TECHNOLOGY: THE GOOD, THE BAD and THE EVIL & CLIENT TRUST ACCOUNTS

STUDENT MANUAL
2017-2018 HAWAII CORE COURSE
PART A

State of Hawaii
Real Estate Commission
335 Merchant Street, Room 333
Honolulu, HI 96813
INTRODUCTION: 2017-2018 HAWAII REAL ESTATE CORE COURSE – PART A

UNIT 1: 2017 REAL ESTATE-RELATED LEGISLATION

Introduction to Unit 1

Lesson: 2017 Hawaii Legislative Updates

- House Bill 192 (HB192 HD2 SD1 CD1): Expands the definition of Planned Community Associations
- House Bill 239 (HB239 HD2 SD1 CD1): Clarifies certain issues relating to condominium association proxies
- House Bill 832 (HB832 HD1 SD1 CD1): Imposes new requirements related to condominium board meetings
- House Bill 1244 (HB1244 HD1 SD2 CD1): Cesspools; Upgrade, Conversion, or Connection
- House Bill 1418 (HB1418 SD1): Amends the county exemptions from building permit and building code requirements to ensure that Hawaii’s communities are not suspended from participation in the National Flood Insurance Program
- House Bill 1498 (HB1498 HD1 SD1 CD1): Condominium Associations; Contracts; Resident Managers; General Managers; Operations Managers; Site Managers; Owners; Board of Directors; Mixed-use Projects; Elections; Board Members
- Senate Bill 119 (SB119 SD1 HD1 CD1): Establishes a cap on late rent payment fees
- Senate Bill 292 (SB292 SD1 HD1 CD1): Repeals HRS Chapter 514A
- Senate Bill 369 (SB369 SD1 HD1 CD1): Prohibits retaliation related to condominium complaints, violations or owners’ exercise of rights


Introduction to Unit 2

Lesson: Security Risks

- Malware
- Ransomware
- Phishing/Spear-phishing
- Phishing with a Scary Twist

Lesson: Risk Reduction/Prevention

- On Guard!
- Security Software
- Social Engineering Attacks
- What to Do When You’ve Been Hacked

Lesson: Electronic Communication

- Email
- Texting

Lesson: Cloud Storage

- Reading Cloud Storage User Agreements

Lesson: Agents and Social Media

Lesson: Blogs

Lesson: Twitter

Lesson: Facebook

Lesson: LinkedIn

Lesson: YouTube

Lesson: Pinterest
| Lesson: Instagram | 23 |
| Lesson: Snapchat | 24 |
| Lesson: Periscope | 24 |
| Lesson: Minimize the Dangers of Social Media | 25 |
| Acknowledging Dangers | 25 |
| Precautions to Stay Safe | 25 |
| Safety Concerns When Posting Open Houses | 26 |
| Additional Precautions When Using Social Media | 26 |
| Lesson: Copyright | 26 |
| Understanding Copyright Law | 26 |
| Content Protected by Copyright Law | 27 |
| Real Estate Items Protected by Copyright | 27 |
| Copyright Infringement and Plagiarism | 27 |
| The Fair Use Doctrine | 28 |
| Complying with Copyright Laws for Images You Use | 28 |
| Give Credit Where Credit Is Due | 29 |
| Lesson: Trademarks | 29 |
| Using Trademark and Service Marks to Distinguish Goods and Services | 29 |
| Trademark vs. Copyright | 29 |
| Lesson: Public Domain Content | 30 |
| Examples of public domain content | 30 |
| Expiration of Copyright Protection | 30 |
| Attributing Public Domain Content | 30 |

**UNIT 3: CLIENT TRUST ACCOUNTS**

| Introduction to Unit 3 | 31 |
| Lesson: Definition & Fiduciary Duties | 31 |
| Definition | 31 |
| Fiduciary Duties | 31 |
| Lesson: Legal Requirements | 32 |
| When and Where a Trust Fund Account Must Be Maintained | 32 |
| Process to Establish a Trust Account | 32 |
| Monies That Must Be Deposited in a Trust Account | 32 |
| Chain of Custody | 33 |
| Management of the Trust Account | 33 |
| Salesperson Handling of Trust Properties Require Written Authorization | 33 |
| Licensee’s Personal Transactions | 34 |
| Recordkeeping | 34 |
| Retention Period | 34 |
| Interest Paid on Trust Funds | 35 |
| Lesson: Commingling | 35 |
| Scenarios That Would Not Be Considered Commingling | 35 |
| Lesson: Conversion | 36 |
| Avoiding Conversion | 36 |
| Violations/Penalties | 36 |
| Lesson: Questions, Examples & Case Studies | 36 |
| Common Questions Received by Real Estate Commission Related to Trust Accounts | 36 |

