



# BEGINNER'S GUIDE TO CHECKBOOK IRAs



Can you have checkbook control  
over your IRA funds?  
At NDTCO, the answer is...

**YES**



# At a Glance

Some IRA investment strategies require a large number of disbursements from the IRA and/or the need to disburse funds quickly. To achieve this level of flexibility, some IRA investors choose a strategy called Checkbook Control which creates the ability of the IRA holder to write checks with IRA money. Compared to a direct IRA investment, the LLC approach will likely involve additional set-up time, expenses (ideally offset by fee savings), operational responsibilities, and risk tolerance.

The set-up of Checkbook Control starts with the fact that the IRS allows an IRA to invest in an entity (in any percentage), as an investment while keeping the tax benefits associated with that account type. This entity can be a “closely held” entity, meaning that the IRA holder or another disqualified person is the manager of the entity.

The most common iteration of Checkbook Control starts with the IRA holder creating a new LLC. The IRA can't be a member of an S-Corp or be a General Partner in a partnership. The IRA then buys 100% interest in the LLC, meaning the IRA Custodian (New Direction Trust Company) funds the LLC with the eligible retirement funds in the IRA. Once open and funded, the entity may access the checking account to initiate investment activities.

**Any account offered by NDTCO can invest in a Checkbook LLC!**



# The Benefits

## DIVERSIFICATION

*With a Checkbook IRA/LLC, you have the freedom to invest your tax-advantaged retirement funds in the assets you're most passionate about. If you can find it, we will help you fund it.*

## INDEPENDENCE

*Our world-class online service allows you to complete all necessary paperwork seamlessly through our online portal. You can then manage your portfolio and watch it grow online, day or night.*

## SECURITY

*A Checkbook IRA affords a greater degree of flexibility but also warrants more responsibility on the part of the investor.*

## OWNERSHIP

*With checkbook control, you don't have to coordinate individual transactions with your custodian.*

