

## IRA/LLC Requirements

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### 1. Overview

A Limited Liability Company (LLC) may be owned by an Individual Retirement Account (IRA) (Traditional or Roth, or HSA or ESA) provided that the account owned LLC conforms to the rules and requirements of the Internal Revenue Code. Additionally, it is important to remember that all activities within your IRA/LLC must conform to the regulations relating to retirement accounts and specifically to the rules regarding Prohibited Transactions (see section 5). In addition to the legal requirements for the IRA/LLC, Directed Trust Company has its own policies and procedure which accounts are subject to and must comply with in all instances.

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### 2. Establishing the LLC

#### Articles of Organization

- The articles of organization or certificate of formation for the LLC must be manager-managed. An IRA/LLC cannot be set-up as member managed.
- The Account Owner cannot use an existing LLC where the Account Owner or a disqualified person to their account, is already the owner or Member of the LLC.
- You must provide a copy of the state-approved LLC formation document (such as Articles of Organization or Certificate of Formation) showing the entity name.

#### Operating Agreement

- The agreement must be prepared by an attorney who has prepared the documents specifically for the account as an owner. The attorney must include a letter or memo along with the LLC stating that the LLC and its associated documents comply with the laws effecting retirement accounts.
- The agreement must include language regarding Prohibited Transactions as defined by IRC Section 4975.
- The agreement must include language regarding the potential or the avoidance of Unrelated Business Income Tax (UBIT) and, if incurred, that the manager will complete and ensure the timely filing of all relevant tax returns to the IRS and state authorities.
- The agreement must name the account as a member as follows:
  - **Directed Trust Company FBO (Account Owner Name)(Account Type). For example, e.g. Directed Trust Company FBO John Smith IRA, or Directed Trust Company FBO John Smith Roth IRA, or Directed Trust Company FBO John Smith HSA, or Directed Trust Company FBO John Smith SEP IRA, etc.**
- The agreement must provide a signature line for Directed Trust Company to sign on behalf of the account. The Owner of the account must also sign the operating agreement as "Read and Approved".
- The agreement must name a manager and provide contact information for Directed Trust Company. If the manager is a disqualified person, the activities and compensation of the Manager must be properly restricted.
- The manager must sign the Operating Agreement; Directed Trust Company will sign on behalf of the account (member).

#### Bank Account

- Once the LLC is established, the LLC must set-up a bank checking account at a bank or credit union in the name of the LLC in order for funds to be provided to the LLC from the account. A credit card or line of credit should not be issued to the account owned LLC bank account. The bank checking account may have checks and a debit card issued.

#### Tax Identification

- You must provide a copy of the IRS Tax Identification Number (TIN) confirmation.

#### Direction of Investment - IRA/LLC Agreement

- You must complete and submit the Directed Trust Company "Direction of Investment- IRA/LLC" for the investment.

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Directed IRA is a tradename of Directed Trust Company, an Arizona Corporation

## Direction of Investment – IRA/LLC

### IMPORTANT INFORMATION

If you are investing your account into an LLC where your IRA (or HSA, ESA, as applicable) is a primary owner, you MUST complete this form prior to making your investment. Please refer to the IRA/LLC Requirements.

### Processing Options

Select an option below. If no option is selected, Directed IRA will process your request as normal (within 3 business days). I understand that if my account does not have sufficient funds, my transaction may not be processed. Processing cannot begin until all Investment Documents have been received and determined to be in good order.

- Next-Day Service (\$150) – Must be received by 4pm MST     Same-Day Service (\$250) – Must be received by 10am MST

### 1. Account Owner Information

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last Name: \_\_\_\_\_

Last 4 of SSN: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Directed IRA Account Number: \_\_\_\_\_ Account Type: \_\_\_\_\_

### 2. LLC and Operating Agreement Information

Single Member IRA/LLC (one account will own the LLC 100%)

Multi-Member IRA/LLC (If multi-member is selected, each account owner must fill out this form.)

