



Real Control. Real Choice. Real Diversification.

ACKNOWLEDGEMENT RE: REQUIREMENTS FOR PRIVATE LOANS HELD IN A 401(k) PLAN

Date: _____

Borrower: _____

401(k) Plan Account: “ _____ 401(k) Plan & Trust FBO _____ \ Acct# _____ ”
 (“Lender”)

RealTrust IRA Alternatives, LLC (“RealTrust”) has received written instructions from the above-referenced 401(k) Account Holder (“Lender”) concerning his/her intention to make a Private Loan to Borrower from funds held in the above-referenced 401(k) Plan Account. As the contemplated loan will become an asset of such 401(k) Plan Account, the following instructions must be followed to ensure compliance with IRS and/or DOL requirements and RealTrust policy and procedures.

RealTrust requires all loan-related documents to be completed, executed and submitted to our Operations Center at least 48 hours prior to the requested funding date. *Please initial all items in the spaces provided below to evidence your intent to comply with these instructions. Please sign and return the completed Form to our Operations Center at your earliest convenience. Be sure to retain a copy for your records.*

_____ The Promissory Note, Security Agreement and related loan documents shall reflect the Lender’s vesting as follows:

“ _____ 401(k) Plan & Trust FBO _____, Participant Account # _____ ”
 (Name of Plan) (Account Holder)

_____ The original Promissory Note and original Security Agreement (e.g. - Deed of Trust), properly recorded and/or filed (as applicable), will be held in trust by RealTrust throughout the loan term.

_____ All payments, income, distributions and/or payoffs for the subject Promissory Note and Security Agreement must be sent to RealTrust. The Mailing Address is: **P.O. Box 69, Chelan, WA 98816.**

Checks shall be made payable to: “ _____ (Name of Plan) _____ 401(k) Plan & Trust FBO _____ (Account Holder) _____, Participant Account # _____ ”.

Under the regulations governing retirement accounts, it is generally unacceptable to send payments directly to a 401(k) Account Holder as it may be deemed that a taxable distribution or prohibited transaction took place. In any event, Account Holder agrees to indemnify RealTrust IRA Alternatives, LLC against all liability that may arise with respect to such failure to comply.

_____ Any questions or issues concerning administration of the subject Promissory Note and/or Security Agreement must be directed to the assigned Account Manager or to RealTrust's Operations Center. 401(k) Account Holder agrees to honor all written instructions from RealTrust concerning the contemplated loan, changes in asset registration and as otherwise related to the subject 401(k) Plan Account.

_____ 401(k) Account Holder hereby agrees to inform RealTrust promptly of any change in physical address, email address, telephone number, or condition of the subject loan (such as bankruptcy filings, regulatory agency investigations, default, and/or litigation).

_____ 401(k) Account Holder hereby acknowledges that RealTrust solely provides administration and record-keeping services with respect to the contemplated Private Loan. RealTrust does **not** act as a loan servicer, as that term is defined in RCW 31.04.015(28). RealTrust does **not** generate amortization schedules for loans, nor provide tax reporting to any party with respect to loan-related activity. Accordingly, 401(k) Account Holder agrees to provide payment vouchers to be included with every loan payment, which voucher shall reflect the payment amount, the interest accrued since the last payment, the corresponding principal reduction amount and the current outstanding principal amount owing on the loan.

_____ RealTrust strongly recommends that each 401(k) Account Holder/Lender retains an actual Loan Servicing Agent, either licensed under Washington's Consumer Loan Act (RCW 31.04, *et. seq.*) or exempt from licensing, as determined by the Director of the Consumer Loan Division of the Department of Financial Institutions in Washington, for the purpose of servicing the contemplated Private Loan.

_____ 401(k) Account Holder hereby acknowledges reading and understanding the following information:

“BULLETIN RE: RESIDENTIAL MORTGAGE LENDING LAW IN WASHINGTON”,
attached hereto as Exhibit “A” and incorporated herein by this reference.

401(k) Account Holder has been advised to seek the advice of independent legal counsel with respect to the applicability of Washington's Consumer Loan Act (RCW 31.04, *et. seq.*) to the contemplated Private Loan transaction, including the legal consequences thereof, if any. In proceeding hereunder, RealTrust is relying upon the representations made by 401(k) Account Holder as to whether or not the subject Private Loan involves a Residential Mortgage Loan as such term is defined in RCW 31.04.015.

_____ The subject Private Loan transaction DOES [] DOES NOT [] involve a Residential Mortgage Loan under Washington's Consumer Loan Act (RCW 31.04, *et. seq.*). If it **does**, Washington Law requires IRA Account Holder to retain the outside services of a licensed or exempt Loan Servicing Agent.

Acknowledged by 401(k) Account Holder/Lender: _____ Date: _____

Acknowledged by Borrower: _____ Date: _____

EXHIBIT “A”

WASHINGTON RESIDENTIAL MORTGAGE LENDING LAW BULLETIN

This Bulletin is designed to make RealTrust clients aware of the law in Washington State that precludes a lender from making a “**residential mortgage loan**” to Washington residents without first obtaining a license, a license waiver, or establishing an exemption from licensing that meets the standard imposed by the Department of Financial Institutions- Consumer Loan Division. In essence, a Private Loan made to a Washington resident that is secured by the Borrower’s “dwelling” may require the Lender to be licensed or clearly exempt from licensing prior to making such loan. This is true even if the subject loan is for *business, commercial, or agricultural purposes* where the borrower’s *primary dwelling* serves as collateral for the loan.

