

How to Use Your IRA to Purchase Overseas Real Estate



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What Your Stockbroker Doesn't Want You to Know: It's Perfectly Legal to Buy Real Estate in Your IRA

Thought you didn't have the down payment for your next investment property? Well, it may be sitting right in your IRA, 401(k) or other retirement plan.

Contrary to what you may have assumed, you can legally purchase real estate in an IRA or Qualified Pension Plan. Moreover, your IRA can borrow to help you make that purchase.

For years, many investors were told that they were not allowed to make these kinds of investments. In some cases, they were told it makes no sense. In the meantime, those in the know have been quietly taking advantage of this wonderful opportunity.

First, let's dispel the myths. There is so much more flexibility to your IRA than you may have ever thought possible.

The IRS Doesn't Forbid It... So Why Should You Overlook the Opportunity?

Section 590 of the Internal Revenue Code is the bible for what you can and cannot do as it relates to investing your IRA. IRC 590 specifically details what are called "prohibited transactions" and "disqualified entities."

If you are like most people, you have never read the Internal Revenue Code. That's a good thing (unless you're an accountant).

It is long, convoluted and often contradictory. Even most experts have a hard time understanding all of the nuances of the code. It's why many people end up in tax court.

The funny thing about most of the code —and specifically section 590 —is most of it is written to tell you what you cannot do...not to tell you what you can do. Fortunately for us, it's very clear from the code —and from precedent —that you can legally purchase real estate.

Wall Street's Misappropriation of the IRA

To hammer home the point that IRAs are not just for stocks, let's take a moment to look at the history of IRAs.

Traditional IRAs were created in 1974. Congress wanted to encourage individuals to begin saving and investing for their own future retirement. There have been many changes to these rules over the years but the basic premise remains the same. An IRA is designed to be a Self-directed retirement plan that provides tax-deferred growth and —for those who qualify--tax-deductible contributions.

Somewhere along the way, one of the most important components of owning an IRA has been at best obscured, and at worst lost. This is the whole concept of Self-Direction.

Wall Street and the financial industry recognized the incredible opportunity to capture assets and create commissions for themselves by providing IRA accounts for eligible investors. What they did not tell those investors is they artificially imposed their own restrictions on IRAs to promote products and services that line their own pockets, and do not necessarily benefit the IRA beneficiary.

IRAs were never created to force investors into owning stocks bonds and mutual funds. In fact, when you look at the rules that govern what you can and cannot own (IRS 590) you will be shocked to see just how liberal and un-constraining the rules actually are. Congress fully intended for you to be able to invest your IRA in almost any asset that makes sense. This includes real estate, private investments, businesses, and almost anything else you can imagine.

Wall Street's Wall of Silence

Why have most investors never heard they are allowed to invest their retirement funds outside of stocks and bonds? Very simply, it's all about the money.

A significant number of investors have their IRA funds with custodians who also happen to be in the business of "providing" investments or investment advice. So, even though most investors have a self-directed IRA they end up with custodians who put restrictions on what they can and cannot invest in.

These custodians have chosen to do this for their own financial benefit and not the benefit of the underlying IRA participant. If you are using one of the major Wall Street firms, they are in the business of selling you investments on which they make commissions or fees...things like stocks, bonds, and mutual funds.

"An IRA is designed to be a Self-directed retirement plan that provides tax-deferred growth and — for those who qualify--tax-deductible contributions. It doesn't say or imply in any way that you can only buy mutual funds."

I am not saying you should not own these investments, But these shouldn't be the only investments you own in your IRA —especially if you're a knowledgeable real estate investor.

What's more, there are times when the market offers horrendous value and has lousy prospects (as from 2000 through 2002), so it's nice to have alternatives. And real estate is traditionally not correlated to the stock market.

The First Step to Freeing Your IRA from Wall Street's Control: Find the Right Custodian

There are a number of custodians out there who will allow you to purchase real estate. They are few and far between-- but they are out there. The good ones have been doing it for a long time, have this process down to a science, and know exactly what it takes to make it happen in a legal and compliant fashion.

Certainly, they charge their own fees for this service. But they do not tell you what you can and cannot do with your money, beyond ensuring what you are doing is permissible. (More about that later.)

