

# Real Estate Commission Bulletin



## The Client's Trust Account

Given the recent U.S. banking crisis that rattled global markets this past March, understanding and protecting client's trust accounts has once again come to the forefront. The following is a timely article that first appeared in the February 2017 Real Estate Commission Bulletin.

### The Client's Trust Account

"The devil is in the details."

The Client's Trust Account ("CTA") is a requirement in Hawaii Administrative Rules ("HAR"), §16-99-4, Client's account; trust funds; properties other than funds. All principal brokers (PB) and brokers-in-charge ("BIC") should familiarize themselves with the "details" in this section. Why? The "devil" will get you if you don't!

The HAR rules on client's accounts remains unchanged. Here are the important facts to understand when creating a CTA and maintaining it well.

- 1) A trust fund account shall be maintained in this State with a bank or recognized depository, which is federally insured, and place all entrusted funds therein. The principal broker is the designated trustee of the account. (HAR §16-99-4(a))
- 2) Records must be retained for at least three years, and kept in Hawaii. (HAR §16-99-4(b))
- 3) Trust funds must be placed into a neutral escrow depository or in a trust fund account by the next business day following receipt. The escrow depository shall be located in the same state where the property is located. (HAR §16-99-4(d))
- 4) The PB or BIC shall not commingle client's funds with other moneys. It is not considered commingling to: (a) Hold an uncashed check until offer acceptance when directed to do so by the buyer; (b) Hold an uncashed check after offer acceptance when directed to do so by the seller; (c) Maintain a minimum amount in the CTA to keep the account open. (HAR §16-99-4(h))
- 5) §16-99-4(h) also states, "Commingling of the client's funds with other moneys shall include, but not be limited to, keeping undisputed commissions, management fees, and other fees in the brokerage firm's client trust account beyond a reasonable time after those commissions, management fees, and other fees have been earned."
- 6) Only with written authorization by the PB or BIC may a salesperson, broker-salesperson, or employee handle trust properties other than funds. Without written authorization, the salesperson, broker-salesperson or employee shall not handle trust properties. The PB or BIC is responsible for trust properties they authorize a salesperson, broker-salesperson, or employee to handle. (HAR §16-99-4(i))
- 7) No person may have custody or control of trust properties held by the PB or BIC except as provided in Chapter 467, Hawaii Revised Statutes. (HAR §16-99-4(j))

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## The Client's Trust Account (cont. from page 1)

- 8) A PB may allow a BIC to have custody and control of trust properties. The PB and BIC shall be jointly responsible for any trust properties the PB authorizes the BIC to handle. (HAR §16-99-4(k))
- 9) Escrow account information, records for real estate transactions for the brokerage firm shall be retained for at least three years, and is subject to inspection by the commission or its representative at the place of business. (HAR §16-99-4(l))

Some common questions posed to the Real Estate Branch by entities seeking to obtain licensing as a real estate brokerage in Hawaii:

- 1) The owner of the entity wants control of the brokerage's monies, which includes check disbursements. The owner is not a Hawaii real estate licensee. ANSWER: NO! The PB is the bottom-line, responsible individual. Only the PB or designated BIC has control over the brokerage's monies.
- 2) The brokerage's bank account is located in another state. ANSWER: NO! The trust fund account must be maintained in Hawaii.
- 3) The bank requires two signatures for check disbursements. Can the 2nd signature be a non-licensee or licensee other than the PB? ANSWER: The PB is the trustee of the account. If the bank requires a second signature, the real estate rules do not specify who that second signatory may be.
- 4) Do all monies received by the brokerage have to flow through the client's account? ANSWER: NO. If monies are the result of a fiduciary relationship, then these funds flow through the client's account. And in light of #5 above, funds for disbursement for commissions, management fees, and other fees need to be disbursed in a reasonable amount of time, from the client's account. See HAR, §16-99-3(e), "The broker shall keep in special bank accounts, separated from the broker's own funds, moneys coming into the broker's possession in trust for other persons, such as escrow funds, trust funds, clients' moneys, rental deposits, rental receipts, and other like items."