OPEN ACCOUNT



# Possible Structures



Hedge Funds



Venture Capital



Crowdfunding

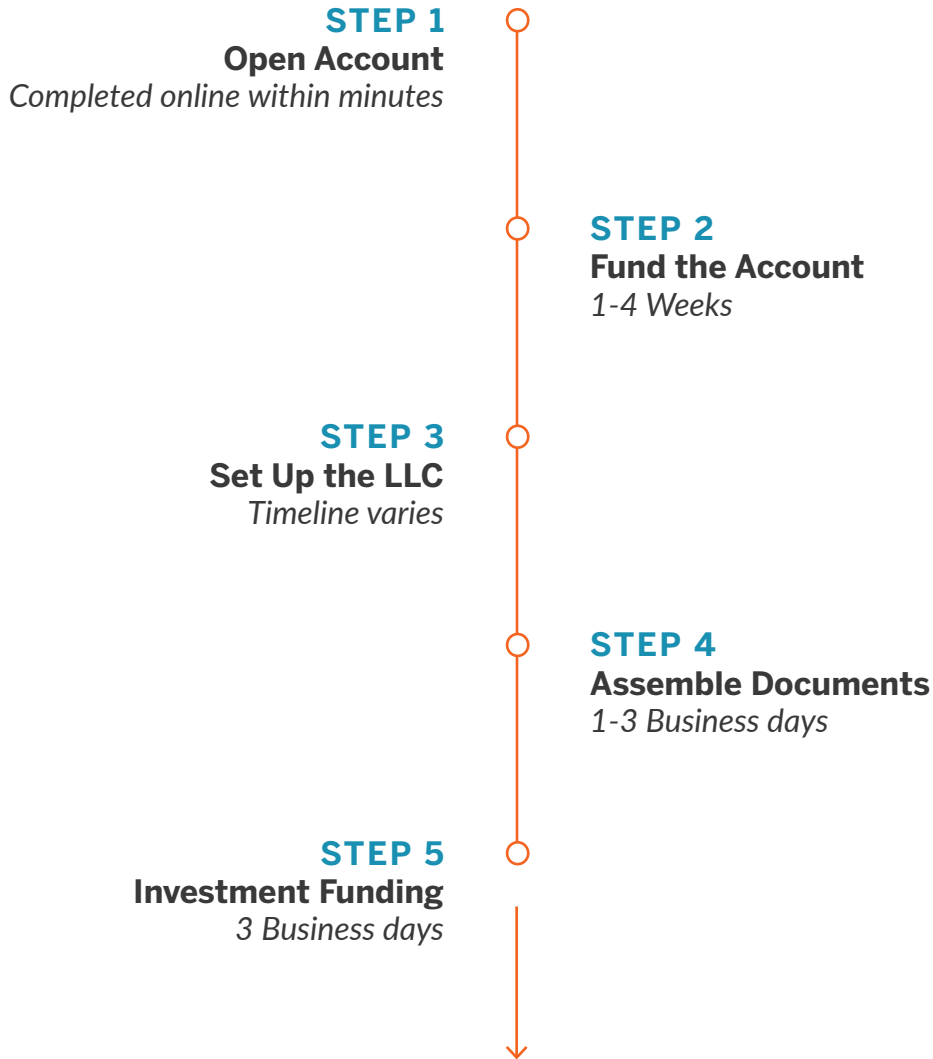


And More!



# The Investment Process

## Checkbook IRA Investment Timeline



START INVESTING

# Due Diligence

As the IRA holder, you are responsible for performing due diligence on your IRA's investments. Neither the IRS nor NDTCO researches or endorses the investments, businesses, or principals involved in your IRA's transactions.

New Direction Trust Company, as the custodian, is not responsible for the terms and conditions of the entity documents, i.e. operating agreement, subscription agreement, corporate documents, or for finding and pointing out possible prohibited transactions within it. It is your responsibility, and that of your legal and/or tax advisors, to ensure the entity documents conform to the existing IRS rules and regulations. Not only is it important that these funds be used solely for the IRA and its assets, there can be absolutely no "self-dealing" with regard to the assets purchased or services provided to the asset. As the manager or trustee of the entity, it is also your responsibility to understand the Prohibited Transaction rules as stated in IRC 4975.

A competent professional in the legal, financial advice or accounting fields can also be engaged if you need additional help deciding if the investment being considered is legitimate, meets your risk tolerance parameters, and is right for your investment goals.

## We are responsible for:

- ▲ Ensuring the entity documents reflect the proper titling of the IRA as the member
- ▲ Providing accurate record keeping of IRA account activity
- ▲ Annual IRS reporting and filing for the IRA only

## You are responsible for:

- ▲ Ensuring your investment does not complete prohibited transactions
- ▲ Providing annual valuations
- ▲ Due diligence on your IRA's investments
- ▲ Ensure all funds return to your IRA and not to you personally
- ▲ Any expenses paid come from your retirement funds and not your personal funds
- ▲ General management of your investment, this list may not be an exhausted list



# The Investment Process

## Required Paperwork

- ▲ Buy Direction Letter – directs NDTCO to fund the entity
- ▲ Closely Held Entity Acknowledgement – confirms acknowledgement of high-risk investment nature of closely held entities in regards to sections 4975, 408, 408A, and other relevant sections of the Internal Revenue Code (IRC)
- ▲ Manager’s Acknowledgement Letter – to be completed by LLC Manager
- ▲ Operating Agreement – signed as “read and approved”
- ▲ Attorney’s Opinion Letter- If applicable
- ▲ Table of Membership – entity must reflect the proper titling of the IRA as the member or beneficiary, and list the IRA’s capital contribution and percentage of ownership
- ▲ Organizational Documents (from Secretary of State)
- ▲ Tax ID Number of Entity

## Titling/Signature Lines on Investment Documents

The name in which the LLC is to be held is: **NDTCO as custodian FBO Client’s Name IRA**

The initial investment documents to establish the entity should reflect the name of the IRA: **NDTCO as custodian FBO Client’s Name IRA.**

## Creating the LLC

The LLC manager will be tasked with the creation of the entity and filing all the necessary documentation with the entity. It is highly recommended that you consult a competent attorney or tax professional that is familiar with retirement accounts, tax law and IRS rules to create the entity documents, although this is not a requirement. New Direction Trust Company does not create or provide examples of entity documents.





