## Letter to Plan Custodian Requesting Distribution According to Donor’s Wishes

**Letter to General Counsel of IRA Custodian**

**[Month, Day, Year**

**Favorite Charity**

**123 Main Street**

**Town, USA 00000]**

Dear General Counsel:

We have been informed that [**Favorite Charity]** is a beneficiary of the IRA of [**Jane Doe]**. The IRA account number is [**123-45-678]**. We request that you liquidate the funds held for our benefit in the trust account and deliver them by check within 30 days to our organization at this address: [**Favorite Charity, Bequest Administrator, 123 Oak Street, Chicago, IL 00000].**

**[Favorite Charity]** is not required to open an IRA account with a custodian to receive an IRA distribution. Under Reg. 1.408-2(b), the IRA account must be created “for the exclusive benefit of an individual or his beneficiaries.” A charity is a nonprofit corporation and is defined as a “Person” under the IRC, but a charity clearly is not an individual and therefore not permitted to set up a Sec. 408 IRA account. In addition, as custodian you are trustee of an IRA trust under Reg. 1.408-2(b). You are required by federal and state law to comply with the fiduciary responsibilities of a trustee. If you fail to make the distribution as required in your contract with the IRA owner, you are potentially in breach of your duty of fiduciary responsibility.

**[Favorite Charity]** is not subject to USA Patriot Act (Pub. L. 107-56). Sec. 326, which requires banks and other custodians to determine that a person opening an account is not on the list of suspected terrorists. First, IRC Sec. 408 does not permit a nonprofit to open an IRA account. Therefore, the Patriot Act does not apply to an IRA distribution to charity. Second, we are a U.S. recognized exempt charity and not on a list of suspected terrorists.

Finally, IRA custodians may withhold 10% of a distribution to individuals and remit that amount to the Internal Revenue Service. We are tax exempt and elect under IRS Form W-4P to not have tax withheld. Because we are tax exempt, there is no income tax on our IRA distribution and no requirement for withholding on your part. Enclosed is a copy of our IRS tax exemption letter. Our IRS identification number is [**00-1234567]**.

Because we are not permitted to open an IRA account; the USA Patriot Act does not apply to a qualified exempt U.S. charity; and withholding is not required, we request that you remit within 30 days the full distribution to the above address. If you are unable to distribute our vested IRA funds within 30 days, then, in a manner similar to Sec. 6662(a), we should receive the IRA funds and a 20% penalty amount. Because after the 30-day period you are in clear and obvious breach of contract and breach of trustee fiduciary responsibility due to noncompliance with the distribution terms of the IRA agreement, we will be willing to settle for the IRA funds plus the 20% penalty.

If you feel you are unable to make this prompt distribution as requested, please have your Legal or Compliance Department provide us with your legal basis for holding these funds and not distributing them to us. We remind you again that this is a trust and you are potentially subject to a breach of fiduciary responsibility claim for failure to follow the trust terms.

Sincerely,

**[Officer**

**Favorite Charity]**