

Real Estate FAQs

Can I buy real estate in my Retirement Plan?

Yes! Contrary to what you may have heard or been told, the IRS places very few limits on what you may buy with your IRA retirement funds. It is your IRA custodian who has put those limits on your retirement account. A true self-directed custodian is the key. Truly self-directed IRAs allow you, the investor, to choose your investments. IRA investments are not limited by the IRS; they are limited by securities-based IRA custodians.

Does the IRS allow real estate in an IRA?

Yes. The IRS has had that question so many times they answer it directly on their website (www.irs.gov). In their retirement Q & A section they say "IRA trustees (ie custodians) are permitted to impose additional restrictions on investments. For example, because of administrative burdens, many IRA trustees do not permit 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". To invest in real estate your IRA custodian must allow it. True self-directed custodians do.

Why didn't I ever hear about real estate investment in IRAs before?

Real estate in IRAs is a well-kept "secret" opportunity that, until recently, hasn't been talked about much. Retirement investing has been dominated by the securities industry since 1974 but has always been available. The opportunity to invest IRA funds directly in real estate is an option that many people are just learning about.

Besides real estate, what are alternative investments my IRA or qualified plan can buy?

You may purchase notes, options, private placements, accounts receivable, timber deeds, crops, cattle, stock, bonds, mutual funds, certificates of deposit, anything which is not prohibited or collectible as defined by the Internal Revenue code (see www.EntrustHawaii.com for a more detailed list and the IRS code).

I have a 401(k). Can I invest that in real estate?

Your 401(k) plan may, at your direction, be invested in real estate if the investment provisions of the plan permit it. The employer establishes the plan for the benefit of the employees. The employer will have specific investment language incorporated in the plan which states what options are available to the employee. If the employer contributions to your plan have been made, and the plan permits self-directed investments, there will be rules governing the amount you may invest from that portion you are vested in. You may also have an Individual 401(k) which limits participants to owners only, plus spouses and partners. In this case you may decide on the investments to be completely self-directed by you.

What about borrowing? Can my IRA get a mortgage?

Yes, over the past year many banks have discovered the demand by IRA owners to finance real estate purchases in their IRAs. Banks continue to develop products specifically for IRAs and other plans. IRA loans tend to have higher down payment requirements than those for personal homes.

What are the restrictions for the purchase?

The primary requirement is that the purchase be for investment purposes. The IRA owner, certain family members and related persons cannot use the property while the IRA owns it. Your IRA is not allowed to buy property you already own personally.

What can I invest my IRA and qualified plans in?

The IRS does not approve any specific investments. There are two things not allowed: Life insurance and collectables. A true self-directed IRA administrator will allow any legal investment.

What are Non-Traditional investments?

Traditional investments are those that are securities sold by brokerage companies and funds. Nontraditional investments are everything else. Almost anything you can invest in outside of your IRA can be purchased inside your IRA. The power of self-direction allows you to invest in what you know. You can take advantage of real diversification. There are no minimums or limits to how much your IRA can earn.

Do I need an LLC to purchase real estate with my IRA?

An LLC may be used to purchase real estate, but it is not required. Your IRA can purchase a property in the very same way as you would personally. This is the most common way real estate is purchased and in this situation the property is simply titled to your IRA.

Where do I find an investment property?

Its up to you to find the property, there are no limitations or restrictions other than the property cannot be something you or any disqualified person currently own. If you need help finding an investment property, speak to your real estate broker.

Do I need to use a special broker and title company?

No special broker or title company are required, you can use the same ones you used to buy your current home or any other broker. However, using a broker that is familiar with this process may be helpful buy it is not required.

Can I repair the property myself?

You may not personally do any work on the property and neither can any other disqualified persons or any company you or they own. Work can be done by anyone else and you still have control over what you want them to do. Basically, you can't personally put the paint on the walls but you can show the painter how to hold the paintbrush and tell him what colors you want where.

Can I partner my IRA with my personal funds? Who else can I partner with?

If you cannot afford the investment property you are interested in you have many options. One option is to partner with yourself. For example your IRA can own 50% and you can personally own 50% (note: even if you personally own 99% of the property you are still prohibited from living in it or using the property.) You may also partner with someone else's personal or IRA funds, the disqualified persons rule does not apply here so you may partner with your spouse, parent, child, friend, or whomever. There is no limit to how many people you can partner with. The percent of ownership cannot be changed once the investment is made.



How are the expenses paid when I partner with my IRA?

Expenses are to be paid directly from the IRA. If the IRA owns 100% of the property it is responsible for 100% of the expenses. If your IRA is a partner, it is responsible for its portion of the expenses. Because the IRA must pay the expenses it is important to make sure there are sufficient funds in the IRA to cover the expenses. When purchasing the property don't forget to take expenses into account.

Where does rent income go?

Income from the investment goes directly into the IRA, and just like expenses, the IRA may only receive its portion of the income.

How long must my IRA own a property before selling it?

There are no time restrictions or limitations on buying or selling a property, you could choose to sell a property the day after closing if you wanted.

Do I have to pay capital gains taxes if I sell the property?

Because the property is owned within a tax deferred (Traditional IRA) or tax free (ROTH IRA) plan no capital gains taxes need to be paid.

Can I take property as a distribution and then live in it?