# After the Purchase

## Additional Funding

To move additional funds from your NDTCO retirement account into your LLC, the process is very similar to the initial funding process. Complete the Buy Direction Letter through our online [Client Portal](#) to authorize NDTCO to fund the entity.

If you have partnered with your IRA and other disqualified persons, any additional funding must be made in the same ratio as the original ownership percentages, defined in the membership table.

## Capital Call Letter

Entity will supply the Capital Call Letter OR a new Subscription Agreement. For additional funding, a new purchase or subscription agreement may be required by the entity.

## Earnings

All earnings from your LLC must flow directly back to your retirement account. Receiving dividends or returns of capital personally, instead of through the IRA, may be construed as a prohibited transaction and result in the distribution of the IRA entirely, along with taxes and penalties.

If you have partnered between your IRA and other disqualified persons, any dividends must be made in the same ratio as the original ownership percentages, defined in the membership table.

## Expenses

Money to pay for any expenses or fees related to the investments within the LLC, cannot be paid personally. The money needs to come from the LLC and not you personally.

## Cash Distribution

All cash distributions must go through your IRA, and not directly from the LLC. Money needs to move from the LLC, back to the IRA and any distributions will come out of the IRA.

## Annual Fair Market Valuations

Per IRS regulations, you must submit Fair Market Value (FMV) information for your IRA-owned closely held entity once per year at a minimum. This valuation will need to include the value of and documentation for all your investments, liabilities, and cash balances.

For the valuation to be processed, supporting documentation is required for each asset held by the LLC. Required supporting documentation (value of all investments, liabilities, and cash balances) will depend on the assets your IRA owned LLC holds.

Failure to provide an annual valuation may result in the taxable distribution of your asset. Accounts that have shown no activity, including the valuation, will not be held by NDTCO because we cannot meet the IRS requirement to annually update the value of your IRA and file an accurate IRS Form 5498 for your account.

FMVs can be completed through our online [Client Portal!](#)

## Unrelated Debt-Financed Income (UDFI/UBIT)

Unrelated Business Income Tax applies to debt financed property in IRAs and also applies to operating income received from companies owned by IRAs and qualified plans. Typically, the debt financed income is taxable under UBIT rules for the percentage of the investment that is debt-financed.

The amount of UBIT is determined by the percentage of the amount of total indebtedness from the acquisition of the investment. Depending on the business activity of the LLC, it may be that the LLC is operating a business, and thus all of its earnings may be subject to UBIT as a result. IRS Form 990-T is used to calculate UBIT for your IRA.

NDTCO does not calculate UBIT or submit form 990-T. Click [here](#) to download our free UBIT calculator.

# Disqualified Persons

All IRAs have a list of people who are disqualified from having certain interactions with that account. Below is a list that delineates which persons are disqualified. Keep in mind that any entity that is owned or controlled by a **disqualified person** is also disqualified.

- ▲ Neither the IRA holder nor any other disqualified person to that IRA may live in or use the property.
- ▲ Disqualified persons cannot work on the property, for free or for pay. “Sweat equity” is not allowed. Any remodeling, repair, improvement, and even maintenance must be performed by a non-disqualified person or entity.
- ▲ Your IRA cannot purchase a property from you or any disqualified person, nor can your IRA sell a property to a disqualified person.
- ▲ Neither you nor a disqualified person can guarantee a loan for an IRA property.
- ▲ Disqualified persons are not allowed to be paid by the IRA.
- ▲ All earnings from your LLC must flow directly back to your IRA, before taking personal possession. Receiving dividends, returns of capital, or assets in-kind personally, instead of through the IRA, may be construed as a prohibited transaction and result in the distribution of the IRA entirely, along with taxes and penalties.