## Ho'ala: The New Face of PVL

As many of you know, the Professional and Vocational Licensing Division ("PVL") launched Ho'ala, the replacement of PVL's decades old licensing system, in February 2020. In March 2021, the real estate's education module went live. As with all new software deployments, unforeseen glitches have occurred and PVL and its vendors have been working daily to address these glitches. This past renewal period was a strenuous test of Ho'ala as real estate is one of the most complicated licensing programs in PVL. For the most part, Ho'ala worked as planned. However, some licensees encountered obstacles renewing their licenses and as of the date of this bulletin, those issues have been resolved.

While PVL's vendor works diligently to bring other licensing programs onboard Ho'ala's renewal platform, there remains the potential for new glitches to arise. Which brings up an **important reminder**: when a licensee submits any document that will change the status of their license (renewal application, restoration application, change form, etc.), you are urged to check the PVL Online License search (<https://mypvl.dcca.hawaii.gov/public-license-search>) 15 to 20 business days after submission to ensure the update to the license record was processed successfully. If your status does not change within 5-10 business days, send an email to the Real Estate Branch at [hirec@dcca.hawaii.gov](mailto:hirec@dcca.hawaii.gov). Provide as much detail as possible and include your daytime phone number in the email so that we can contact you if additional information is required. **Never assume** that a license update was processed.

Be assured that we are working hard to ensure Ho'ala lives up to its promise of being efficient and user-friendly, and your cooperation is greatly appreciated.

# The Chair's Message

Happy May Day!

Wow – can you believe it is May already? A third of 2023 has already whizzed by. Are you still honoring your 2023 Resolution? I am trying my best and I hope you are too. As each day, week, and month pass, I better comprehend the saying, “Time flies when you are having fun.” So far, the Year of the Rabbit has been eventful and challenging, but exciting and fun. I think it is interesting that as we see normalcy in the world return, we similarly see a return of a more balanced real estate market in Hawaii.

Before more time passes, I must apologize and say I stand corrected, then thank you. In my last message, I insinuated that many of you only read the Administrative Actions section in the REC Bulletin. I jokingly scolded you for not reading The Chair's Message. Well, that must have hit a nerve, or, more fittingly, many funny bones. After the message was published, I received many positive calls and texts from individuals from all islands who said they read the entire Real Estate Bulletin. Many of you also shared compliments on The Chair's Message. You stated you enjoyed my message as you could easily relate to it. To those who provided feedback (and you know who you are) - thank you. I appreciated hearing from you as did the Real Estate Commission. Hearing from upstanding citizens who foster good in society is always important. Your voices validate the important work the Real Estate Commission does. Your support encourages us to continue to work hard for the real estate industry and the State of Hawaii.

One keen observation that many of you shared is that my suggested resolution – to be the best Hawaii real estate licensee that you can be – must have resonated with licensees. You noticed that with each passing Bulletin, the Administrative Actions section got smaller and smaller due to fewer violations. Your observations were correct! Striving to make the real estate industry in Hawaii more competent and professional has been a goal. With the help of all licensees and the cooperation and collaboration of all brokerages, large and small, we will achieve this goal. It will not be easy as all brokers will face more scrutiny but it is necessary. Consumers today expect real estate licensees to know what they are doing. Access to technology and shared information has increased consumers' expectations. They demand a professional experience and expect nothing less.

To reach this goal we need to start “from the top” and put the “heavy lifting” on the licensed real estate brokers. HRS §467-1.6 clearly states, “The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.” If the “boss” broker knows what she is doing, does it professionally, and supervises her firm properly, her competent staff will be well on its way to professional success. (I reference the boss broker as she/her in honor of Mother's Day. Do not forget to honor your mom on May 14th.)