*Examples of how Funds Flow In and Out of a Trust Account*

<p>| Example 1: Buyer Instructs the Earnest Money Deposit Check to Be Held Uncashed | 37 |</p>
<table>
<thead>
<tr>
<th>Example 2: Licensee Works with a Property Manager</th>
<th>37</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Studies</td>
<td>38</td>
</tr>
<tr>
<td>Case Study #1: Negligence in Depositing Escrow Check</td>
<td>38</td>
</tr>
<tr>
<td>Case Study #2: Clients’ Trust Accounts’ Audit Goes Awry</td>
<td>38</td>
</tr>
<tr>
<td>Case Study #3: Failing to Transfer a Deposit to the Broker</td>
<td>39</td>
</tr>
<tr>
<td>Client Trust Accounts—Other Resources</td>
<td>39</td>
</tr>
</tbody>
</table>
Introduction: 2017-2018 HAWAII REAL ESTATE CORE COURSE – PART A

The Course

Licensees intending to renew their license on an active status by the November 30 (even-numbered years) renewal deadline must complete 20 hours of approved continuing education courses during the biennium. The required continuing education hours include six (6) hours for the Real Estate Commission (REC)-designated core courses and fourteen (14) hours of elective credit hours.

The core course is divided into two parts (A and B). Each part is, in turn, divided into two sections. The first section covers the legal updates for that year and the second section covers one or more topics of current interest or importance as determined by the REC. This year’s Section 2 is entitled *Technology: The Good, the Bad, and the Evil*; and *Client Trust Accounts*. Both parts may be taken either live in a classroom setting or online. For more information, contact the Department of Commerce and Consumer Affairs’ Real Estate Branch at www.hawaii.gov/hirec.

Course Evaluation

At the end of this course, you will be asked to complete an evaluation of the course as a whole. As the course progresses, please note items in both sections that you might wish to critique. Your candid and constructive feedback will be appreciated by the instructor, course provider, and the Real Estate Commission.

Caution and Disclaimer

1. This course is intended to provide general information and is not a substitute for obtaining legal advice or other competent professional assistance to address specific circumstances. Because it will not contain subsequent law changes, readers are advised to check current laws and rules to determine if any changes have occurred since publication.
2. The information and documents provided in this course are not intended to represent the Real Estate Commission’s policy or opinions on any given topic.
3. In all cases where references are made to specific sections of the Hawaii Revised Statutes, the actual language as published in the Hawaii Revised Statutes shall control.

Course Objectives

Upon completion of this course, you will be able to:

- Be aware of understand some of the real estate-related bills passed by the legislature in 2017.
- Have a basic understanding of different types of technology tools and practices used in the real estate industry and the legal rules pertaining to them such as copyright and trademark.
- Identify the legal requirements concerning client trust accounts.
Introduction to Unit 1
Pursuant to the Real Estate Commission’s (REC) objective of making licensees aware of each year’s major law changes relating to real estate, this unit lists bills that were passed by the Hawaii Legislature during the 2017 session and sent to the governor. Bills can become law either by the governor signing them, or by not vetoing them by the applicable deadline. If the governor vetoes a bill, it will not become law unless the governor’s veto is overridden by the legislature.

Article III, section 16 of the Hawaii State Constitution specifies that the governor has 10 days to consider bills presented 10 or more days before the adjournment of the legislature and 45 days after the adjournment of the legislature to consider bills presented to the governor fewer than 10 days before such adjournment. Saturdays, Sundays, holidays, and any days in which the legislature is in recess prior to its adjournment are not counted in determining these time periods.

Bills that have become law at the time this manual is published are identified by an act number in bold type under the bill number. The others that are not yet law will be updated when the information becomes available.

The bills are arranged numerically by House and Senate, followed by bill titles (which are not always descriptive of a bill’s contents) and a brief description. The bills and the committee reports and testimony relating to them can be viewed by at the Hawaii Legislature’s website http://www.capitol.hawaii.gov.

Note: Each bill contains a provision stating when it will become effective. The date that a bill becomes law may not be the date that the law will take effect.