## NON-DISQUALIFIED PERSONS

- ▲ Brother
- ▲ Sister
- ▲ Brother-in-law
- ▲ Sister-in-law
- ▲ Niece
- ▲ Nephew
- ▲ Aunt
- ▲ Uncle
- ▲ Cousin

## DISQUALIFIED PERSONS & ENTITIES

- ▲ The account holder (you)
- ▲ The account holder’s linear ascendants (parents, grandparents, etc.)
- ▲ The account holder’s linear descendants (children, grandchildren, etc.) and their spouses
- ▲ Fiduciaries to the account (accountants, financial advisors, attorneys, etc.)
- ▲ Tax-advantaged savings accounts held by any of the aforementioned individuals
- ▲ Businesses or entities owned or controlled by any of the aforementioned individuals
- ▲ Spouse
- ▲ Children of spouse



# Prohibited Transactions

The following actions are considered **prohibited transactions** and could result in the distribution of this asset from your plan. Prohibited transactions apply to all disqualified persons to your plan. A Checkbook IRA affords a greater degree of flexibility but also warrants more responsibility on the part of the investor. When investors have direct access to their retirement funds, there is an increased risk of performing a prohibited transaction.

The following actions are considered prohibited transactions and could result in the distribution of this asset from your plan. When an IRA buys into an entity, the entity is required to comply with the IRS prohibited transaction rules. Prohibited transactions apply to all disqualified persons to your plan.

- ▲ Engaging in a transaction between your account and a disqualified person
- ▲ Yield a commission/fee for the purchase, sale, or exchange of assets
- ▲ Cover account expenses with personal, non-account funds
- ▲ Use of your IRA's assets as collateral for a personal loan
- ▲ Use of your IRA's assets to guarantee credit for a loan
- ▲ Receive dividend or distribution payments directly instead of having them go to the IRA
- ▲ If you hold Real Estate within your LLC, it has to be for investment only purposes, you cannot live in the property or rent to a disqualified party.

If it is done correctly, it is possible to create an entity that has disqualified persons as members. Ownership between disqualified persons must be decided prior to initial funding; once the initial investment has been made, the percentages must remain in the same proportion throughout the life of the entity. Disqualified members must also receive the same deal, dollar for dollar on the entity investment. If a distribution from the entity is needed, all disqualified persons must distribute funds according to their ownership. If a dividend is paid by the company, it should be paid by percentage of ownership to all investors.

While we can share IRS rules with you, NDTCO does not give tax, legal or investment advice; refer to your financial or legal representative for further details or a possible solution.

# Why NDTCO?



## DIGITAL INNOVATION

*We are relentless in our mission to modernize and digitize by building tools and platforms that make self direction easier, more streamlined, and more intuitive.*



## TIRELESS EDUCATION

*Providing you with the knowledge and insight to succeed has always been our top priority. We continually host webinars, create resources, and develop educational tools that help empower and guide you.*



## DEDICATED CLIENT SERVICES

*A real person is always available to help with all of your account management needs. If you need assistance, a knowledgeable, educated person is here to help empower you.*

GET STARTED



# NDTCO Client Portal

Our online **Client Portal** combines human power and digital innovation, making it simple to view all your account information in one centralized location. Within the client portal, you have the ability to directly message our support team, review recent transactions, download account documents, and review a vast library of educational content easily and securely.