HRS §467-1.6 lists nine responsibilities that a principal broker is responsible for. Brokers, you need to know these responsibilities and abide by them! You are held to a higher standard than that of a salesperson. Due to space constraints, I am not able to list all of the responsibilities in the Bulletin. I will highlight an important one, HRS §467-1.6 (b)(7) which states, “The principal broker shall be responsible for ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active.” Easy to understand and simply put. Renewing one's license happens once every two years at the same time and same place. Reminders and warnings are plentiful yet, some in our industry miss the deadline and continue to practice. I know, I know, I can read your lips, all of you exclaimed in unison, “WHAT? That is inexcusable!” This is a definite faux pas that will be addressed.

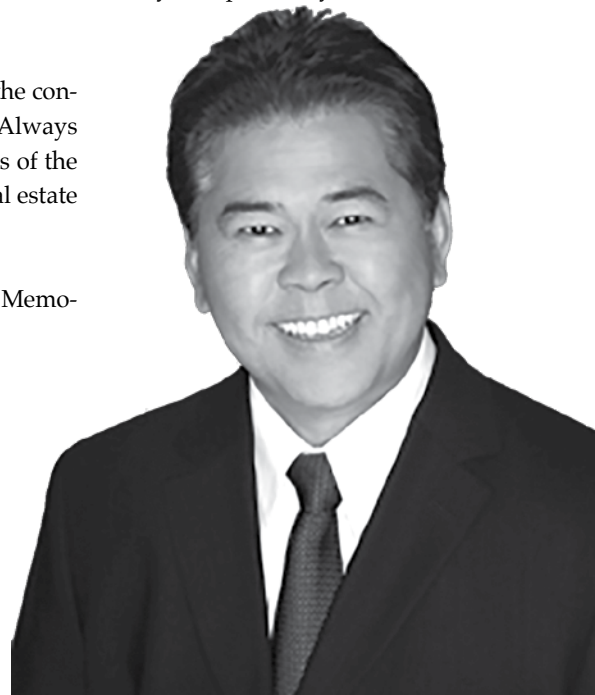
No one is perfect; we all make mistakes. Perpetrators need to take responsibility, accept the consequences, and make restitution. Do not make the same mistake again. Be competent. Always try to better yourself. Focus on staying out of trouble and out of the Bulletin. Two-thirds of the year remain and good things will come to those who remain steadfast as consummate real estate professionals.

Happy May Day! Do not forget Mother's Day! And honor those who sacrificed for us on Memorial Day!

Mahalo Nui Loa,



Derrick Yamane, Chair  
Hawaii Real Estate Commission



# Administrative Actions

## February 2023

### KONA NOW LLC dba

KONA NOW HAWAII REALTY  
RB 23284

Case No. REC 2021-282-L; REC  
2021-296-L; REC 2021-317-L; REC  
2021-366-L

Dated 03/01/2023

(Commission approved  
settlement agreement)

### RICO Allegation:

Between January and September 2021, in the County of Hawaii, State of Hawaii, Respondent displayed signs and advertisements, including public-facing door and window signs at its place of business, that used the license name of a different real estate brokerage firm, without the Commission's authorization or approval. [REC 2021-282-L.]

Between January and September 2021, in the County of Hawaii, State of Hawaii, Respondent managed more than two dozen rental real estate properties without real property rental

management agreements signed, in writing, by and between Respondent and the owners of those real estate properties. [REC 2021-296-L; REC 2021-317-L; and REC 2021-366-L.]

### Alleged Violations:

HRS §467-14(13); HAR §16-99-3(f); HAR §16-99-11(a)

### Sanctions:

Revocation of Respondent's real estate broker's license.

Respondent is represented in this matter by Steven D. Strauss, Esq.

JACQUELINE J. FRAME aka  
JACKIE FRAME  
RB 23076

Case No. REC 2021-282-L; REC  
2021-296-L; REC 2021-317-L; REC  
2021-366-L

Dated 03/01/2023

(Commission approved  
settlement agreement)

### RICO Allegations:

Between January and September 2021, in the County of Hawaii, State of Hawaii, the real estate brokerage firm that Respondent was responsible for managing and supervising as its principal broker failed to comply with State licensing requirements relating to advertisements and real property management agreements.

