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## **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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# RIFT – All pro bono volunteer project

**R**elease  
**I**RA  
**F**unds  
**T**imely



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



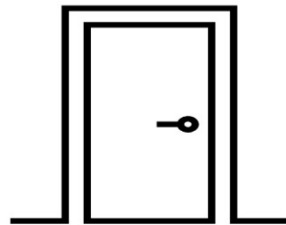
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## Who and What and When?

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

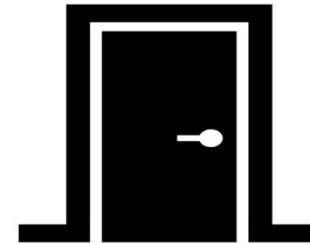
*Custodians pay death claims either  
one of two ways:*

*Door #1*



*or*

*Door #2*



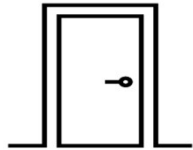


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## Key to Understanding

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

No consensus or uniformity



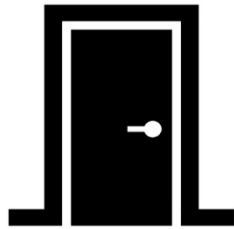
## *Door #1 (the right way, IMHO)*

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

## Typical Information Requested

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





## *Door #2*

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

*They only pay if beneficiary (i.e., your charity) 1<sup>st</sup> becomes their new "customer."*

## 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

## 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

- 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

## 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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Why?

# *“Asset Conservation” Technique*

Used by Some IRA Custodians



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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## It's a Choice

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



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## What Custodians Have Told Us

*“You have two choices:*

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



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## What Custodians Have Told Us

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

## 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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CC2711121 (0519-9GXP) APP10149-19 (12/19)



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## The Problem is Expanding

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



## The Problem is Expanding

Some financial institutions require a 2<sup>nd</sup> 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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FinCEN

Reconfirmed in October 2022 with 7 of  
their lawyers

But stay tuned...more later...

## Assess the Risk

- 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!

## 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.

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 2<sup>nd</sup> account... then yes.  
**No legal requirement to open a 2<sup>nd</sup> account just to pay a charity!!!!**

- 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???)



Then suddenly told about this new public FinCEN document.

FinCEN said:

- a) **IF** the account is with a “Broker-dealer” **AND**
- b) **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/2<sup>nd</sup> account (Door #2) is required by FinCEN to pay a death claim.