Set forth below are some pertinent statutory provisions and definitions that govern the law relative to private lending through Self-Directed IRA’s or 401(k)’s:

RCW 31.04.025 (1) states as follows:

Each loan made to a resident of this state by a licensee, *or persons subject to this chapter*, is subject to the authority and restrictions of this chapter.

RCW 31.04.035 states as follows:

(1) No person may make secured or unsecured loans of money or things in action, or extend credit, or service or modify the terms or conditions of residential mortgage loans, without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW [31.04.025](#).

(2) If a transaction violates subsection (1) of this section, any:

(a) Nonthird-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges; and

(b) Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower.

Exemptions: This chapter does *not* apply to the following:

(e): “Any person making a loan primarily for **business, commercial, or agricultural purposes** *unless the loan is secured by a lien on the borrower's primary dwelling; ...*

(f) Any person selling property owned by that person who provides financing for the sale when the property does not contain a dwelling and when the property serves as security for the financing. This exemption is available for five or fewer transactions in a calendar year. This exemption is not available to individuals subject to the federal S.A.F.E. act or any person in the business of constructing or acting as a contractor for the construction of residential dwellings;" (RCW 31.04.025(2))

Definitions:

- (1) "**Residential mortgage loan**" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other consensual security interest on a dwelling, as defined in the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling. (RCW 31.04.015 (23))

- (2) "**Dwelling**". The Truth in Lending Act §103(v) defines "**dwelling**" as a residential structure or mobile home which contains one- to four-family housing units, or individual units of condominiums or cooperatives. Thus, a "residential mortgage loan" is a dwelling-secured consumer credit transaction, regardless of whether the consumer credit transaction involves a home purchase, refinancing, home equity loan, first lien or subordinate lien, and regardless of whether the dwelling is a principal residence, second home, vacation home (other than a timeshare residence), a one- to four-unit residence, condominium, cooperative, mobile home, or manufactured home.

The undersigned Account Holder, having read and understood the foregoing content of this Bulletin, hereby warrants that the contemplated private loan transaction:

DOES [] DOES NOT [] involve a "residential mortgage loan" under Washington law.

If the subject loan does involve a residential mortgage loan, Account Holder warrants that an appropriate license and/or exemption applies thereto and that Account Holder will arrange for a qualified Loan Servicing Agent to service the subject loan throughout the term thereof. Account Holder hereby agrees to indemnify and hold RealTrust IRA Alternatives, LLC, its principals, agents, employees, delegees, successors and assigns, harmless from and against any liability that may arise with respect to the custody, administration and/or record-keeping of the subject loan unless such liability is the direct result of the intentional or grossly negligent act of RealTrust IRA Alternatives, LLC.

Account Holder: _____

Date: _____



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Documents Required Prior to Funding a Secured Note (401(k) Accounts)

As the contemplated Private Loan is to be held in a 401(k) Plan Account, the following instructions must be followed to ensure compliance with both regulatory requirements and RealTrust IRA Alternatives, LLC (“RealTrust”) policies and procedures. These instructions are designed to assist in efficiently and effectively completing the contemplated transaction.

****RealTrust requires all requested documents to be submitted at least 48 hours prior to funding****

****Any inaccurate or incomplete documentation may result in a delay of funding or closing****

Documents Required Prior to Funding:

1. Escrow Instructions & Settlement Statement (all signed by **401(k) Account Holder as Trustee of the 401(k) Plan**).
2. Wire Transfer Instructions.
3. Preliminary Title Report (for Mortgagee’s Policy of Title Insurance).
4. Copies of signed Promissory Note & Deed of Trust, including statement re: Priority Position of DOT.
5. Servicing Agreement (if applicable) with statement by the Servicer detailing the documents to be held and their correspondence address.
6. Acknowledgement of Private Loan Requirements, signed by 401(k) Account Holder & Borrower.
7. Proof of hazard insurance showing Vestee as “additional insured”.
8. 401(k) Account Holder to sign and return accurate and complete Asset Purchase Directive.

Documents Required At Close of Escrow:

1. Settlement Statement (Final)
2. Copy of Deed of Trust, properly recorded, and original Promissory Note
3. Mortgagee's Policy of Title Insurance (as applicable)

All Vestings to Read:

_____ 401(k) Plan & Trust, fbo (*Client name here*), Participant Acct. #(*client Plan # here*)

All assets will be vested using the subject 401(k) Trust Tax ID # (_____), NOT the client’s SSN.

EXAMPLE of Signature Blocks: (*All documents required to be signed by the Lender MUST be signed by 401(k) Plan Trustee*)

_____ 401(k) Plan & Trust, fbo (*Client name here*), Participant Acct. #(*client Plan # here*)

By: _____
_____, Its: Trustee

Date: _____