if the charity wants to.

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“You have two choices:

- 1: *Give us the SSN, or*
- 2: *Disclaim the account!”*

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PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS **What Custodians Have Told Us**

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

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What Custodians Have Told Us

- “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.”

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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.”

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The Problem is Expanding

Some Financial Institutions require a 2nd account for non-IRA accounts – “TOD accounts”

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The Problem is Expanding

Some financial institutions require a 2nd account for payments to the charitable beneficiaries of a Charitable Remainder Trust and other trusts

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Tax Withholding Issues

Improper withholding of federal income taxes by financial institutions

Costing charities 10-20% or more

Years to get money back chasing it from the IRS to refund the withheld tax dollars

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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.”

-FinCEN's Resource Center
6/20/2019

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Reconfirmed in October 2022 with 7 of their lawyers

But stay tuned...more later...

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- Charities - “low” risk for money laundering and terrorist activity
- Regulated into absurdity – it would be funny if it wasn’t so serious – gov’t regulations run amok
- Beyond common sense!

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PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS **Ponder this.....**

If all these Door #2 custodians were **REALLY** interpreting the law correctly, how is it that all the **Door #1** custodians aren’t requiring the “new account” and the invasive personal information to pay the claim?

It is just their business practice – not a legal requirement.

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PG Calc YOUR PARTNER IN PLANNED GIVING SUCCESS **Latest FinCEN**

Requested FinCEN ruling against Fidelity August 2022:
...Community Foundation Request for an Administrative Ruling Pursuant to 31 CFR 1010.711
Date: April 14, 2023

"Whether a broker-dealer must comply with written verification requirements in the CIP Rule and CDD rule when distributing to a beneficiary....."

To the extent that Fidelity requires a 2nd account... then yes.
No legal requirement to open a 2nd account just to pay a charity!!!!

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- Broker-dealers want a SSN so RIFT met with FinCEN to clarify
- Pled our case
- FinCEN is worried charities could be funneling money to Hamas with death claims from IRAs (YES - REALLY???)!!!!

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Then suddenly told about this new public FinCEN document.

FinCEN said:

- IF the account is with a "Broker-dealer" **AND**
- IF it is a Broker dealer requires a new account (i.e., Door #2)

Then the charity HAS to give the **SSN** of its control person

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Broker-Dealer Examples

- Vanguard
- Fidelity
- RBC
- Ameriprise

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FinCEN Spring 2024

What it didn't say:

That an Inherited IRA/2nd account (Door #2) is required by FinCEN to pay a death claim.

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What Do We Do Now?

What we still don't know and are researching.....what is the weight of authority of this FinCEN ruling. SSN may still be required?????

- General Counsel Webinar in August
- Lobbyist
- Class action

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What Do We Do Now?

Push back on Door #2 companies by using the RIFT letters. (SSN may still be required due to FinCEN in certain instances?????)

Door #1 companies don't involve this problem.

Escalate your RIFT letter to:

- Head of Risk Management
- Head of AML (anti money laundering) department
- General Counsel's office

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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

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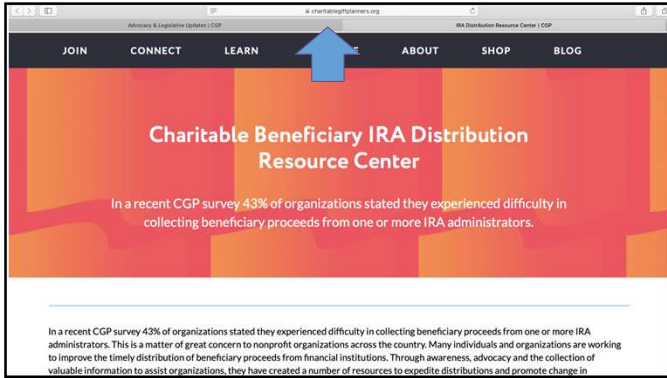
Free Access to RIFT Database

Don't need membership in national CGP to use website

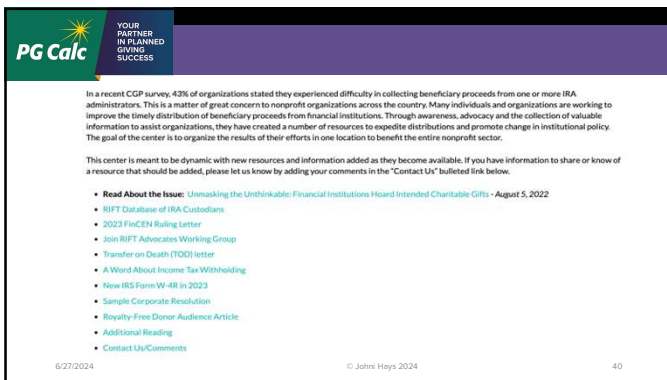
www.charitablegiftplanners.org/ira-distribution-resource-center