Name of IRA/LLC: \_\_\_\_\_

The Operating Agreement must be prepared by an attorney who has prepared the company documents in compliance with retirement plan rules, and who advises you as to the proper operation of the IRA/LLC. The attorney must include a letter with the LLC operating agreement stating that such LLC was set-up in compliance with the laws effecting retirement accounts. Operating Agreements prepared by the Account Owner, an unlicensed accountant, or websites such as LegalZoom.com or BizFilings.com are not acceptable.

Name of Attorney: \_\_\_\_\_ Firm Name (if applicable): \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email Address: \_\_\_\_\_

### 3. Investment Information

If the total investment amount exceeds the available cash in my account I hereby request the amount to be decreased to the available cash in my account.

Name of IRA/LLC: \_\_\_\_\_

No. of Units/Shares: \_\_\_\_\_ Price per Unit/Share: \$ \_\_\_\_\_

Total Investment Amount: \$ \_\_\_\_\_ Percentage of Ownership (after purchase): \_\_\_\_\_ %

### 4. Document Forwarding Instructions

A copy of the signed investment documents will be scanned and emailed to you in accordance with our document handling policy. Please refer to the Records section of your Custodial Account Agreement and Disclosure for more information about how documents are stored at Directed Trust Company.

Recipients Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Additional Instructions/Notes: \_\_\_\_\_

## Document Forwarding Instructions Continued

- Regular Mail    Overnight Mail (Charge my Directed IRA Account)
- Overnight Mail (Send via 3<sup>rd</sup> party billing):    FedEx   or    UPS   Account Number: \_\_\_\_\_
- Email to: \_\_\_\_\_ ATTN: \_\_\_\_\_
- Fax Number: \_\_\_\_\_

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## 5. Funding Instructions

Please select option A or B below:

- A.    Check

Make Check Payable To: \_\_\_\_\_

Mail Check To: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

**Delivery:**    Regular Mail (7-10 business days)    Priority Mail (2-3 business days) (\$15.00)    Overnight Mail (\$35.00)

- B.    Electronic Funds Transfer

Bank Name: \_\_\_\_\_ Routing Number: \_\_\_\_\_

Account Holder's Name: \_\_\_\_\_ Account Number: \_\_\_\_\_

Reference Number: \_\_\_\_\_ Funding Deadline: \_\_\_\_\_

**Delivery:**    Wire    ACH   Account Type:    Checking    Savings

\*Routing Number may differ depending on selection

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## 6. General Acknowledgment and Agreement

- a) I acknowledge that I am investing my account funds in an LLC and I agree to provide certain information about the LLC to the Custodian of my account to allow them to properly complete any required reporting to the Internal Revenue Service or other governmental agencies.
- b) I agree to allow Custodian to discuss limited account information such as account titling and account number to the attorney or firm listed above in section 2, and to pre-fill the Direction of Investment documents.
- c) I acknowledge that the Custodian may determine that the information I provide is not sufficient to complete its obligations to the Internal Revenue Service. After notifying me of such deficiencies and allowing me to correct them, the Custodian, at its sole discretion, may determine the sufficiency of the information to comply with the Internal Revenue Service regulations and if insufficient, elect to distribute the LLC to me.
- d) I acknowledge that any future changes in the Internal Revenue Code or other laws and regulation may require further action by me to allow the Custodian to continue to maintain the LLC within my account.
- e) I agree to hold harmless, protect and indemnify the Custodian from and against any and all liabilities, losses, damages, expenses and charges, including but not limited to attorney's fees, penalties and expenses of litigation, which the Custodian may sustain or might sustain resulting directly or indirectly from this investment.

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## 7. Valuation

- a) I agree to provide an annual statement of the LLC's fair market value to Directed IRA on the IRA/LLC Valuation form available on Directed IRA's website.
- b) I understand that the Custodian may require a fair market valuation from a third-party professional at the time of any taxable distribution, such as a Roth conversion, account owner distribution, or required minimum distribution and that a licensed professional must sign the valuation. I will ensure that the appraiser signs the IRA/LLC Valuation form.

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## 8. LLC Dissolution

If you decide to dissolve your IRA/LLC, you must provide the following:

- State issued dissolution/termination certification.
- Final Bank Statement showing the balance, to be returned to your account (you must deliver the funds via check or wire transfer).
- List of other assets to be transferred back to your account (provide proper re-registration documents).
- If there is a loss in the LLC, submit a written statement declaring what caused the loss (attach proof of the loss for review).