Caution and Disclaimer

1- The impact of the bills is far-ranging, from possibly minimal to certain licensees in some areas of real estate to significant to those practicing in others. The purpose of this section is not to provide a detailed analysis of each bill, but to give licensees a general awareness of legislation being enacted so that each person can take appropriate follow-up action.

2- This information is not intended to be a comprehensive, nor necessarily balanced, treatment of any bill, nor are they to be construed as legal advice or necessarily reflective of the Real Estate Commission’s policy or opinions on any of these measures.

Lesson: 2017 Hawaii Legislative Updates

House Bill 192 (HB192 HD2 SD1 CD1): Expands the definition of Planned Community Associations
This bill expands the definition of a “planned community association” under HRS Chapter 421J to include a homeowners' association, in which the voting membership is made up of ten or more parcel owners or their proxies and specifies that assessments may be imposed that, if unpaid, may become a lien on the parcel(s). It also addresses how proxies that return with boxes “unchecked” are to be treated. Members of these types of associations will now have access to
mediation dispute resolution processes as a result of being subject to Chapter 421J. The effective date of this bill: July 1, 2017.

**House Bill 239 (HB239 HD2 SD1 CD1): Clarifies certain issues relating to condominium association proxies**
This bill specifies that if a proxy is a standard proxy form authorized by a condominium association, and the proxy is returned with no box checked or more than one box checked, the proxy shall be counted for quorum purposes only. The effective date of this bill: when it is approved by the Governor.

**House Bill 832 (HB832 HD1 SD1 CD1): Imposes new requirements related to condominium board meetings**
This bill provides that any violation by a condominium board member of the mediation or arbitration provisions of Hawaii’s condominium statute (HRS sections 514B-161 & 162) may constitute a violation of the member’s fiduciary duty but also provides a safe harbor provision for a board member who votes for compliance or rescinds or withdraws the violating conduct. It specifies that condominium owners shall be permitted to participate in any deliberation or discussions at board meetings, other than executive sessions, subject to owner participation rules adopted by the board. The bill further requires the notice for board meetings to include a list of items expected to be on the meeting agenda and that unapproved final drafts of the minutes of a board meeting be available within 30 days after the meeting. The effective date of this bill: July 1, 2017.

**House Bill 1244 (HB1244 HD1 SD2 CD1): Cesspools; Upgrade, Conversion, or Connection**
This bill requires all cesspools in the state be upgraded or converted into more environmentally friendly waste treatment systems or connected to a sewer system before January 1, 2050 but gives the Department of Health the authority to grant exemptions from this requirements to property owners of cesspools who show a legitimate reason that makes it infeasible to upgrade, convert, or connect the cesspool. The bill also directs the department to collaborate with the department of taxation to assess the feasibility of a grant program to assist low-income property owners with a cesspool upgrade, conversion, or connection. The effective date of this bill: July 1, 2017.

**House Bill 1418 (HB1418 SD1): Amends the county exemptions from building permit and building code requirements to ensure that Hawaii's communities are not suspended from participation in the National Flood Insurance Program**
Act 203, Session Laws of Hawaii 2013, exempted certain agricultural structures from building code and permit requirements. However, these changes inadvertently conflicted with state floodplain management requirements that are consistent with the National Flood Insurance Program (NFIP), as administered by the Federal Emergency Management Agency (FEMA). As a result, FEMA notified the state in April 2016 that unless the state made certain necessary statutory amendments, new and renewed NFIP policies would be suspended, and NFIP flood insurance would be unavailable to Hawaii's residents. This bill amends the exemption provision (HRS section 46-88) consistent with the NFIP to ensure Hawaii's continued eligibility in the NFIP. The effective date of this bill: upon approval by the Governor.
House Bill 1498 (HB1498 HD1 SD1 CD1): Condominium Associations; Contracts; Resident Managers; General Managers; Operations Managers; Site Managers; Owners; Board of Directors; Mixed-use Projects; Elections; Board Members

Part I: Requires copies of contracts, written job descriptions, and compensation between the association and any person retained to manage the operation of the property on-site to be made available to any unit owner, and allows certain personal information to be redacted from the contracts.

Part II: Clarifies that in cases where the removal or replacement of a director elected by a class of unit owners is authorized, such removal or replacement may be by a majority of only the members of that class. The bill also specifies that, for an election in a mixed-use condominium project where directors are elected by different classes of owners, an association may cast the vote or votes allocated to any nonresidential unit owned by the association where those eligible to vote in the election are limited to owners of one or more nonresidential units, including the nonresidential unit owned by the association.

