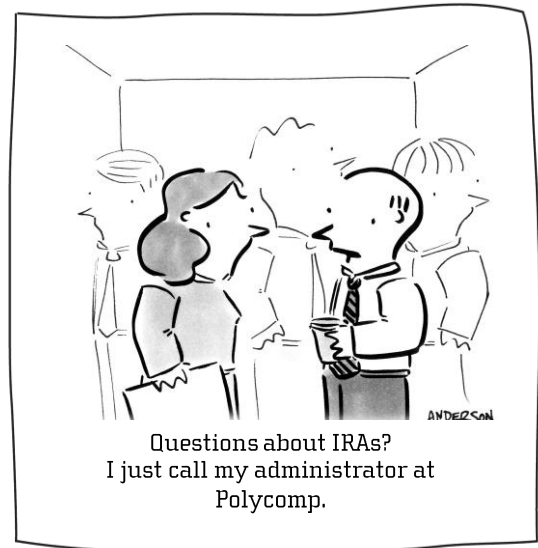




We Deliver Performance

Polycomp Trust Company (PTC) Real Property FAQs



Can I purchase real estate in my IRA?

Yes.

Why does my current IRA brokerage firm say I can't buy real estate in my IRA?

Custodians determine the type of assets they will hold and may not choose to hold all assets the IRS allows. Life insurance contracts and collectibles are the only investment types prohibited by the IRS as an IRA investment. On their website the IRS states *".....because of administrative burdens, many IRA trustees do not allow IRA owners to invest IRA funds in real estate. IRA law does not prohibit investing in real estate but trustees are not required to offer real estate as an option."* So, just because your broker doesn't offer real estate as an investment doesn't mean that you can't do it; it just means that you can't do it through them.

Are there restrictions on the type of property that my IRA can purchase?

No. As long as it is an investment, your IRA can purchase any type of real estate (raw land, pre-development, commercial, residential, etc.).

Will Polycomp Trust Company hold real property?

Yes. Polycomp Trust Company will hold direct title to real property, in addition to interests in Limited Liability Companies (LLC) or Limited Partnerships (LP) that hold title to real property; notes secured by trust deeds/mortgages; and interests in real estate investment trusts (REITs).

What are the requirements for Polycomp Trust Company to hold direct title to real property?

1. You must maintain a minimum of \$2500 in the cash account of your Polycomp IRA.
2. You must obtain title insurance.
3. The property must be located in the United States.
4. You must have the necessary cash in your IRA to complete the purchase before a purchase offer is drawn.

What is the first step?

Review the handout *Polycomp Trust Company Real Property Requirements* (available online or by request from the IRA department). Once you find the property you want to purchase you negotiate the purchase price.

How should the purchase offer be drawn?

Whether the IRA is the only buyer, or buying as a tenant in common, the purchase offer and all escrow documents should be vested in the name of *Polycomp Trust Company Custodian FBO* IRA Holder's Name IRA or Roth IRA #____.

How is the deposit on the property paid when the IRA is purchasing the property?

When your IRA purchases property the deposit or earnest funds are paid by the IRA. You **cannot** use personal funds for the deposit. You complete and return our *Direction Letter for Earnest Money Deposit* with a copy of the purchase offer showing *Polycomp Trust Company Custodian FBO* IRA Holder's Name IRA or Roth IRA #____ as the purchaser. As long as cash is available in your IRA for the full *purchase* amount, your deposit will be funded within 48 hours of receipt of the required documents.

What are the next steps?

Once the purchase offer has been accepted and the deposit funded you need to provide a contact at the title company. We can work directly with the escrow officer to ensure that the required documents are vested correctly.

You also need to complete and return a *Direction Letter* for the purchase of the property. As long as cash is available in your IRA, your purchase will be funded within 48 hours of receipt of all required documents.

What is the required documentation?

The following documentation is required:

1. Proposed preliminary title report (or chain of title) with full property description (legal description and street address).
2. Contract of sale, counter offers, independent escrow and closing documents drafted in the name of *Polycomp Trust Company Custodian FBO* IRA Holder's Name IRA or Roth IRA #____, signed as read and approved by the IRA holder.
3. Title Insurance Policy.
4. Phase I or Phase II Environmental Report, if applicable, for commercial or industrial property.
5. Direction Letter

All pages requiring Polycomp Trust Company's initials/signatures as custodian/buyer must be initialed/signed by the IRA holder as "read and approved".

Who signs the closing documents when the IRA is purchasing the property?

The IRA holder signs all escrow documents as *Read & Approved* and Polycomp Trust Company as Custodian signs all escrow documents on behalf of the IRA.

Can my IRA invest in real property with a down payment and a loan?

It is possible, but there are significant issues regarding leveraged property in an IRA. You cannot personally guarantee a loan for your IRA. You should not carry debt if there is any risk that the IRA will be unable to make the payments. In addition, your IRA will be subject to Unrelated Debt Financed Income tax on the income or gains attributable to the leveraged portion. It is possible to leverage the investment in your IRA with a non-recourse loan.

What is a non-recourse loan?

A non-recourse loan is a loan which you, as the IRA holder, are not personally liable for repayment.

The security instruments allow no recourse against you or the balance of your IRA. In the event of default/foreclosure, the lender can only look to the property as the source of repayment.