## 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

### 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

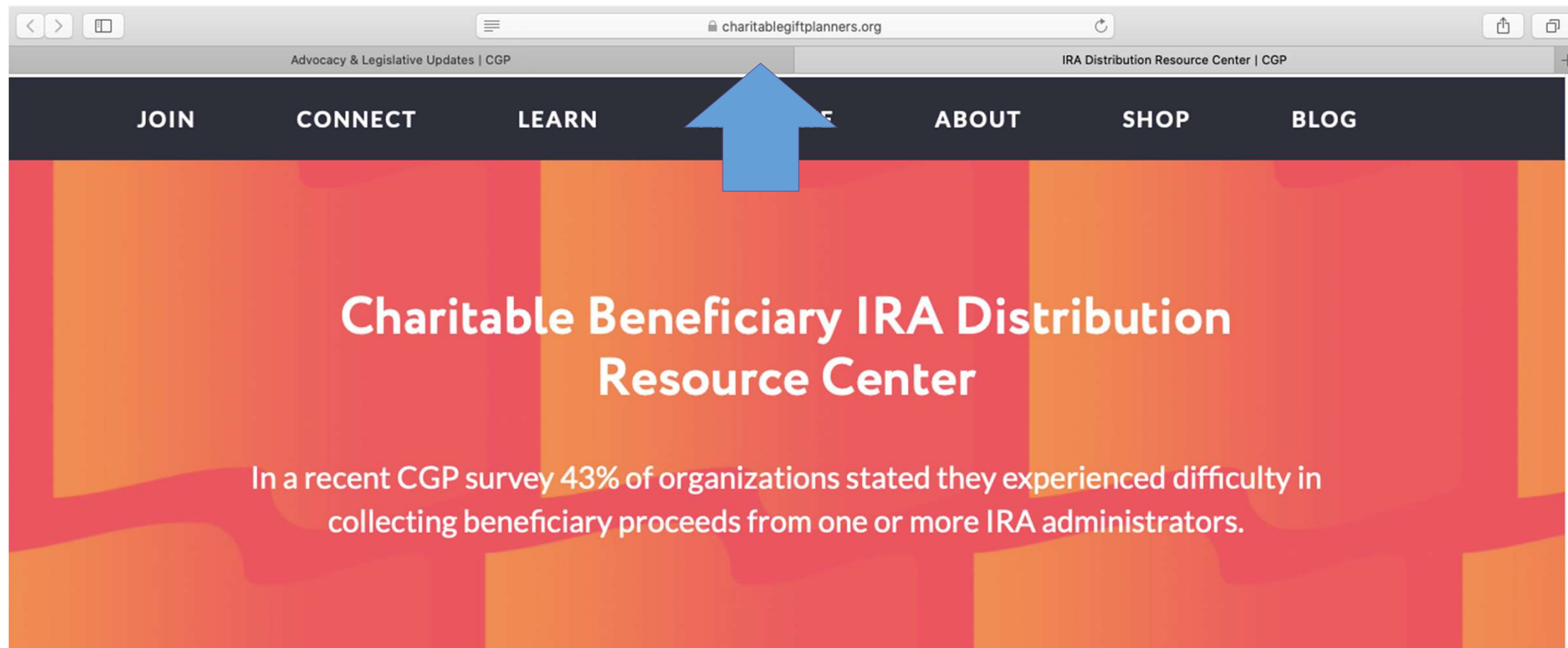


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## Free Access to RIFT Database

Don't need membership in  
national CGP to use website

[www.charitablegiftplanners.org/  
ira-distribution-resource-center](http://www.charitablegiftplanners.org/ira-distribution-resource-center)



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In a recent CGP survey 43% 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





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This center is meant to be dynamic with new resources and information added as they become available. If you have information to share or know of a resource that should be added, please let us know by adding your comments in the “Contact Us” bulleted link below.

- **Read About the Issue:** [Unmasking the Unthinkable: Financial Institutions Hoard Intended Charitable Gifts - August 5, 2022](#)
- [RIFT Database of IRA Custodians](#)
- [2023 FinCEN Ruling Letter](#)
- [Join RIFT Advocates Working Group](#)
- [Transfer on Death \(TOD\) letter](#)
- [A Word About Income Tax Withholding](#)
- [New IRS Form W-4R in 2023](#)
- [Sample Corporate Resolution](#)
- [Royalty-Free Donor Audience Article](#)
- [Additional Reading](#)
- [Contact Us/Comments](#)



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charitablegiftplanners.org

RIFT Database of IRA Custodians | CGP

<b>Ameriprise</b> <a href="#">Learn More</a>	<b>Bank of the West</b> <a href="#">Learn More</a>	<b>BNY Mellon/Pershing</b> <a href="#">Learn More</a>
<b>Charles Schwab</b> <a href="#">Learn More</a>	<b>Edward Jones</b> <a href="#">Learn More</a>	<b>Equitable</b> <a href="#">Learn More</a>
<b>E*TRADE</b> <a href="#">Learn More</a>	<b>Fidelity</b> <a href="#">Learn More</a>	<b>LPL Financial, LLC</b> <a href="#">Learn More</a>
<b>Merrill Lynch</b> <a href="#">Learn More</a>	<b>Morgan Stanley</b> <a href="#">Learn More</a>	<b>Northern Trust</b> <a href="#">Learn More</a>
<b>Raymond James</b> <a href="#">Learn More</a>	<b>RBC</b> <a href="#">Learn More</a>	<b>State Street Global Advisors</b> <a href="#">Learn More</a>



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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**

## 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

## 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

## 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.)



## 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

## 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](mailto: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 Crape (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](mailto: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](http://www.fincen.gov/contact)

Email to [FRC@fincen.gov](mailto: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

## 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  
Executive Vice President  
Thompson & Associates

**E-mail:** [johni@ceplan.com](mailto:johni@ceplan.com)

**Phone:** 515-988-8817