Part III: Clarifies that tenants are prohibited from serving as board members of a condominium association. The effective date of this bill: July 1, 2017.

Senate Bill 119 (SB119 SD1 HD1 CD1): Establishes a cap on late rent payment fees

This bill establishes a cap of 8% on late rent payment fees which would be applicable to all new rental agreements and rental agreement renewals entered into on or after the effective date of the bill. The effective date of this bill: November 1, 2017.

Senate Bill 292 (SB292 SD1 HD1 CD1): Repeals HRS Chapter 514A

This bill repeals chapter HRS chapter 514A in order to eliminate the unnecessary confusion caused by maintaining two condominium chapters under Hawaii law. As a result, all condominiums in the state would be governed under HRS chapter 514B. However, certain condominium projects created prior to July 1, 2006 may still be required to submit various types of public reports to the Hawaii Real Estate Commission and therefore the bill provides for certain “safe harbor” provisions for such condominium projects to ensure the smooth transition of these condominiums and projects to chapter 514B. Licensees and developers should contact their attorney regarding the technical requirements to comply with the transition. The effective date of this bill: January 1, 2019.

Senate Bill 369 (SB369 SD1 HD1 CD1): Prohibits retaliation related to condominium complaints, violations or owners’ exercise of rights

This bill strengthens protections by prohibiting condominium associations, boards, managing agents, resident managers, other owners, and persons acting on behalf of an association or condominium owner from retaliating against a condominium owner, board member, or association employee who files a complaint, acts in furtherance of a complaint, report, or investigation of an alleged violation, or exercises or attempts to exercise any right as a condominium owner under the State’s condominium laws or the condominium project’s governing documents. The effective date of this bill: July 1, 2017.
Unit 2: Technology: The Good, the Bad, and the Evil
(Time 90 minutes)

Introduction to Unit 2
Is technology the be-all and end-all of conducting business? For many real estate professionals, the answer is a resounding “Yes!” However, technology also presents pitfalls that need to be recognized and addressed in order to ensure your real estate practice can be done safely and in compliance with existing laws and rules. In addition, everyone—agents, clients, property managers and tenants—may have different skill levels and understandings of the different technologies that can be utilized to communicate, market and facilitate transactions. As a result, the use of technology may lead to errors, miscommunication, invasion of privacy, financial loss and even to jeopardizing your personal safety. That’s why it is important for you to have a general knowledge of the different technologies that are often used in the real estate industry so that you can recognize how they can help but also have the potential to hurt you.

This unit begins with an examination of some of the most common security issues related to the use of technology in the real estate industry. This is followed by a description of several forms of electronic communication methods and the advantages and disadvantages associated with them. Next is an overview of the different forms of social media most commonly used by real estate professionals. Finally, the unit concludes with an examination of copyright laws and concepts and how these apply to the use of social media.

Lesson: Security Risks
As new technologies and web resources are developed, real estate professionals are able to use innovative techniques and strategies for connecting with prospects and serving clients. It is important that you, as a real estate professional, develop and maintain an online presence; however, your online activities can expose you and your broker to risk. To protect yourself and your broker from liability issues, it is beneficial for a real estate professional to be aware of the inherent risks in online activities.

Malware
Look at the terms used in malware: viruses, worms and Trojan Horses. Just the names alone seem to spell trouble. Malware is an umbrella term that covers a variety of programs designed to do harm by causing damage to systems or data, invading privacy, stealing information or gaining unauthorized access. It includes viruses, worms, Trojan Horses, spyware, adware, and bots. Below are some key definitions of malicious programs you should be aware of.

Spyware: Software that runs in the background and collects information about a computer and how it is used and sends that information to others over the Internet. This software sometimes installs itself on your computer without your knowledge or consent.

Virus: A program that can self-replicate and infect files, programs and operating systems.

Worms: A malicious program that can copy and reproduce itself over the Internet using email programs or other transport tools; may cause system and data damage.
**Trojan horse:** A malicious program that looks like legitimate software; it often allows someone else to take over a computer, and may attack data or systems.

**VIRTUAL FIELD TRIP:** The Federal Trade Commission’s website contains an excellent description of avoiding, detecting, reporting and eliminating malware.