### Alleged Violations:

HRS §467-1.6(a); HRS §467-14(13)

### Sanctions:

Fine of \$5,000.00

Respondent is represented in the matter by Steven D. Strauss, Esq.

## March 2023

SOLDIER TO SOLDIER  
HAWAII REALTY LLC and  
CELESTER THOMAS  
RB 22154  
RB 22155

Case No. REC 2020-244-L

Dated 3/26/2023

(Commission approved  
settlement agreement)

### Uncontested Facts:

RICO received a complaint alleging that, on or about March 18, 2020, Respondent Thomas met with owners of 184 Kilea Place, Wahiawa, Hawaii 96786 (the "Property"), Lloyd M. Yamada and Ok Chin Pak Yamada ("Complainant") (hereinafter, the "Owners") to discuss retention of Respondent Soldier as the seller's agent for the Property. No contact or listing agreement was signed by the Owners or Respondent Thomas on behalf of Respondent Soldier. On or about June 6, 2020, the Property was listed as an "Exclusive Rights," "Full Service" listing on the Multiple Listing Service (MLS), MLS listing no. 202012552 (the "Listing"), naming the Listing agent as Respondent Thomas and the office as Respondent Soldier. On or about June 9, 2020, Complainant, through her attorney, Warren Kim, Esq., contacted Respondent Thomas and demanded that the Listing be removed as there was no listing agreement or other written contract

signed by Complainant regarding Respondents' agency in the sale of the Property. Respondents did not promptly delist the Listing.

RICO alleges that Respondents failed to obtain a written listing agreement or agency agreement as between Respondents and the Owners prior to listing the Property for sale. RICO further alleges that Respondents misrepresented to the consuming public that Respondents were agents for the owners in the sale of the property, through the Listing.

### Alleged Violations:

HRS §§467-14(1); 467-14(13); HAR §§16-99-3(b); 16-99-3(f); 16-99-3(i)

### Sanctions:

Fine of \$7,500.00

(cont. page 5)

# Administrative Actions (cont. from page 4)

## March 2023

**RUSSELL H. YAMANOHA**  
RS 62617

Case No. REC 2019-609-L

Dated: 3/25/2023

(Commission approved  
settlement agreement)

### **RICO Allegations:**

In September 2019, Respondent pleaded guilty in the United States District Court for the District of Hawaii to a criminal misdemeanor information regarding a conspiracy to make false entries into the records of a labor union. Respondent was convicted and, in December 2022, was sentenced to two years of probation and ordered to pay a \$5,000.00 fine, which Respondent paid, in full, later that same month.

Respondent timely self-reported both his September 2019 guilty plea and his December 2022 conviction and sentence to the Commission, in writing, within thirty days.

### **Alleged Violations:**

HRS §467-14(8); HRS §467-14(20)

### **Sanctions:**

Fine of \$4,000.00

## Statutory/Rule Violations

**Settlement Agreement (Allegations/Sanction):** The Respondent does not admit to the allegations set forth by the Regulated Industries Complaints Office (RICO) and denies having violated any licensing law or rule. The respondent enters in a Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing on the matter.

**Disciplinary Action (Factual Findings/Order):** The respondent is found to have violated the specific laws and rules cited, and the Commission approves the recommended order of the Hearings Officer.

- |                  |  |
|------------------|--|
| HRS §467-1.6(a)  | The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees.   |
| HRS §467-14(1)   | Making any misrepresentation concerning any real estate transaction.   |
| HRS §467-14(8)   | Conduct constituting fraudulent or dishonest dealings.   |
| HRS §467-14(13)  | Violating this chapter, chapters 484, 514B, 514E, or 515, or section 516-71, or the rules adopted pursuant thereto.  |
| HRS §467-14(20)  | Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.  |
| HAR §16-99-3(b)  | The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity of the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.   |
| HAR §16-99-3(f)  | The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved. When working with a seller in a "For Sale By Owner" or a "Courtesy to Broker" situation, the licensee shall disclose who, if anyone, the licensee represents and who will pay a commission, if any. |
| HAR §16-99-3(i)  | The brokerage firm shall not submit or advertise property without written authorization, and in any offering the price quoted shall not be other than that agreed upon with the owner as the offering price.   |
| HAR §16-99-11(a) | All real estate advertising and promotional materials shall include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission.  |