These types of custodians are not in the business of selling you investments. They make their money from the fees they charge to act as the custodian and/or administrator of your account.

What You Need Is a Good Administrator

Most of the companies that can help you set up a self-directed IRA are IRA administrators, not custodians. They are the front end of the process.

Administrators take care of all of the paperwork and required reporting. They usually place your funds with qualified custodians, such as insurance companies or federally insured banks. These custodians typically are happy to give up the paperwork aspect of the transaction and are glad simply to hold the funds.

The original rules that established and still govern IRAs and other individual retirement plans (Treas Reg. 1.408- 2(e)(2)) automatically granted permission to insurance companies and banks to act as qualified custodians, should they choose to do so. Any other entities must apply for, and receive from, the IRS a determination letter stating they qualify to act as a custodian.

There are significant capital requirements and other qualifications that make the entry barrier to achieve this status quite high. For this reason, there are only a limited number of companies with the financial resources to act as custodians.

But all you need is the right administrator who will help you with the necessary paperwork. They will work with a qualified custodian. Sovereign International Pension Services is one such IRA administrator that can offer custodial services through an arrangement with an FDIC insured bank.

Your IRA Can Buy Virtually Any Kind of Real Estate

One of the more exciting aspects of purchasing real estate in your retirement plan is that you can buy virtually any type of property. That includes...

- Ø Raw Land
- Ø Single Family Home
- Ø Multiple-unit dwellings
- Ø Apartment Buildings
- Ø Condominiums
- Ø Office Buildings
- Ø Foreign Real Estate

That's right, you can even buy foreign real estate through your IRA! Maybe you have found a little piece of beachfront property in Mexico you would like to build on for your future retirement home. You can legally do this through your IRA.

In fact, your IRA can even purchase an option on any of these types of properties. It can also make other real estate related investments. For instance, you can buy mortgages or other notes through your IRA. You can buy tax lien certificates and defaulted notes.

For the purposes of this report, however, we're going to stick with real property.

Know What You Can't Do...So You Can Make the Most Out of What You Can

There are some restrictions on any investment you make with your IRA. These restrictions apply to real estate investments as well.

One of the primary restrictions is this regard is that any investments your IRA makes cannot be for your benefit today. They must be for the future benefit of you, your heirs or both. This means if you purchase real estate in your IRA, you cannot use it in any fashion until you retire... well, almost any fashion.

Most rules have an exception and this rule is, well, no exception.

Say you buy a beachfront property as an investment through your IRA. You rent it out most of the time and perhaps you're anticipating retiring to it one day. But you may also want to use it occasionally now. There are certain circumstances by which you can do just that.

The code is actually a little more flexible than you might think. It allows your friends and some of your relatives to use your property prior to retirement. So even though you are specifically prohibited from using your property, many of your relatives are allowed to use it. And anyone not related to you can use it, too.

"Your IRA can even purchase an option on properties. It can also make other, non-physical, real estate related investments. For instance, you can buy mortgages or other notes through your IRA. You can buy tax lien certificates and defaulted notes."

Who is a "related" party that would be prohibited from using the property? The IRS Publication 590 defines these "disqualified persons" as...

- Ø Your spouse
- Ø Lineal members of your family (ancestor, lineal descendant, and any spouse of a lineal descendant)
- Ø Your investment advisor or manager
- Ø Any entity in which you hold a 50% or higher ownership

What relatives are not prohibited from using the property? Your siblings and cousins. So if you didn't alienate all of your brothers and sisters when you were growing up, it may be time to cash in. You can allow your siblings to use your beautiful beachfront property and they can invite you as their guest!

However, if your property is repeatedly and only used by friends and relatives who always invite you as their guest and never pay any rent to use the property, the IRS would infer you really used it for your own benefit. So some common sense is warranted.

When it comes to the use of the property, it is an honor system. Your IRA administrator or custodian is not going to keep track of who uses your property. And the IRS certainly does not have the manpower to keep track. So it is very unlikely that anyone is going to be checking up on you. It is up to you to abide by the rules.