[https://www.consumer.ftc.gov/articles/0011-malware](https://www.consumer.ftc.gov/articles/0011-malware)

**Ransomware**

Ransomware is a newer type of virus that installs on a device, including computers and smartphones, with the intent of either holding the data “for ransom”, or with the threat of public release. Email is a target for this particularly nasty program that is installed via spam or a hacked account. The bad guys like big targets, either businesses or even a whole industry. Guess which particular industry is an attractive victim? The point of entry is the marketing done by agents in the pursuit of business. “Contact me today…” often with an email address prominently displayed. All it takes is an enterprising criminal to gather these details, package them and sell them to other enterprising criminals, who then put their dastardly plans into action. The bait is set—and all that’s needed is an unsuspecting potential victim to take it. This means the arrival in the inbox of one of your clients of an email message that states it’s about a seemingly legitimate topic and all they need to do, for example, is open the attachment and learn more about:

- An invoice for services
- Property details, including images, or
- Official documents, such as an agreement.

Open the attachment and voila—the ransomware gets downloaded into their system. That’s the short and sweet version, as there are different versions of this type of attack. Worse, these viruses can eke past the very security programs installed to keep them out depending on which of these versions is used. One common tactic is embedding a hyperlink in the email body itself for the message recipient to click on. Keep in mind that the scams are ever-evolving as criminals and anti-criminals try to keep ahead of each other.

Once the ransomware has access, the downloaded virus encrypts the user’s files, which basically means it puts a lock on it. You want the key? Pay the ransom.

**VIDEO:** Here’s a 4:49 minute video about ransomware


**Phishing/Spear-phishing**

Have you been “phishing” lately? You can bet some crook has. **Phishing** is an attempt to mislead people into divulging confidential information (e.g., passwords, Social Security numbers, etc.). Phishing uses legitimate-looking email or instant messaging in combination with fake websites to make fraudulent requests for information. It looks like a duck, it smells like a duck… but it’s a phish, and it’s treacherous.

**Example:** The way you get hooked is by receiving an email that indicates there’s some sort of issue they (“they” being a trusted company, etc.) need to alert you about, whether it’s with your bank account, or a credit card. They need your help to protect you! Victims are told all they have to do to ensure an unauthorized transaction didn’t occur is verify their confidential account
information (e.g., account number, passcode, PIN, Social Security number), and the matter can likely be cleared up rather quickly. More like, they get cleaned out.


This article from the Pennsylvania Association of REALTORS® recounts a real-life story of how one real estate professional’s identity was used as a basis for a phishing scam. http://speakingofrealestate.blogs.realtor.org/2017/02/16/local-realtor-leader-has-been-dealing-with-a-nightmare-email-scam-for-a-year/?utm_medium=PARJustListed.com&utm_campaign=@PAREaltors&utm_source=Website

Phishing with a Scary Twist
An ongoing and ever-growing problem is the hacking and diverting of closing funds. It began as hacking escrow emails, and has since shifted to hacking buyer’s funds and diverting these funds. The point of entry? Email accounts, including real estate brokers and other transaction parties. The hacker gets the information and then coaxes the victim into doing a wire transfer, maybe by impersonating another party to the transaction so that everything looks legitimate. The ruse is that the wiring instructions are changed, and the money gets routed straight to the hacker’s account, and without even a ‘thank you’ the hacker withdraws it and that’s that—the money is not retrievable.

VIRTUAL FIELD TRIP: This article, “The Threat of Wire Fraud is Real,” offers tips on helping buyers avoid this type of scam. http://realtormag.realtor.org/for-brokers/network/article/2016/05/threat-wire-fraud-real

Lesson: Risk Reduction/Prevention
Do you know how to outsmart the sophisticated schemes of a wily, criminal, information-thief? Get—and stay—informed as to what schemes and shenanigans are taking place out there in the cyber-world, and be proactive. A brokerage firm may already have policies, procedures, and software in place as a defense. These should be reviewed regularly and updated as necessary to ensure everyone is staying a step ahead of the next scheme and scam.

On Guard!
The most important thing to know is what the various scams are in the first place, and then keep your guard up. While no one wants to go around thinking like a criminal (except, apparently, the criminally minded), you do need to be savvy enough to recognize that not everything or everyone is harmless. It’s crucial that you put into place risk reduction and prevention strategies to keep your data—and your professional reputation—safe.