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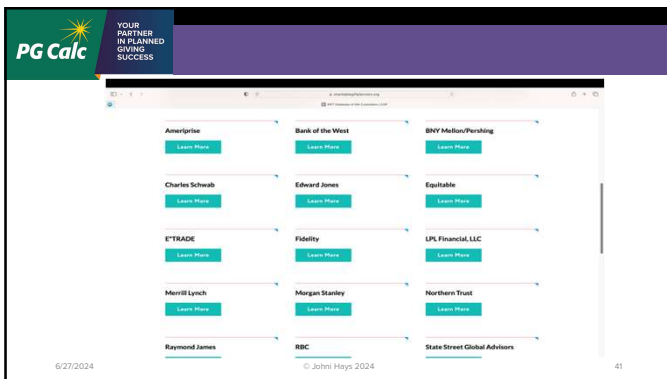
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Who Does NOT Require An Inherited IRA

As of 6/1/2024:

- Ameriprise
- Bank of the West
- BNY Mellon/Pershing
- Edward Jones
- Merrill Lynch
- Morgan Stanley*
- Raymond James

- TD Ameritrade (but now see Schwab)
- TIAA
- UBS (most of the time)
- US Bank
- Vanguard*
- Wells Fargo Bank & Advisors

*Yet TOD's require opening a new account

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Who Will Make An Exception

As of 6/1/2024: KEY! Charities have to ask for the exception—it is not automatic. Use the RIFT letter made especially for this exception.

- Charles Schwab – very easy to work with once you ask for the exception. If you don't ask for it, they'll make you open the Inherited IRA.
- Equitable - Equitable will allow an exception if the charity pushes back against its requirements.


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NEW

**“RIFT Advocates”
Bequest Working Group**



For charities to participate, contact:
Karen Smedley – Duke University
Phone: 919-684-0367

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10 Tips for Charity's Success

1. Follow-up at least weekly or biweekly with the custodian for a status update
2. Keep copies of EVERYTHING you send – “they’ll lose it 8 times”
3. Reject the custodian’s request for information not required of charities
4. Know when/where to use new IRS Form W4-P
5. Use the RIFT database - check every time your charity client has a new claim due to new updates

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10 Tips for Charity's Success

6. Know whose paper the death claim account is written on – work with them and avoid middlemen if possible
7. Realize the custodian may not tell you the amount of the charity’s claim – push back – that’s the charity’s account now; also ask if there are other charitable beneficiaries as they can work together to push back
8. Beware of income tax withholding issues – especially with qualified retirement plans. Fix it right away if the custodian withholds income tax – have them remedy it immediately.

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10 Tips for Charity's Success

9. Know that IRAs can be processed differently than TOD accounts within the same custodian
10. Avoid asking for exceptions from anyone but their legal department – others (e.g., local reps, customer service staff, etc., have no authority to make the needed exceptions.)

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New Iowa RIFT Law

- State legislation (Iowa example)
- HF2366
- Effective 7-1-24
- Provides penalties and legal fees if it takes longer than 30 days to pay a charity's claim

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HF 2366 Provisions

Then the financial institution **shall not ask** for any other personal information from any employee or board member of the charity.

The financial institution specifically cannot ask for:

- Social Security Number
- Driver's license number
- Contact information
- Personal financial information

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Can this statute be shared with other states?

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State Efforts

- Every state attorney general oversees the performance of charitable trusts and their fiduciaries.
- The state attorney general is charged with protecting consumers from unfair trade practices.
- Met with North Carolina Attorney General Josh Stein's office to explain the issue of charities being forced to become customers of a financial institution.
- NC Attorney General is looking into this.

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State Efforts

Presentation made to the Tennessee Attorney General's Office in August 2023

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Join RIFT Advocates

To participate, contact:

Karen Smedley – Duke University
 Phone: 919-684-0367
Karen.Smedley@Duke.edu

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Join RIFT Advocates

What Can Your Charity Do **Now?**

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Contact

Contact Senator Tim Scott (South Carolina)
P: (202) 224-6121

Contact Senator Jerry Moran (Kansas)
P: (202) 224-6521

Contact Senator Ron Wyden (Oregon) - **Chair of Senate Finance Committee**
P: (202) 224-5244
F: (202) 228-2717

Contact Senator Mike Crapo (Idaho) - **Ranking Member Senate Finance Committee**
Phone: (202) 224-6142
Fax: (202) 228-1375

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Contact

Jamie Cummins
Senior Tax Counsel
Senate Finance Committee

Email: Jamie_Cummins@finance.senate.gov

Charities need to share how hard this is on them.

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Contact FinCEN

www.fincen.gov/contact
 Email to FRC@fincen.gov
 Leave message @ 703-905-3591 hotline
 Andrea Gacki, Director
 Ms. Gacki – needs to hear how hard this is on charities
 And FinCEN is wrong on the 2024 Fidelity ruling

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Keys for Success

Use RIFT sample letters
 And send to the CC people on the sample letters.....it is working to get their attention

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What Can a Charity Do Now

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.

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If your charity wants to get involved?

*Email your experiences to RIFT
johni@ceplan.com*

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Working together we are definitely making a difference!

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Questions?



Click the Q&A icon at the bottom of your screen.

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Still Have a Question?

Contact: Johni Hays
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E-mail: johni@ceplan.com

Phone: 515-988-8817



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