

# CAPITOL ♦ TITLE

*Goldstein & Levy, P. A.*  
*General Counsel*

September 16, 2009

## LEGAL BULLETIN

### **Buying Real Estate Inside Your IRA**

A little-known Internal Revenue Code provision permits individuals to purchase land, homes, commercial property and condominiums with funds held in many common forms of IRAs, including a traditional IRA, a Roth IRA and a Simplified Employee Pension Plan (“SEP-IRA”). In order to purchase the property in your IRA you must find a registered IRA custodian that will allow you to make non-traditional investments with funds held in your IRA. You can locate an acceptable property for purchase (with the assistance of a real estate broker/agent) and then arrange for the custodian to complete the purchase in the custodian’s name, for your benefit, with funds held in the IRA account.

Unfortunately, the IRS regulations prohibit you or your family from using the property for any purpose (personal or commercial use) and you can not acquire the property from certain, related parties (e. g. spouse, parents, children). You can not have any personal use or benefit from the property and violation of this prohibition can result in the imposition of taxes and penalties. Once you’ve chosen a property your IRA custodian (not you personally) must purchase it in its name for your benefit (e. g. “XYZ Trust Company, as Custodian for John Smith”). Therefore, financing the purchase with a mortgage can be difficult and complicated. Many custodians, therefore, require that the property be purchased solely with cash held in your IRA account.

All operating expenses for the property, including taxes, insurance and repairs must be paid from funds in your IRA. All income generated from the property will be deposited into your IRA account so you can use that money to cover your costs (or for the purchase of other investments (including real estate) in your IRA. If you wish to sell the property, the IRA custodian will enter into the contract as seller and the funds (including any gains on the sale) are put back into your IRA account for use in making other investments (or buying other or additional real estate).

You can withdraw real estate from your IRA and use it as a residence or second home when you reach the age of 59½ or older (for a penalty-free withdrawal) or you can elect to have the IRA sell the property or take a distribution of the property from your IRA by having the custodian sign over the title to you (there will be taxes owed on this distribution if the property was held in a traditional IRA, just as there will be taxes owed on cash distributions taken from a traditional IRA).

This is a potentially powerful and relatively unknown avenue to build wealth for retirement. Due to complex rules and regulations involved, however, anyone interested in pursuing this option should make sure that they work with a custodian which has expertise and experience in this area.

***“SETTLE ON OUR EXPERIENCE”***®

This bulletin is for informational purposes only and is not intended as legal or tax advice to be used or depended upon in any specific transaction. All parties are advised to seek competent legal and tax advice / counsel with respect to these issues before entering into any transaction.

©Capitol Title Insurance Agency, Inc. 2009