Email security: Remember that crooks are drawn to where the action is, and since email is a mainstay of real estate communications, this is also the portal through which a crook can gain access. Having appropriate security to protect your email account is a large component of your risk-reduction strategy. One of the best prevention steps to take is to never, ever click on an attachment in an email message from someone you don’t know. Or, if you receive an email from
someone you know but the link looks odd or otherwise raises a red flag, double-check the email address since that person’s email may have been hacked. An antispam and antivirus program is one tool in your security arsenal. Here is a list of best practices to follow to help maintain email security. https://www.nar.realtor/sites/default/files/handouts-and-brochures/2015/protecting-from-cyberfraud-handout-2015-11-24.pdf

**Suspicious emails:** If you get any phishing-type emails—delete them. Never respond to the sender, this is the last thing you want to do. Prior to deletion, you could forward the email itself to spam@uce.gov, file a report with the Federal Trade Commission (www.ftc.gov/complaint), as well as contact whichever entity was being misrepresented to let them know some scammers are acting in their name. If you aren’t sure about the message you received, go directly to the source and use the contact information provided on bank statements, account agreements, or what you look up yourself. The main thing is that you do not use any of the contact information provided in the email itself, such as a phone number, website address, or email address, as the communication won’t be going where you think it will.

**HANDOUT:** The National Association of REALTORS® (NAR) issued an alert in 2015 related to the wire fraud-phishing schemes. This alert provides both prevention tips and damage control recommendations.

**Backup policy/procedure:** Once a file is lost, it can be gone forever. While you can try to see if “lost” files can be ferreted out by various tech specialists, often for a healthy fee, you can’t count on it working in all cases. A better plan is to have a regular schedule for backing up your files. This article, The Beginner’s Guide to PC Backup by PC Magazine can tell you how to get started if you’re not familiar with what to do.

**Security Software**
You will want to make sure your computer has security software installed, including the following:

**Antivirus:** Software that handles viruses, worms, and Trojan horses.

**Antimalware:** Protects against all of the newer malware that hackers cook up in their quest to stay ahead of security software.

**Firewall:** Use a firewall to protect your computer from hacker attacks while it is connected to the Internet. A firewall is software or hardware designed to block hackers from accessing your computer. A properly configured firewall makes it tougher for hackers to locate your computer and get into your programs and files. Set access controls—these are settings that determine who gets through the firewall and what they will be allowed to see—to allow only trusted employees with a legitimate business need to access the network.

**VIRTUAL FIELD TRIP:** Good advice about general computer security can be found here: https://www.consumer.ftc.gov/articles/0009-computer-security
**Social Engineering Attacks**
This is a masterful form of manipulation, in which criminals target victims and try to draw out their personal information such as date of birth, Social Security number, and financial and other personal information. It’s a tricky scheme, which plays on a person’s trust. These attacks take on various disguises such as:

- Email message from a known friend, but contains a short message that goes something like “You’ve got to take a look at this!” along with a link or other download option. You click on it—the hacker is in.
- Messages such as “It’s me, Melody! I need your help. Someone stole my handbag and now I’m stuck in Xanadu and need you to wire me money so I can get home.” Needless to say, Melody didn’t send the message and she isn’t waiting for your help in Xanadu.
- Beware of “great deal” offers that sound too good to be true. The only real offer they have is a whole lot of headache for you when malware gets into your computer system.

**VIDEO:** Watch this quick video that gives you the A-to-Z on social engineering attacks and how to steer clear of them.

**What to Do When You’ve Been Hacked**
First, you have to recognize that you’ve been hacked. One raging-big clue is when you can’t get into your own email account. Or maybe that nice client who just signed a listing agreement with you calls and says, “Ah, I think your email account may have been hacked.” What do you do? Contact your service provider right away. Once the service provider gives you back access to your account, change all of your passwords—and make them challenging, enough so that even you have to write them down to remember. Utilize a mix of available keys, including symbols and numbers, caps and lower-case. Then run a virus scan to make sure you remove anything downloaded onto your computer.

Also, check any other accounts you have to make sure the virus didn’t leapfrog into those, as well.

One of the uglier aspects of having an account hacked is that it provides a door for accessing the other contacts in your email’s database. It’s important to send out fair warning to your contacts and let them know that for a period of time, your email account was compromised, and not to open anything from you for that time frame, or check with you if they aren’t sure if you really did send them a message.

**VIRTUAL FIELD TRIP:** There are other clues that you have been hacked that may be more subtle. Would you recognize them? Remember that hackers are always trying to stay a step ahead of you, just as you are trying to stay a step ahead of them. This article from wikiHow.com provides a visual walkthrough for signs of hacking with which you may not be familiar:


**Lesson: Electronic Communication**
Communicating through websites, social networking sites, and email is easy, fast, and efficient, but there are risks to consider, as well. Online communications pose one of the biggest opportunities for litigation because they can spread like wildfire. Just think of that funny cat video you’ve seen for the 100th time. Let’s take a look at some of the legal considerations when
using the ubiquitous, omnipresent Internet. Be aware of what technology applications may be used for, but understand that the good can also be accompanied by the bad and the evil.