I suggest keeping a record of when the property is used and by whom in case you ever have to document the use of the property for the IRS.

You Can't Use Your IRA Real Estate Investments for Current Business Use...But There Are Some Notable Exceptions

Besides personal use, it is also against the rules to use any property for your personal business either. Yet there are some useful exceptions to this rule too.

In my research of this topic I turned up some amazing examples of individuals who had seemingly broken all of the rules. Yet they were in compliance. It was as if the section on prohibited transactions and related parties had never been written.

One of my favorite examples is a group of doctors whose retirement plans own the land and the building out of which their medical clinic operates. In another case, an individual was able to purchase 176 acres of unimproved land from his own IRA and then use that land for himself, personally.

"The Department of Labor has granted a number of blanket exemptions to the prohibited transaction rules."

These fall squarely into the list of prohibited transactions. They cannot even be called a gray area. So how did they get away with it?

It turns out the Department of Labor has granted a number of blanket exemptions to the prohibited transaction rules. And, as long as you follow their exemption application procedures and meet their criteria, you can receive approval for a similar transaction under one of these blanket exemptions.

The subject of exemptions is highly complex and technical. So, if you want more information on this subject, go directly to the DOL's web site, where they list these blanket exemptions and have all of the necessary information required to apply for your own exemption.

The general website is <http://www.dol.gov/>. A specific link for this section is <http://www.efast.dol.gov/>.

You can also contact Ekaterina A. Uzlyan of the Department of Labor at (202) 219-8883.

Turning Your IRA into a Real Estate Investment

In describing the different possibilities and flexible nature of your IRA, I've gotten a little ahead of myself. So let's get back to basics and talk about how this all works, step by step.

Chances are your IRA or retirement plan is not currently with a custodian who is going to allow you to buy real estate through it. So, your first step is to find a custodian that allows for truly self-directed IRAs. The simplest way to do this is to do an Internet search for "self-directed" IRAs and check out their websites or call them to find out if they handle real estate purchases for the IRAs they administer.

Ask about their level of experience with IRA-based real estate transactions and inquire about their fees. Request references.

Once you have picked your new custodian, you need to transfer your existing account to them. They will have all of the paperwork needed to do this. It can be done by a wire transfer from your existing custodian or by check. If you own other securities you are going to keep, it can be done through a direct account transfer, frequently known as an ACAT transfer.

The new custodian has all of the paperwork needed for you to buy real estate. The next thing they are going to ask you for is a "buy direction letter". This simply tells the custodian what you plan on purchasing.

I suggest you also give them all of the contact information for any other parties involved in the transaction, such as the seller, any attorneys who might be involved and any title agents. This will speed up the process if any questions arise along the way.

Your custodian will take care of all closing documents and the property will actually be purchased in the name of your IRA or retirement plan.

Some of the common questions that arise concerning buying real estate through your IRA are...

- Ø How is the property titled?
- Ø Can my retirement plan borrow part of the money?
- Ø Can I own the property in any other entities (e.g., trusts, LLCs)?
- Ø What if I want to purchase it with a partner?

In normal real estate transactions, you can buy properties individually in personal name, with partners or as a business entity. This same flexibility applies to owning real estate in your retirement plan.

For instance, property owned by a retirement plan can be owned partially or fully by the plan. This opens up a universe of opportunities.

Let's say you have found a piece of property you are interested in purchasing but you do not have enough money to buy it outright with either personal or retirement assets. You can legally own it with both and in any fractional combination.

In fact, you can own property with your IRA with as many other entities as you want. There are virtually no restrictions. However, if you own property fractionally with your retirement plan, all income and expenses must also be accounted for fractionally.

Let's look at a couple of simple examples.

You purchase a piece of property for \$200,000. To keep it simple, let's ignore leverage for the moment and assume you purchase it for 100% cash.

You pay for half of it with personal assets and half with assets from your IRA. Your custodian will now ensure when the transaction closes that you own it 50% personally and 50% by your IRA.

Going forward, you must pay for any expenses or improvements in the property in the same manner, 50% personally and 50% with your retirement plan. So if you need to put a new roof on your rental home for \$15,000, \$7,500 must come from your IRA and the other \$7,500 from personal assets.

