

# Fractionalized Trust Deeds: Joffrey Long Explains Majority Interest Rule

## *Trust Deed Investments and Multi-Lender Loans*

IRVINE, CA, UNITED STATES, March 18, 2020 /EINPresswire.com/ -- Two or more trust deed investors invest in one note secured by a trust deed. It's called a "fractionalized trust deed" or "multi-lender loan." These are usually made or arranged by licensed real estate brokers, acting as "private money brokers" or "trust deed brokers." (broker/organizers)

Investors ask, "What happens if there is a problem and decisions must be made? How do all the investors agree on what to do?"

Until 1996, this was unclear. Then SB 1638 passed, adding section 2941.9 (the "[Majority Interest Rule](#)") to the California Civil Code.

It spelled out how individuals could invest in trust deeds with IRA funds or with other funds and the holders of a majority interest in the note/trust deed could make decisions about the investment.

Section 2941.9 spelled out the method investors could use to make decisions. It provides that:

- Multiple holders (beneficiaries) of a note and deed of trust can agree to be governed by a majority in interest of the holders of the note, should decisions need to be made regarding the note/trust deed.
- A written agreement could be entered into by the investors, agreeing to be bound a vote of a majority in interest.



This shows how trust deed investors make decisions about their investment."

*Joffrey Long*

• If a broker, such as a private money / hard money loan broker organized the investment or services the loan, any share owned by the broker or their affiliate does not count toward calculating a majority for voting purposes. A majority in interest would be based on a

percentage of the shares of the loan other than any shares owned by the real estate broker or their affiliate.

- A notice of action is sent by certified mail to each holder of an interest in the note / trust deed, informing them of the anticipated action to be taken.



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How are [Fractionalized Trust Deeds](#) set up?

**Loan Origination:** The loan may be made or arranged with funds from two or more investors, or in some cases, made with the broker/organizer's own funds. In the case where the loan has been funded and closed, using the broker/organizer's funds, the broker/organizer is now the owner of the loan, and will begin to sell interests in the loan to private investors.

**Loan Servicing:** Either the broker or a third-party loan servicer will service the loan and will disburse the proportionate share of payments to the various investors.

**Fractionalized Trust Deeds: Who are the investors?**

Most of our investors don't even need to invest in fractionalized trust deeds. They could invest in whole loans but choose to place their capital in fractionalized interests in loans. Why? Here are the reasons:

- Investing in part of a loan allows the investor to "spread around" their funds over different trust deeds. This is helpful in that it reduces risk: If an investor has \$50,000 invested in each of three trust deeds instead of \$150,000 invested in one and one of the trust deeds experiences a period of delinquent payments, the investor still has the other two trust deeds paying on time.
- If one of three \$50,000 trust deeds pay off, they still have two thirds of their funds invested, where if one \$150,000 trust deed pays off at once, they're completely uninvested until they find a new trust deed.
- Most fractionalized trust deeds, as explained earlier, are already funded by the broker/organizer. This means a potential investor isn't rushed to place funds into the borrower's loan escrow because of the time deadlines of a loan transaction. Instead, since the broker/organizer has already provided funds and closed the loan, they can provide the investor with information and disclosures about the loan and allow sufficient time for them to consider, investigate, and decide about the investment. This is also valuable when investing IRA funds into trust deeds, as the paperwork when investing IRA funds may take more time.
- When a broker/organizer has already made, funded, and closed a loan, it allows the investor to be a "secondary market purchaser," rather than directly placing their funds into the borrower's escrow. This may benefit the investor by removing them from involvement in the borrower's original transaction.
- Broker/organizer participation in the investment: Many investors prefer to invest in loans where the broker/organizer has also invested money into the investment. If the broker/organizer funds the loan with their own money, then sells part of the loan and keeps a partial interest themselves, investors may feel that the broker/organizer has a greater incentive to make a more careful initial selection of the investment and to pay more attention to it during the life of the investment.

•When a broker/organizer has already funded and closed the loan, the investor also has the benefit of knowing that the investment opportunity will actually exist, as opposed to attempting to place funds in a borrower's open loan escrow, only to learn that the borrower obtained a loan elsewhere.

•Title insurance: There may be title insurance advantages to the feature mentioned in the last bullet point, that of having the broker/organizer remain a part-investor in the loan.

“Controlling Interests:” I've heard the idea and have even seen articles written, suggesting that if investors purchase or invest in at least 51% of a fractionalized trust deed, they'll purportedly have control over the future decisions. While I won't recommend in favor or against this or any other practice, (at least not here) I will caution anyone considering this to obtain qualified legal counsel as to your possible obligations to the minority interest holders if you “take control and become the leader” of the loan servicing and trust deed investment decisions.

Assignment and Recording: It's not immediately related to this article, but I get asked this often, so I'll address it here. When investors acquire a share of a note/trust deed, their investment is evidenced by an assignment (endorsement) of a partial interest in the note and an assignment of a partial interest in the trust deed, which is recorded in the county recorder of the county where the property is located

Joffrey Long: I own Southwest Bancorp, a private money lender, broker, and loan servicer. As you might guess from the article, I provide investors with fractionalized [trust deed investments](#), in many cases suitable for IRA Investments or for individuals and family trusts.

I also testify as a private (hard) money lending expert witness in trials and arbitrations on the standard of care for makers, arrangers, and servicers of private money/hard money loans. Southwest Bancorp holds real estate broker license # 00898122, from the Calif. Dept. of Real Estate. I've held broker's license # 00525142 since 1979. Southwest Bancorp can be reached at (818)366-5200 or [info@asksw.com](mailto:info@asksw.com). The business has been in existence since 1981.

What I believe: I believe in trust deed investments and am heavily invested in them myself. Please be careful out there, many individuals have flocked to this industry during the recent boom. Some may not have the level of experience and qualification that warrants the investment of your hard-earned savings. A real estate broker may inquire about and consider your background, circumstances and qualification to make investment decisions, to ensure that they're offering you investments that are suitable for you.

DISCLAIMER: I'm a loan broker, lender, arranger, loan servicer and hard money trust deed investor. I'm not an attorney. Nothing in this article can be relied upon as legal or professional advice. Different circumstances may require different approaches or procedures. Please consult with a qualified attorney and/or other qualified advisors before making decisions or adopting an investment strategy. Nothing in this article should be considered as a “standard of care” or “the right or wrong way to do anything” in private money lending and investment, loan brokerage, loan servicing.

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