Email

The Good: Imagine you have a slew of information to deliver to a seller client. You try to reach them on the phone, but no luck—there’s no answer. The information is detailed and you don’t want to ramble on in a voicemail message. You and your client keep missing each other, and the details of what you needed to share have gone from red-hot to cooled-off and fuzzy. Email is a quick means for capturing information to share without having to rely on the receiver being there at the same moment or for you to scramble to find your notes or retain the information in your memory. Email probably serves as the bedrock of real estate transactions, as most real estate professionals rely on email to correspond with clients.

The Bad: Emails can get caught in spam files on the receiver’s end, get deleted, or get lost or overlooked in the email-inbox shuffle. Some people don’t check their email very often. Another consideration is the message being conveyed can be misunderstood or misconstrued, or not up to snuff in terms of grammar. Misspelled words or poorly written sentences can give the impression that you are careless, unprofessional, and don’t take pride in your work. Do such words describe a person you’d entrust with something as important—and expensive—as a home purchase? No.

The Evil: Anything that is popular can quickly become a target to the evil guys. Email accounts are subject to hacking, compromising the privacy factor—which means confidential information is no longer confidential. Also, just because a licensee is comfortable with electronic communications does not mean all clients have the same level of knowledge or even interest in using this method of communication.

Texting

The Good: Quick and easy, texting via a cellphone is a short form of communicating immediately. With more consumers than ever using mobile devices to communicate, it makes sense to use.

The Bad: The communication can be misinterpreted, or hard to access and read due to the nature of the devices. Older messages can also be difficult to locate if the device contains a lot of communications. Text messages can be printed but doing so may be more cumbersome than printing an email.

The Evil: It’s possible that a text message may be perceived by the recipient as not as important as an email, or something to be read later, just because of the informal ease of use. Some also feel that text messages don’t convey the same professional image and tone as an email message. Real estate transactions are often complex, and it can be a challenge to do the necessary back and forth to ask and answer questions that may be more involved than just a yes or no response. This may frustrate a client and the licensee, and important details may be missed that can ruin a transaction. The same issue with emails is present with text messages: some clients are not tech-savvy, and either don’t know what to do with such communications, or are not comfortable communicating in this manner.
Lesson: Cloud Storage
Cloud storage is a service model in which a user’s data is maintained, managed and usually backed up remotely by an outside company and made available to the users over a network (typically the Internet). Users generally pay for their cloud data storage on either a flat or per-consumption rate.

The Good: Users only need to pay for the storage they actually use, and tasks, such as purchasing additional storage capacity, are offloaded to the responsibility of the cloud storage provider. Cloud storage can be used as part of a disaster backup strategy, as normally there are two or three different backup servers located in different places around the globe.

The Bad: Cloud storage companies may not be permanent and the services and products they provide can change. Outsourcing data storage in general also creates a risk that the data could be lost or compromised if the cloud storage company has a security breach.

Reading Cloud Storage User Agreements
In order to sign up for cloud storage services, you will need to sign a cloud service agreement. These contain specific terms and conditions, and before you check off “I agree…,” you should read them so that later, you won’t be hit with any surprises. In the context of confidential real estate information, those “surprises” represent risk. Such clauses to be aware of are those which state that the cloud-service company owns your information, can use your data publicly for marketing purposes, and/or has the right to republish or resell that data. How about the loss of data—is the company responsible, or do you assume all the risk if you use their service and what you were counting on being secure? Also, if you (or the company) cancels the service, what happens to your data that’s currently in the cloud?

Lesson: Agents and Social Media
More and more real estate professionals are taking advantage of the marketing power that various social media platforms offer. According to the National Association of Realtor’s (NAR) 2016 “Member Profile,” agents surveyed reported the following:

- 70% use social media (note that this is up from 65% in 2014)
- 54% have had a website for at least five years
- 11% have a real estate blog

In its 2017 report entitled “Real Estate in the Digital Age,” NAR asked agents about their comfort using social media. The findings were:

- 26% said they were “extremely comfortable”
- 31% said they were “comfortable”
- 25% said they were “somewhat comfortable”
- 10% said they were “uncomfortable” using social media
- 1% said they were “extremely uncomfortable” using social media
- 7% said they do not use social media

Over half of the agents surveyed reported that they were either extremely comfortable or comfortable with social media. With the increasing connectivity of people through technology
the expectation that information will be readily available on some social media platform will most likely only continue rise.