Similarly, if it is income-producing property, the same principle applies to the income it generates. Half would be earned by you, and hence half would be taxable. The other half would be earned by your retirement plan and be tax-deferred (if in a traditional IRA) or tax-free (if in a Roth IRA).

There is virtually no limit on the numbers of partners with whom you can own the property. And your partners can use personal assets or retirement assets for their investment funds too.

You Can Own Property through Your IRA and Title it in a Business Entity

For privacy or asset-protection purposes, you may prefer to own your properties in a corporate entity such as a Limited Liability Company. Your IRA or retirement plan can also own property in this manner, with some minor exceptions.

Once again the IRS wants to make sure you use your retirement plan as an investment for the future and not for today. They make it clear you cannot enter into any transaction that might be considered self-dealing. And most custodians want to ensure you do not accidentally or purposefully enter into a transaction that might trigger any self-dealing. So most of them put some minor restrictions on the form of corporate ownership you can be involved in.

"You can establish a new corporation that would be 100% owned by your IRA. And you can then own investment property in that corporate name."

You can establish a new corporation that would be 100% owned by your IRA. However, if you want to own the corporation personally (rather than own the corporation through your IRA), most custodians will only allow you to own it with up to a 49% share. The remaining 51% must be owned by an unrelated party.

This is done to keep you from selling a corporation you already own personally to your IRA. This is considered self-dealing and is a prohibited transaction.

This may become particularly important when buying non-US property in certain jurisdictions. That's because some foreign jurisdictions may not allow you or your retirement plan to own the property directly. Instead, they may require you to own it in the name of a foreign corporation.

You Can Use Leverage in Your IRA

One of the most common questions that arises is how do I pay for the property? More specifically, can my retirement plan take out a mortgage? The answer is yes!

Your IRA can borrow to make a real estate purchase. However, there are several important things to point out. You may not pledge the assets of your IRA as the collateral for the loan.

A loan may only be in the form of a non-recourse promissory note and the IRA holder is not allowed to personally guarantee the non-recourse note. The underlying property itself must be the only collateral for the loan.

Many lending institutions simply will not loan money under these conditions. Others may only grant loans up to 70% or 75% of the purchase price, requiring a 25% or 30% down payment from your IRA. Other, non-traditional lenders, however, may be willing to make a higher loan-to-purchase-price to your IRA—if you've bought it at a good enough price that the loan to appraised value is low enough.

So let's say you've bought a property in pre-foreclosure for \$100,000, and the property has a market value of \$130,000. Even though you have all that extra equity in the property from buying below market, a traditional bank may only be willing to lend your IRA 70% or so of your purchase price... or \$70,000 in this case. However, a non-traditional lender may be willing to lend you 70% of the appraised value (\$130,000 in this example). That would mean you'd get a loan of \$91,000 for this purchase, instead of the \$70,000 offered by the bank.

The Key Steps to Buying Real Estate through Your IRA

- Ø Find a custodian for truly self-directed IRAs
- Ø Arrange for transfer of funds
- Ø Fill out "buy direction" letter
- Ø Execute sales contract with help of administrator
- Ø Apply for loan in the name of the IRA
- Ø Close on transaction and reap tax-sheltered benefits
- Ø Option to pay yourself an asset management fee (not a direct property management fee)

It is also important to note when you have debt-financed real estate in a retirement plan the mortgage payments must come from either income from the property, existing plan assets, new contributions to the plan, or some combination of these.

But you've already learned in MSM to make sure all your rental properties pay for themselves and that you always should have a margin of safety. If you follow those guidelines, your carrying costs should all be covered by the property itself, and this requirement won't be difficult to meet.

There Are Limitations on Tax-Sheltered Income when your IRA Borrows to Buy Real Estate

The use of borrowing in your IRA may trigger an event called UBTI, Unrelated Business Taxable Income. Let's say you purchase a piece of income-producing property with your IRA. You pay \$30,000 in cash from your IRA and you finance the other \$70,000 for a total purchase of \$100,000. During the year this property generates \$10,000 in income.