## Condominium Documents: Seller Obligations

The seller of a condominium unit has a contractual duty to provide certain documents to a prospective buyer pursuant to the Purchase Contract. Section M of the Purchase Contract, Additional Seller Obligations Regarding Documents, provides that in the sale of a condominium unit, the seller “shall provide” to the buyer, at the seller’s own expense the following condominium documents “to the extent that they exist and are obtainable”:

- Approved minutes of the last three Board meetings.
- If the association has incorporated, Articles of Incorporation and any amendments.
- Bylaws and any amendments.
- A copy of all pending litigation complaints filed by or against the Association and/or its directors that are currently unresolved.
- Current and/or a proposed budget.
- Current financial statement for the association.
- Current house rules.
- Condominium declaration and any amendments.
- Any design standards and/or guidelines.
- Summary of insurance for the association.
- Any lender’s disclosures.
- Minutes for the last annual meeting of the association.
- Project information form RR105c.
- Reserve study or summary.

For their part, the listing broker and/or agent should review Section M with the seller(s), point out the documents to be provided and facilitate the delivery of the condominium documents from the appropriate source to the buyer(s).

Listing agents should talk to their broker if they have any questions regarding the mechanics involved in the delivery of the documents. Having said this, the owner of the unit, “or the owner’s authorized agent” is the person with the authority to request any documents, pursuant to HRS § 514B-154.5.

Every association handles the responsibility for the provision of documents differently. The condominium association board through a board member, the resident manager, or the condominium managing agent, any of these individuals may be responsible for providing documents to requesting owners. Find out who is tasked with this responsibility in the association. And **always** make a document request in writing to create a written record of your request.

HRS § 514B-154.5 sets out the documents that must be made available “[n]otwithstanding any other provision in the declaration, bylaws, or house rules” including any requirements for receiving them. A link to the governing statute and this section is provided at the end of this article.

Some associations have their own website from which documents may be downloaded. If requested in writing by an owner or the owner’s authorized agent, documents, records, and information may be made available directly from the website. This information may be downloaded at no cost to the owner. Another option for owners - if an association can send documents electronically, owners may make a written request to have documents emailed to them.

Now that you are prepared to make a request, check whether the law requires you to provide an affidavit before receiving documents. For example, anyone wanting financial information or insurance policies pursuant to HRS § 514B-154.5 (a) (10) must provide an executed affidavit stating that the information is requested in good faith.

The law allows associations to charge requesting owners an administrative cost and copying fee for documents. The administrative and copying fees “shall be reasonable” and cannot exceed \$1 per page, except for pages larger than eight and one-half inches by fourteen inches. Pursuant to the Purchase Contract, the seller is responsible for any costs.

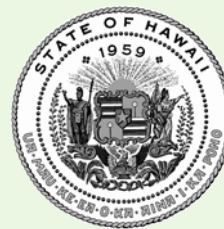
It is essential that potential buyers have access to information about association matters, in particular financial matters, as it can influence their decision to purchase a unit. Details relating to reserve studies, monthly maintenance fees, potential special assessments for common element maintenance or pending litigation are critical to making an informed purchase. The prospective buyer can get a sense of how the association is run and its relative financial strength by reviewing these documents beforehand.

The State Regulated Industries Complaints Office (“RICO”) has legal jurisdiction over ensuring that owners receive the documents due them. At RICO’s website here, <https://web2.dcca.hawaii.gov/ricocomplaint/>, you can access a records request form, or a complaint form should you be denied access to records, as well as find tips for making a successful records request. Their website is informative; check it out.

To view and review HRS § 514B-154.5, visit REBs website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec). Click on the “HRS/HAR” link at the top of the home page, then choose HRS 514B.