Yes, after you reach 59.5 years of age you may choose to take the property as a distribution from your IRA. Once the property is 100% in your possession you are free to use the property as you wish.

What are some good resources for more information on this?

For more information on Real Estate investing in IRAs visit www.EntrustHawaii.com. For more information on IRAs and Qualified plans you may visit www.irs.gov

How long does it take to purchase a property?

Because each case is different there is no set timeline for a real estate transaction, however an average timeline might go as follows:

- 24 hours to get the account set up once we've received the original application.
- 7-15 days for funds to be moved via "rollover distribution" (This can be initiated prior to opening the account and the funds can be mailed in with application.) If funds are moved via "transfer" the process may take longer depending on your current custodian.
- Time to get the closing documents prepared depends on you and your broker(s).
- We require all closing documents 3 business days prior to closing. The documents will be received and reviewed in this time. If we have all paperwork associated with the purchase, funds will be sent to the closing.

How much does this cost?

- To open an account the cost is \$50 (one time).
- The acquisition cost is \$95 (per asset).
- Yearly fees are \$250 per property (\$390 if leverage is used within the IRA).

For a copy of our fee disclosure please contact us.



How do I get started?

The first step is to contact Entrust Hawaii and request an account application.

How do I determine which plan is the best one for me?

The factors to consider include: your age, your contribution and deferral capability, whether you are a sole proprietor or own a company, whether you have common law employees, when you wish to retire, and your tax situation. Do you seek to make the highest contribution and have the most flexibility? Also factor in the complexity you are willing to deal with. You can review the information on our website at www.EntrustHawaii.com to receive information regarding plan aspects and contribution comparisons. You should also seek the services of a tax professional or financial planner to work with you on specifics.

What are the best kinds of retirement accounts for small business owners?

If you have no common law employees, those which are not spouses, owners, or partners, the best plan is the Individual 401(k), which permits the highest aggregate percentage of contributions and flexibility in defined contribution plans. The administration is straightforward and you are the trustee, custodian, and administrator, unlike IRA plans.

The SEP-IRA is also a common and easy plan for employers, but limitations on contributions and lack of flexibility make it less favorable overall.

The SIMPLE IRA is a small form of a plan allowing employee deferral, but it limits the amount of contributions. The SIMPLE can be a good plan for those who have lower income.

These employer-based IRAs must always have a trustee or custodian as permitted by the IRS code, and may not be self-trusted. These plans do not provide features of the qualified plan, such as being able to borrow from the plan, and in some states are not creditor-proof, among other things. The defined benefit plan has even higher contribution levels depending on your age and retirement criteria. These are expensive plans to administer, but under the right circumstances are excellent plans for people who have the money to contribute and are late in making the decision to start retirement contributions. In all cases, you may always make contributions to IRAs if you have received compensation as outlined by the IRS.

How do I find out what the current investments limits are for my retirement plans?

You can find that information at www.EntrustHawaii.com, as well as in IRS publications 560 and 590, these can be found on our site or at www.irs.gov.

Can my IRA be sued?

Your IRA may be subject to legal action by anyone. IRAs are not always exempt from creditor claims and are never exempt from federal or state taxing authorities. However, some states do not permit creditors to collect from IRAs.

Is there any liability to my retirement plan holding real estate?

Your plan may face liability, whether your plan is an IRA or qualified plan, such as a 401(k) plan. If, for example, your plan owns real estate and a person is injured on that property, the plan or IRA would have the same liability issues that you would have to deal with if you owned the property personally. Your IRA or plan could also avail itself of protections, such as insurance. Limiting liability for assets in your IRA or plan should be discussed with competent professionals, such as attorneys.

**What exactly is UBIT?**

Unrelated Business Income Tax applies to debt financed property in IRAs and also applies to operating income received from companies owned by IRAs and qualified plans. Typically the debt financed income is taxable under UBIT rules for the percentage of property that is debt financed. The details are included at www.EntrustHawaii.com and www.irs.gov.

What happens if I have to withdraw funds out of my plan for an emergency?

Borrowing funds from a plan for an emergency prior to your reaching age 59 ½ may be done without a 10% penalty if the emergency is in compliance with hardship withdrawal rules noted in the IRS code. You may withdraw funds from your IRA or plan provided you repay the funds within 60 days of distribution.

What are the deadlines for Qualified Plans and IRAs?

IRA contributions must be made by April 15 with no extensions. Qualified plans must be established by the last day of your fiscal year if contributions are to be made for that year. So if you have a calendar year end 12/31/2010, you need to establish the plan on that date for 2010 contributions. The contributions may be made until your company tax year deadline including extensions. 401(k) deferrals must be made no later than 30 days after the contributions are received. For 12/31/2010 that deadline would be 30 days later. SEP and SIMPLE IRA contributions may be made by the company tax deadline plus extensions.

What is a disqualified person or entity.

Generally, prohibited persons for your plan are you, your spouse, your children, their spouses, your parents, their spouses, other lineal ascendants or descendants, plus any company that they or a combination of them own a 50% or controlling interest in, plus a few others. You may find a detailed list on our website at www.EntrustHawaii.com. Your Plan may not enter into transactions with a disqualified person or entity. Note that the list does NOT include siblings.

For more information visit www.EntrustHawaii.com or call 808-521-4472.