Seventy percent, or \$7,000 of this income, would not be sheltered since this relates to the amount that was financed by your IRA. Thirty percent, or \$3,000 of this income, would be sheltered since this was the amount that was not financed.

You would be responsible for reporting this UBTI on IRS Form 990-T each and every year the property produced a taxable income stream.

The Pros and Cons of Using Your IRA to Buy Real Estate

Some commentators say it is not a good idea to buy real estate with your retirement plan while others have whole-heartedly embraced the idea. Like anything, there are pro's and con's. Among the key positives...

You get to access capital in your IRA for real estate purchases, and this can provide a very valuable alternative to stocks, especially when the stock market is overvalued and weak.

You also get the tax-deferral benefits of IRAs while investing in real estate.

With a traditional IRA, capital gains from property sales, and any income, grow tax-deferred while remaining under the retirement plan umbrella. But they are taxed at ordinary income rates when withdrawn. (However most participants are in a lower tax bracket at this point in their lives.) With

a Roth IRA, your contributions are with after-tax dollars. So capital gains and income grow tax-free.

Among the drawbacks is the fact that you lose some of the write-offs and depreciation you normally enjoy when owning real estate outside of a retirement plan. Yet, at the same time, you also avoid the depreciation recapture upon sale if the property is held under the plan umbrella.

In my opinion, owning real estate in a retirement plan makes a great deal of sense. The investors I have assisted have been thrilled to be able to invest in a number of different types of projects and finally put their retirement assets to work in an investment they know and understand. And I believe many more investors would welcome the opportunity if they only knew the option exists.

Now, you are one of those in the know. So let's take a look at a few deals we have been able to put together for our clients... so you can get an idea of how using your IRA to buy real estate might help you.

Case Study # 1: Doc Tim Buys His Future Retirement Haven

Doc Tim had been a client of mine for several years. One day I casually mentioned to him I had helped a client purchase real estate with his retirement plan. Tim visibly immediately sat up and took notice.

It wasn't long after that when I received a call from Tim. It turns out Tim had another IRA account at Schwab. Like most investors in so-called, self-directed IRAs, Tim had primarily owned mutual funds over the years and the occasional stock. None of these had performed very well.

Also, like a lot of Floridians, Tim was thinking about owning a piece of property in the mountains in North Carolina. He wanted to use it as an investment property today, with the possibility of using it as a second home (fully paid off) after he retires. (Remember, Tim or any other disqualified persons are prohibited from using the property today-except for the exceptions already noted.)

Tim is one of those guys who seem to know everyone and whom everyone likes. As it turns out, one of Tim's contacts had told him about some property he could get on the side of a mountain in NC as a real steal.

Tim contacted my office and inquired if this really was something he could do. He was more than ecstatic to find out not only was it possible, but we were one of the few firms who knew how to make this kind of transaction happen smoothly.

We were able to help Tim get his IRA transferred from Schwab to a new IRA custodian, legally and as a non-taxable event. The transfer of assets took about two weeks. The new custodian then completed the purchase agreement and all other necessary documents to complete the transaction.

Tim is now the happy owner of 3 lots on the side of a beautiful mountain in NC. Currently, these lots are in the form of unimproved raw land. Tim is free to hold these purely for speculation or to build on these lots using other retirement assets.

Case Study # 2: A Seasoned Real Estate Investor Taps into Her IRA Funds

Barbara A from Olympia WA has been speculating in real estate for years. She was tired of not earning the kinds of returns in her IRA she had become accustomed to earn as a real estate investor. Barbara contacted our office when she heard about our ability to purchase real estate in a retirement plan.

Turns out Barbara is either very lucky or is quite the visionary. She had a hunch that lumber prices (which had been depressed) were overdue for a cyclical rally. She used our firm to turn her under-performing IRA into 23.7 acres of prime timber, which she bought for just \$31,000.

That property has now shot up in value. And Barbara has been able to shelter 100% of the gain in her tax-deferred retirement plan.

Case Study # 3: Developing Caribbean Real Estate through an IRA

The experience of Dan T from Jacksonville is best captured by a letter he wrote to The Sovereign Individual, an investment letter to which I contribute from time to time. Forgive me if it reads a bit like a commercial, but this is a real letter... with actual details of the transaction... and a pretty good synopsis of the steps that were involved.