## Prelicensure Schools

Abe Lee Seminars	808-942-4472
American Dream Real Estate School, LLC	844-223-7326
Carol Ball School of Real Estate	808-280-0470
The CE Shop, LLC	888-827-0777
Coldwell Banker Pacific Properties Real Estate School	808-748-3410
Colibri Real Estate, LLC	866-739-7277
Continuing Ed Express, LLC	866-415-8521
Diamond Real Estate School	808-866-5828
Excellence in Education dba Maui Real Estate School	808-212-4861
Hawaii Institute of Real Estate	808-342-4061
Inet Realty	808-955-7653
Mayfield Real Estate, Inc., dba Global Real Estate School	800-581-6014
Premier Real Estate LLC, dba Premier Real Estate Academy	808-556-3135
Real Estate School Hawaii	808-551-6961
REMI School of Real Estate	808-230-8200
Scott Alan Bly School of Real Estate, LLC dba Bly School of Real Estate	808-738-8818
Seiler School of Real Estate	808-874-3100
Vitousek Real Estate Schools, Inc.	808-946-0505



## State of Hawaii Real Estate Commission

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This material may be made available to individuals with special needs. Please call the Senior Real Estate Specialist at 808-586-2643 to submit your request.

## Continuing Education Providers

Abe Lee Seminars	808-942-4472	Honolulu Board of Realtors	808-732-3000
American Dream Real Estate School, LLC	844-223-7326	International Association of Certified Home Inspectors (InterNACHI)	720-735-7125
Building Industry Association of Hawaii	808-629-7505	Kauai Board of Realtors	808-245-4049
Carol Ball School of Real Estate	808-280-0470	McKissock, LLC	800-328-2008
The CE Shop, LLC.	888-827-0777	Preferred Systems, Inc.	888-455-7437
CMPs Institute, LLC	888-608-9800	Real Estate School Hawaii	808-551-6961
Coldwell Banker Pacific Properties Real Estate School	808-748-3410	Real Estate Success Series LLC	310-259-5776
Colibri Real Estate, LLC	866-739-7277	Realtors' Association of Maui, Inc.	808-873-8585
Continuing Ed Express, LLC	866-415-8521	REMI School of Real Estate	808-230-8200
Eddie Flores Real Estate Continuing Education	808-223-6301	Residential Real Estate Council	800-462-5541
ExceedCE, LLC	415-885-0307	Scott Alan Bly School of Real Estate, LLC dba Bly School of Real Estate	808-738-8818
Finance of America Reverse, LLC	330-807-8948	Servpro Industries, LLC	615-451-0200
Franklin Energy Services, LLC	866-735-1432	Shari Motooka-Higa	808-492-7820
Hawaii Association of Realtors	808-733-7060	Sirmon Training and Consulting Group LLC	704-458-9743
Hawaii Business Training	808-250-2384	Systems Effect LLC, dba Training Cove	480-517-1000
Hawaii CCIM Chapter	808-528-2246	WebCE Inc.	877-488-9308
Hawaii First Realty LLC	808-282-8051	West Hawaii Association of Realtors	808-329-4874
Hawaii Island Realtors	808-935-0827		

State of Hawaii  
Real Estate Commission  
King Kalakaua Building  
335 Merchant Street, Room 333  
Honolulu, HI 96813

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## 2023 Real Estate Commission Meeting Schedule

### Real Estate Commission – 9:00 a.m.

**Friday, May 26, 2023**

**Friday, June 23, 2023**

**Friday, July 21, 2023**

**Friday, August 25, 2023**

**Friday, September 22, 2023**

**Friday, October 27, 2023**

**Friday, November 17, 2023**

**Friday, December 15, 2023**

Until further notice, Laws & Rules Review Committee, Condominium Review Committee, and Education Review Committee meeting items will be discussed at Real Estate Commission meetings.

Real Estate Commission Meetings will be held online via the Zoom platform. Physical location will be in the King Kalakaua Building, 335 Merchant Street, Room 333.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at [www.hawaii.gov/hirec](http://www.hawaii.gov/hirec) or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586- 2643 to submit your request.