## Direct Messaging

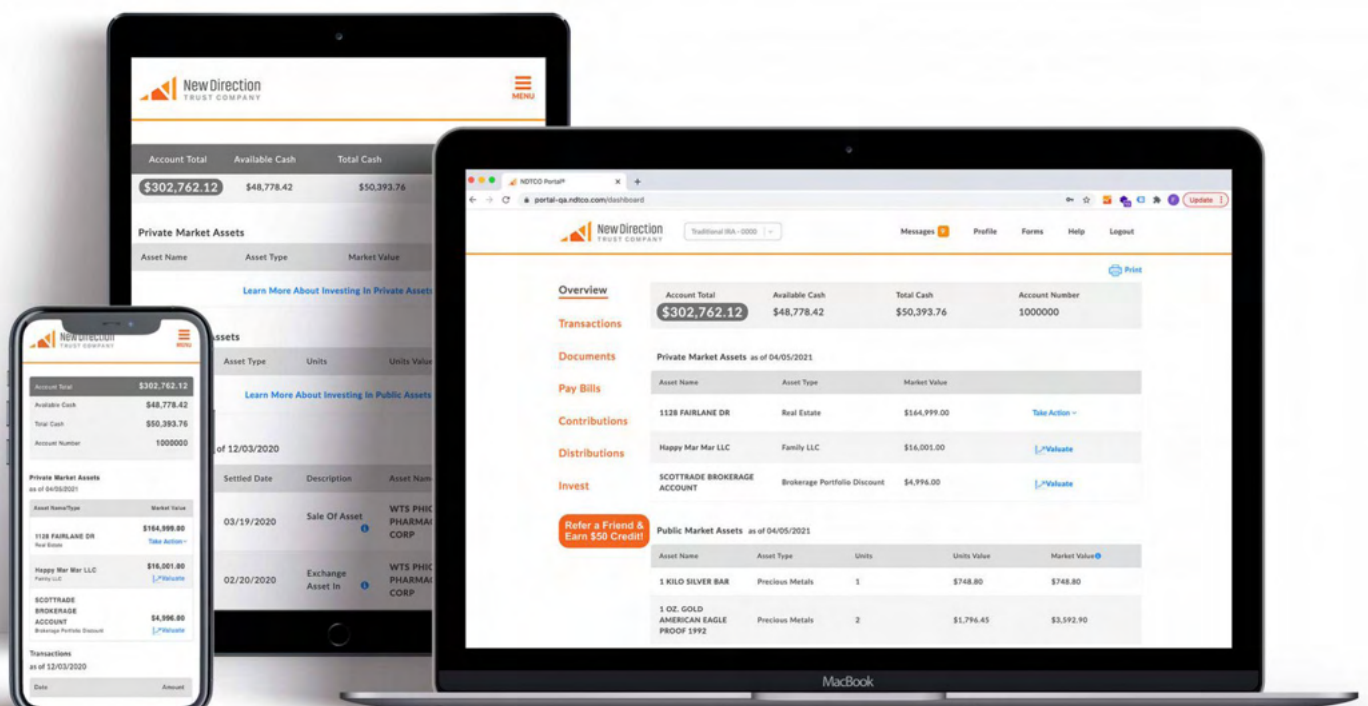
Communicate quickly and easily through the secure messaging center. Be confident in sending transaction and account-related documentation directly and safely to the NDTCO team.

## Bill Payment

Quickly and easily pay vendors or bills related to any of your assets. For example, set up scheduled payments for your HOA and/or mortgage, or simply make a one-time payment via check or ACH.

## 24/7 Management

Easily manage your account details anytime, from anywhere. Check your account balances and transactions, update your contact information, generate statements, and designate your beneficiaries easily and securely.





# The Answers (FAQ)

## Which accounts are eligible?

Any account offered at NDTCO can invest in a Checkbook LLC. You can learn more about each account type [here](#).

## Can I invest in multiple assets with my NDTCO account?

Yes! Within your NDTCO account, you are not limited to only one asset category. You can learn more about your investment options [here](#).