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## 9. Prohibited Transactions

A prohibited transaction is a transaction or benefit between a plan (account or the IRA/LLC) and a disqualified person. If your IRA/LLC engages in a prohibited transaction, your account will be distributed. Prohibited transactions are described in IRS Publication 590-B and in IRC Section 4975. Seek out the guidance of a licensed attorney, CPA, or tax advisor regarding compliance with these rules.

Prohibited transactions generally include the following transactions:

- A transfer of plan income or assets to, or use of them by or for the benefit of, a disqualified person;
- Any act of a fiduciary by which plan income or assets are used for his or her own interest;
- The receipt of consideration by a fiduciary for his or her own account from any party dealing with the plan in a transaction that involves plan income or assets;
- The sale, exchange, or lease of property between a plan and a disqualified person;
- Lending money or extending credit between a plan and a disqualified person;

- Furnishing goods, services, or facilities between a plan and a disqualified person.

A disqualified person is any of the following:

- You, the owner of the account;
- A member of your family (e.g., your spouse, parents, children and spouses of children);
- Any corporation, partnership, trust, or estate in which you, or certain family members own (either direct or indirect) 50% or more;
- An officer, director, 10% or more shareholder, or highly compensated employee of a company controlled by disqualified persons.

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## 10. Acknowledgement & Signature

I agree to the foregoing and I understand that I am responsible, and Directed Trust Company and its related entities are NOT responsible, for selecting and reviewing the investment of my account into an LLC or for investments which the account owned LLC makes. I understand that I am responsible, and Directed Trust Company and its related entities are NOT responsible, for determining the suitability, nature, value, risk, safety and merits of the investment that I am making to the account owned LLC or that may be made from the account owned LLC.

Please note electronic signatures on the Direction of Investment form must include the electronic signature Certification page or Certification Stamp. If one is not included we will not be able to process the Direction of Investment Form.



\_\_\_\_\_  
Account Owner Signature

\_\_\_\_\_  
Date

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## Direction of Investment Disclosure

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1. ACCOUNT OWNER WARRANTIES. As an account owner of a self-directed retirement account, I represent and warrant to Directed IRA Tradename Directed Trust Company (“Custodian”) the following:

- I. I warrant that I have properly titled the asset held by my retirement account;
- II. I warrant that I am not receiving any personal benefit from the investments made by retirement account (e.g. using your rental property as a vacation home);
- III. I acknowledge that if my retirement account invests in an asset that does not provide an automated update in regards to its fair market value (FMV), I must provide that value to Directed IRA each year as requested;
- IV. I acknowledge that an investment in my retirement account may create Unrelated Business Taxable Income (UBTI), and I should consult my tax advisor on the tax consequences of my investment;
- V. I warranty that my retirement account has invested in an asset that complies with all applicable federal and/or state requirements;
- VI. I warrant that I have provided all documentation associated with my investment to Directed IRA.
- VII. I acknowledge that I have read the disclosures provided with the Direction of Investment and accept any and all risk that may be associated with the asset I have chosen; and
- VIII. I understand that Custodian does NOT insure the investments made by retirement account.

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2. Custodian nor Custodian’s agent has NOT selected nor recommended any investment for me; and neither Custodian nor any employee of Custodian has acted as a broker dealer or salesperson in completing any purchase or sale of an investment or a security from me.

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3. Custodian has no obligation or duty to investigate, analyze, monitor, verify title to or otherwise evaluate any investment contemplated herein, or to obtain or maintain insurance coverage (whether liability, property, or otherwise) with respect to any assets or investment purchased by Account Owner. Custodian shall not be responsible to take any action should there be any default or any other obligation with regard to this investment unless instructed in a signed writing by Account Owner.

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4. It is not the responsibility of Custodian to review or consider the prudence, merits, viability or suitability of any investment made by me or to determine whether the investment is

acceptable under ERISA, the Internal Revenue Code or any other applicable law. I understand that certain transactions are prohibited in individual retirement accounts and qualified retirement plans under Section 4975 of the Internal Revenue Code. I further understand that the determination of a prohibited transaction depends on the facts and circumstances that surround the particular transaction.

