Folks:

Take-Away: IRA custodians may have a fair amount of latitude when it comes to titling an inherited IRA, which means that 'all IRA custodians are not alike.'

Background: The Tax Code's rules for titling an inherited IRA are basic. First, the deceased IRA owner's name must remain on the inherited IRA account. Second, the title to that inherited IRA account must indicate that it is an inherited IRA by either using the words *beneficiary* or *inherited IRA*. Beyond those word requirements, there is no set format or rules that dictate how an inherited IRA is to be titled by the custodian.

> **Example:** A properly titled inherited IRA might look like: ***Joseph Biden IRA (deceased, 4/20/43) F/B/O/ Hunter Biden, Beneficiary*.**

Disparate Custodian Policies: Where the confusion comes is when IRA custodians have different in-house rules for different situations, which means assumptions can be dangerous. A couple of examples follow.

> **Spousal Rollovers:** One example is when it comes to allowing a spousal rollover, even though a trust is named as the IRA's designated beneficiary. If a trust is named as designated beneficiary of the decedent's IRA, then one would expect to see an inherited IRA created for and in the name of the trust, considering that the Tax Code's naming rules are clear if a trust is named as beneficiary; thus, the IRA custodian will require that the inherited IRA be set up for, and in the name of the trust. However, if the surviving spouse is the sole beneficiary of the trust, and if the surviving spouse has sole control of the trust assets, e.g., he/she is the successor trustee of the trust, some IRA custodians will allow the surviving spouse to do an immediate direct spousal rollover of the inherited IRA assets into his/her own IRA. Other IRA custodians will

not automatically allow this approach to 'skip' the inherited IRA made in the name of the trust. While there are several Private Letter Rulings that formally authorize this 'skipped inherited IRA step' some custodians still require that the 'skipped inherited IRA step' be accompanied by an expensive Private Letter Ruling. In short, it is the IRA custodian's decision whether to allow the direct spousal rollover or not of the inherited IRA.

Estate Bypass: An 'estate bypass' is another situation where the IRA custodian of the inherited IRA may, or may not allow, based on its own in-house rules. When an estate becomes an IRA beneficiary, e.g., the decedent's probate estate is the *default* beneficiary of the IRA, typically an inherited IRA is established for the estate by the IRA custodian. However, depending on the applicable payout structure from the inherited IRA, this could cause the estate to remain open for several years. To permit the Personal Representative to close the probate estate, some IRA custodians will allow the inherited IRA to be established for the estate beneficiaries. Yet this will cause those inherited IRA accounts to still be bound by the payout rules that are applicable to the estate, such as the 5-year distribution rule. Once again, this decision rests within the IRA custodian's discretion, so if the custodian refuses to open the inherited IRAs for the estate's beneficiaries, a Private Letter Ruling may be required.

Conclusion: IRA custodians have some flexibility when it comes to when and how inherited IRAs are opened. Each may have its own set of rules, or requirements, when it comes to titling an inherited IRA. It would be smart to ask, in advance, what an IRA custodian will require in the examples provided, since obtaining a Private Letter Ruling can be both time-consuming and expensive either for a surviving spouse or the Personal Representative of the deceased account owner's estate.

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