"I'm developing Caribbean real estate with my IRA funds. I read one of Larry Grossman's articles about using IRA funds to purchase real estate overseas and called his group for more information. Soon, I embarked on an adventure to purchase and develop some ocean front property on a Caribbean island.

"Larry and his group worked to get the funds consolidated from 20 individual accounts to fund the adventure. They helped establish new IRA and non-IRA accounts with a new custodian. They also set up a corporation, and transferred the funds on an accelerated schedule.

"We have now purchased the land; we have building permits and environmental impact statements approved. Our comprehensive Master Plan for single-family homes, condominiums, apartments, and commercial and office space is exciting. The survey is finished; the lots are staked out and go on sale in a week. We have Letters of Intent on six lots. The promotional materials will be done within two weeks and the roads and utilities will be in within 90 days."

Case 4 is a hypothetical case to show just how diverse a transaction like this can actually be.

Case Study # 4: A Hypothetical Case (This Could Be You)

Jim was tired of losing money in the market and knew there had to be a better way to do things. Jim lives in Boston, which has been a hot real estate market and he thought it was only going to get hotter. Jim had his eye on a new office complex he drove by every day on his way to work. He had checked into the property and knew there was a shortage of good office buildings like that in the area.

The problem was the developer wanted \$1,000,000 for the property. Jim has a million dollars; he has done well over the years. But he did not have a million in either his personal accounts or his retirement accounts. He did have a million between them all combined.

Jim found out the rules are much more flexible than he had ever been told they were. So he bought a 34% interest in the property with all of his IRAs combined under one custodian. He bought 33% with his company's profit sharing plan and 33% with a Nevada LLC he had set up for asset protection planning.

Jim likes to be actively involved in real estate and has decided to manage the property himself. Interestingly, Jim found out the IRS allows you to pay yourself a fee from your retirement plan for managing the assets of the plan, but not for direct property management. Jim is now collecting a quarterly salary from his retirement plan for managing the plan assets. Jim, of course, pays taxes

on this income but does not have to pay a penalty, as this is not considered a premature distribution of the plan.

The property is actually owned and titled in the name of all 3 entities. Jim therefore keeps track of all expenses and income and prorates this to all three entities in the same percentages as it is currently owned.

Types of Individual Retirement Plans That Can Invest in Real Estate

Virtually any individual retirement plan is eligible to invest in real estate. These include...

- Ø Traditional IRAs
- Ø Roth IRAs
- Ø SEP IRAs
- Ø SIMPLE IRAs
- Ø 401(k)s

What's more, the rules governing these types of investments are basically identical for all types of plans. The key is to work with a knowledgeable team of advisors or a custodian who understands truly self-directed plans and will allow you to make these types of investments.

Until next time, invest well.

Larry Grossman, CFP®, CIMA®

About the Author

Larry C. Grossman, CFP®, CIMA®, is the Managing Director of **Sovereign International Pension Services**, (SIPS), based in Tampa Bay, Florida. SIPS is an IRA Administrator offering custodial services through an FDIC insured bank as well as offering a full range of custom-designed Pension Plans. Larry was one of, if not the first, financial advisors in the country to develop a compliant method for helping clients take IRAs and pension plans offshore for asset protection and greater investment diversification. Larry's method has been reviewed and approved by some of the top ERISA attorneys in the country.

Larry has earned the coveted designation of CIMA®, (Certified Investment Management Analyst) awarded in conjunction with the Wharton School of Business. Larry graduated Summa Cum Laude with a Bachelor of Arts in Business Management from Eckerd College. He went on to acquire his Certified Financial Planning designation from the College of Financial Planning in Denver, Colorado. Larry is the author of "The Ultimate Retirement Protection Plan", published by *The Sovereign Society*. In addition, he is a Fox News contributor and has written numerous articles on topics related to asset protection and investing for *The Sovereign Individual*, *The Oxford Club Communiqué* and *International Living*.

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More Info on Buying Real Estate through Your IRA

For More Information on Self-directed IRAs, go to the IRS website (<http://www.irs.gov/>) and select publication 590.

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