

Checkbook IRAs for Real Estate Investors
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An IRA is a special type of trust that the Federal Government allows you to use in order to save money for your retirement in a tax preferred environment. The fact that you can grow money without a tax on the growth is a big deal!

In exchange for the privilege of growing your money without a tax, the government imposes certain restrictions on your access to your money. Your money has to be held and managed by an IRS approved trustee. You can't access your money before you get to be 59 years old, participate in any prohibited transactions, or cause your IRA funds to be used in any situation that could be considered "self dealing."

All of the rules hinge on the trustee controlling the funds. It is a pain to deal with the trustees if you are doing anything other than buying stocks and bonds. In fact, most trustees, like banks and brokerage houses, only allow you to invest in narrow classes of securities. However, a "self directed IRA trustee" will allow you to make other types of investments. BUT, the trustee has to actually do the investing. The trustee doesn't act fast and charges for ever transaction. Self directed IRA trustees are slow and expensive!

In order to get around the expense and frustration of working with the self directed IRA trustees, a concept known as "checkbook IRAs" has become very popular in the last few years. A lot of self directed IRA trustees are pushing really hard to promote themselves as the King of Checkbook IRAs.

Basically, a checkbook IRA set up goes something like this: 1. A self directed IRA is established with a "friendly" self directed IRA trustee. 2. An LLC is established by the IRA owner. 3. The self directed IRA trustee buys all of the "stock" (membership interests) in the LLC using the IRA money. All of the IRA money is transferred to the LLC in exchange for the membership interests. 4. You, the manager of the LLC, now have control "checkbook control" over all of the money that was in the IRA. You can spend the money as you wish as manager of the LLC.

All of the self directed IRA trustees promoting checkbook IRAs will tell you that you can spend the money as you wish. All of these guys site the Swanson case as the authority that lets you do the checkbook IRA.

The 1996 tax court case, where the IRS came after Mr. Swanson, is the primary justification for most "weird stuff" people want to do with IRAs. Mr. Swanson set up an IRA. The IRA bought stock in Mr. Swanson's company that acted as the distribution part of his tool business. All of the profits or "sales commissions" the distribution company got from the tool company dropped directly into Mr. Swanson's IRA. The IRS said he couldn't do that.

He beat the IRS on the case they brought against him. The IRS said his IRA couldn't own part of his business. The IRS said he was violating the prohibited transaction and self dealing rules. The IRS lost. The IRS got spanked by the tax court.

Swanson is always cited for the checkbook IRA concept, but everyone "fuzzies up" the logic that justifies checkbook IRAs. The Swanson case didn't have anything to do with checkbook IRAs. It does not justify checkbook IRAs in any respect.

People who do the checkbook IRAs are violating a ton of IRS rules. They will lose their IRA and pay heavy penalties when the IRS looks into the matters. It will take the IRS years to get around to looking into the checkbook IRA you have, but they will come. Obama has doubled the number of IRS agents, so they will come faster than they used to.

The fact that the self directed IRA trustee says you can set up a checkbook IRA deal doesn't make it right in the eyes of the IRS. The trustee has no liability to the IRS. You are liable. The biggest self directed IRA trustees won't let you do a checkbook IRA. Most trustees actually promote the checkbook IRA, but the two biggest IRA trustees, Entrust and Equity trust, don't do it.

In summary: checkbook IRAs? Yes or No? The answer is no and Hell NO!