## Can NDTCO help me invest?

As the IRA holder, you are responsible for performing due diligence on your IRA's investments. Neither the IRS nor NDTCO researches or endorses the investments, or investment providers, involved in your IRA's transactions. A competent professional in the legal, financial advice or accounting fields can also be engaged if you need additional help deciding if the investment being considered within your closely held LLC is legitimate, meets your risk tolerance, and is right for your investment goals.

## Why is Checkbook Control considered a gray area?

The court case that is most often pointed to when discussing the legality of a closely-held entity is Swanson vs. Commissioner 106 T.C. 76 (1996). Mr. Swanson was operating a closely-held LLC where his IRA was the sole shareholder, and he was named manager after creation. Mr. Swanson was suing over legal fees incurred when the IRS tried to claim that his IRA was involved in a prohibited transaction. While the lawsuit was mainly regarding repayment of attorney fees, it did raise questions as to whether this structure is allowable- can the IRA wholly own an entity; can the account holder act as the manager over their retirement funds, and can the asset retain its tax-free or tax-deferred status?

The IRS lost the lawsuit and later released documents affirming the ruling and expanding further on some of the rules about transactions that the entity can participate in. Much is left unknown as to some of the legalities of the structure. Though the structure is considered legal, it can be scrutinized on the dealings and purchases the entity makes. The flexibility of checkbook control will require additional care by the IRA holder in avoiding prohibited transactions, but it is important to remember that the closely-held entity is an asset among your portfolio of self-directed assets. As such, your responsibilities as the plan holder of a Checkbook IRA will be no different than the custodian that typically holds the investments made by the entity. The account holder will have to understand that the rules remain hard and fast, regardless of the structure being used for the investment.

# The Answers (FAQ)

## What is UBIT?

Unrelated Business Income Tax (UBIT) applies to debt financed property in IRAs and also applies to operating income received from companies owned by IRAs and qualified plans. Typically, the debt financed income is taxable under UBIT rules for the percentage of property that is debt-financed.

## Are there FMV requirements?

Per IRS regulations, you must submit Fair Market Value (FMV) information for your IRA-owned closely held entity once per year at a minimum. This valuation will need to include the value of and documentation for all your investments, liabilities, and cash balances.

For the valuation to be processed, supporting documentation is required for each asset held by the LLC. Required supporting documentation (value of all investments, liabilities, and cash balances) will depend on the assets your IRA owned LLC holds.

Failure to provide an annual valuation may result in the taxable distribution of your asset. Accounts that have shown no activity, including the valuation, will not be held by NDTCO because we cannot meet the IRS requirement to annually update the value of your IRA and file an accurate IRS Form 5498 for your account.

## What is a prohibited transaction?

A Checkbook IRA affords a greater degree of flexibility but also warrants more responsibility on the part of the investor. When investors have direct access to their retirement funds, there is an increased risk of performing a prohibited transaction.

Please see the Prohibited Transactions section above to view a list of actions that are considered prohibited transactions and could result in the distribution of this asset from your plan. When an IRA buys into an entity, the entity is required to comply with the IRS prohibited transaction rules. Prohibited transactions apply to all disqualified persons to your plan.

## Who can help me create the LLC?

The following attorneys can help you set up a Checkbook IRA. Please note that NDTCO does not endorse any of the below attorneys. The list is for informational purposes only.

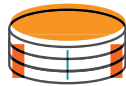
[Attorney List - New Direction Trust Company \(ndtco.com\)](#)

# Get Started With NDTCO



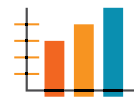
## STEP 1 Open An Account

Choose the account that's right for you, and complete an online application in 15 minutes or less.



## STEP 3 Choose Your Investment

Once you've landed on a strategy, establish the terms of the transaction, draw up the contract, and fund the purchase.



## STEP 2 Fund Your Account

Prepare your self-directed account for launch by financing your account via contribution, transfer or rollover.



## STEP 4 Manage Your Account

Manage your portfolio securely and with ease or dive into our investment tools from your client portal or NDTCO app.

OPEN ACCOUNT





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