If my IRA purchases real property or acquires property through foreclosure with multiple parcels, how will it be held in my IRA?

Each parcel purchased or acquired through foreclosure will be held as a separate asset and separate administration fees will apply.

Can my IRA form an LLC that will buy real property?

Yes. Your IRA can participate in the formation of an LLC. The IRA can also purchase an interest in an existing LLC provided that you or any parties related to you do not already own 50% or more of the LLC. The LLC would be a real estate operating company. If the IRA owns 100% of the LLC, the assets in the LLC are considered assets of the IRA. In this case, the operating agreement would need to require that the managing member (generally the IRA holder) either appoint a qualified professional such as an attorney or CPA to either conduct a review of each transaction before execution, or to take over as managing member. Additional funding and/or payment of LLC expenses would not be allowed.

What are the steps that I take in order to invest in real property through an LLC?

First, you must establish an LLC (or LP). The Operating Agreement and/or Subscription Agreement must show your IRA's membership/partnership interest as *Polycomp Trust Company Custodian FBO IRA Holder's Name IRA or Roth IRA #_____*. In addition the Operating Agreement and/or Subscription Agreement must require that the managing member either appoint a qualified professional such as an attorney or CPA to either conduct a review of each transaction before execution, or to take over as managing member. These documents are reviewed and approved by you; however, Polycomp Trust Company must sign as the subscribing member/limited partner. Once you have reviewed the documents you complete our Direction Letter (which directs Polycomp Trust Company to sign the documents and purchase the LLC interest) and forward the Direction Letter and the Agreement(s) to us. As long as cash is available in your IRA, your LLC interest will be funded within 48 hours of receipt of the required documents.

If my IRA is a member of the LLC that is buying property, how should the purchase offer be drawn up?

All offers must list the LLC as the buyer. The LLC is purchasing the real property in the name of the LLC. Whether it is the only buyer, or buying as a tenant in common, the documents should be vested in the name of the LLC.

How is the deposit on the property paid when the LLC is purchasing the property?

When your IRA purchases property as a member of an LLC, the deposit or earnest funds are paid by the LLC. Typically, the LLC will have a bank account in its name to hold the members' funds for investment and to pay expenses.

Who signs the closing documents when the LLC is purchasing the property?

The managing member of the LLC signs all escrow documents on behalf of the LLC.

Can my IRA invest in an LLC with other members?

Yes. You, any family members, their IRAs, eligible 401(k)s (or other qualified plans), and unrelated third parties may all be initial members of an LLC created to purchase real property. Each member's interest is held separately within the LLC. Once the initial funding of the LLC is complete, however, future transactions may be limited due to the prohibited transactions and self-dealing rules.

Can I personally guarantee a loan to the LLC in which my IRA is a member?

No. You cannot guarantee a loan for any amount personally, even in the LLC.

If the LLC buys an income producing rental property, what happens to the rental income?

The income goes back into the LLC. The LLC can reinvest or hold the cash according to its Operating Agreement. The IRA is treated as any other member of the LLC. If dividends or principal are returned to members, the IRA's share is paid to *Polycomp Trust Company Custodian FBO* IRA Holder's Name IRA or Roth IRA #_____ and sent to Polycomp for deposit to the IRA cash account.

Will the income generated by the real property in my IRA be subject to taxation?

Although your IRA is tax-exempt, the manner in which the IRA generates tax-exempt income is limited by the unrelated business taxable income (UBTI) rules. If the IRA conducts an active trade or business, the income derived from that activity is taxed as UBTI. Some rents or debt-financed property may be subject to UBTI. If there is UBTI, IRS Form 990-T must be filed and the taxes must be paid from the IRA. We recommend that you consult with your tax advisor to determine if there is any UBTI and if so, to prepare the necessary tax returns.

Can my IRA or the LLC that is owned by my IRA purchase real estate I already own?

No. This would be considered a prohibited transaction. Your IRA may not purchase property (or any asset) which is currently owned by you or any other disqualified person.

Who is a disqualified person?

Generally, disqualified persons include your immediate family members: you; your spouse; your lineal descendants or ascendants and their spouses (i.e., son, mother; daughter-in-law); a fiduciary of the IRA or person providing services to the IRA (i.e., the trustee or custodian); an entity at least 50% of which is owned (or at least 50% of the beneficial interests are held) by a combination of the above (i.e., if you and your spouse own 50% of an LLC, that LLC is a disqualified person with respect to your IRA); or a 10% owner, officer, or director or highly compensated employee of such an entity. The IRS does not consider siblings, aunts, uncles, etc., as disqualified persons.

What are the consequences of a prohibited transaction in my IRA?

If you engage in a prohibited transaction all the special tax benefits accorded the IRA are lost. That means the entire IRA will become taxable to you as of the first day of the taxable year in which the transaction occurs.

If the IRA invests in vacation property can my family stay there on vacation?

No. You and/or any disqualified persons cannot personally benefit from the assets in your IRA.

Does Polycomp need the fair market value (FMV) of the property every year?

We are required to report the FMV of your IRA to the Internal Revenue Service (IRS) annually. For this purpose, we need a third party appraisal at least once every three years. In the event of a taxable distribution, a third party appraisal is required at the time of the distribution.

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