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5. Custodian will make no determination as to whether my investment is prohibited. I further understand that should my account engage in a prohibited transaction, my account will incur a taxable distribution as well as possible penalties.

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6. I represent to Custodian that I have consulted with my own legal, tax and accounting advisors to insure that my investment does not constitute a prohibited transaction and that my investment complies with all applicable federal and state laws, regulations and requirements including without limitation that the offering entity or individual is not a disqualified person under IRC 4975(e) (2).

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7. In the event any investment for my retirement account produces taxable income (unrelated or debt financed) pursuant to IRC 511-514. I agree to prepare or have prepared for me, the required 990T tax form along with a direction of investment authorizing the Custodian to pay taxes from my account. Forms need to be submitted to the Custodian for filing five (5) days prior to the date on which they are due.

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8. Custodian does not provide legal or tax services or advice with respect to my investment; and the undersigned releases and indemnifies, and agrees to hold harmless and defend Custodian in the event that my investment or sale of assets pursuant to the Direction of Investment violates any federal or state law or regulation or otherwise results in a disqualification, penalty, fine or tax imposed upon the account, Custodian, or the undersigned.

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9. Custodian shall be fully protected in acting upon any instrument, certificate, or paper believed to be genuine and to be signed or presented by the proper person or persons whether or not by facsimile or other copy, and Custodian shall be under no duty to make any investigation or inquiry as to any statement contained in any such writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

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10. The undersigned represents to Custodian that if any investment is a “security” under applicable federal or state

securities laws, such investment has been registered or is exempt from registration under federal and state securities laws and the undersigned releases and waives all claims against Custodian for its role in carrying out the instructions of the undersigned with respect to such investment. The undersigned acknowledges that the foregoing representation is being relied upon by Custodian in accepting the undersigned's Direction of Investment and agrees to indemnify Custodian with respect to all costs, expenses (including attorney's fees). Fines, penalties, liabilities, damages, actions, judgements and claims arising out of such investment and/or breach of the foregoing representation.

11. The undersigned agrees that any documents sent to the undersigned by Custodian in connection with my investment shall be deemed approved by the undersigned, unless written notice to the contrary is received by the Custodian with the documents.

12. Any suit filed against Custodian arising out of or in connection with its role as Custodian of the undersigned's account shall only be initiated in the courts of Maricopa County, Phoenix; and the undersigned agrees to submit to such jurisdiction.

13. The undersigned agrees to reimburse or advance to Custodian, on demand, all legal fees, expenses, costs, fines and penalties incurred or to be incurred in connections with the defense, contest or prosecution of any claim made, threatened or asserted pertaining to the undersigned's investment through Custodian, including, without limitation, claims

asserted by the undersigned, any state or federal regulatory authority or self-regulatory organization.

14. The undersigned releases and indemnifies, holds harmless and defends Custodian from any and all claims, damages, liability, actions, costs, expenses (including, without limitation, attorney's fees) and responsibility for any loss resulting to the account, the undersigned or to any beneficiary or incurred by Custodian, in connections with or by reason of any sale or investment made or other action taken (or omitted to be taken) pursuant to and/or in connection with this Direction of Investment or resulting therefrom. Under no circumstances shall Custodian be subject to or liable for any consequential, incidental, indirect, special, exemplary or similar damages, including without limitation, damages or costs incurred as a result of loss of time, loss of savings, loss of data, loss of revenues and/or profits, whether foreseeable or unforeseeable that may arise out of or in connection with this agreement or Custodian complying with your directions, regardless if such damages are based in contract, tort, warranty, negligence, strict liability, products liability or otherwise.

15. The undersigned acknowledges, understands and agrees that this Direction of Investment and any other Direction of Investment of the undersigned is subject to all of the term, conditions, representations, warranties and agreements contained in this Direction of Investment Disclosures, the undersigned's Custodial Agreement and Disclosure Information and any other documents or disclosures provided to you by Custodian.



Account Owner Signature

Date

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