**The Good:** Twitter, Instagram, Pinterest, Facebook… the options are varied for connecting with the public. It’s fast and easy to dash off a message about an open house or post pictures of a property you just listed.

**The Bad:** Sharing on social media means it’s a message going out to the world. With each post, tweet, pin, or update—whether you’re sharing a listing or a selfie or an article—remember that you are actively promoting:

- Yourself
- Your brokerage
- Your team
- Your clients

That’s because everything you do on your professional social media platforms reflects back on you and those associated with you. This means that if you come off as impersonal or arrogant or unrelatable, then you’re also coloring how people view your brokerage and your team members. If you’re constantly making inappropriate updates and comments, then you’re likely to turn off customers.

Also, posting in haste can lead to mistakes. For example, it can be easy to dash off a post that breaks fair-housing law by seeming to state a preference, or violate the brokerage’s policy on social media usage.

**The Evil:** It’s the “social” part of social media you need to keep in mind: whatever you post, eyes are on it—and it’s not always who you intended. People with criminal intent can use social media to determine when a licensee will be alone at an open house, or case a property to see what types of goodies to steal. Pictures, addresses, and seemingly innocent word choices such as “secluded location” can attract the wrong kind of attention.

**HANDOUT:** To learn more, take a look at NAR’s 2017 “Real Estate in a Digital Age” report.

Also, take a look at “[The Biggest Social Media Fails in Real Estate](#),” by Bill Gassett.

**Disclaimer:** The information and opinions contained in the websites operated by the National Association of REALTORS® are referenced in this manual solely as a resource and their inclusion in this course does constitute support or endorsement of these sites or the National Association of REALTORS® by the Hawaii Real Estate Commission.

The following is an example of various social media tools and services commonly being used in real estate agencies at the time this course was written and is subject to change.
Lesson: Blogs

A blog is a web log (shortened to “blog”) and its form can range from “Dear Diary” to an interactive, vibrant community. Real estate agents use blogs to express their personality and share their knowledge about the real estate industry by offering tips to homebuyers and sellers, or addressing common questions you hear from consumers. By demonstrating how much they know, how relatable they are, and how well they communicate, agents not only inform others, but also attempt to gain new clients.

The Good: Blogging can help you build and maintain an online community.

The Bad: Easy to launch, harder to maintain. Blogging can take a chunk of time coming up with post ideas (see the Virtual Field Trip below for a helpful article), and then keeping up with comments. However, beware of “trolls”; a term used to describe people that post negative statements to incite others. Trolls are the bane of all online activity, posting inflammatory comments meant to start raucous verbal confrontations.


Lesson: Twitter

Twitter allows users who have shared interests to follow each other. Users communicate (or “tweet”) information as often as they like. In fact, because tweets are limited to only 140 characters, users expect and want, a greater amount of short, current communication from the people or companies they follow. This unique social network also works for businesses. Users can follow your company for the latest information on your service offerings.
The Good: This network is excellent for messaging numerous bits of info throughout the day about your business, which followers might find useful. Think of it as a short form of communicating, like texting, rather than the longer forms of content one finds on Facebook (Links to tweets can be added to Facebook). Advertising on Twitter is available via “sponsored tweets,” but the payoff is not what you would get on other social networks. There is no sidebar showing ads like there is on Facebook or LinkedIn. Despite the fact that you’ve only got 140 characters to convey your message, Twitter is a great forum for:

- Sharing updated house listings
- Announcing new listings
- Advertising open houses
- Sharing an informative or newsworthy article about your local market
- Promoting your own real estate blog

The Bad: The 140-character limit is just that—a limitation and followers expect updates, or new “tweets”, to be posted frequently which can require a lot of time and effort.

VIRTUAL FIELD TRIP: To learn more, check out the NAR Field Guide to Twitter.

Lesson: Facebook
With more than 1.3 billion members worldwide, Facebook remains the largest social network site. After registering, users can create a profile indicating their name, occupation, schools attended and so on.
The Good: Users can add other users as "friends", exchange messages, post status updates and digital photos, share digital videos and links, use various software applications ("apps"), and receive notifications when others update their profiles or make posts. Additionally, users may join common-interest user groups organized by workplace, school, hobbies or other topics, and categorize their friends into lists such as "People from Work" or "Close Friends". In groups, editors can pin posts to the top of the post feed. Users can also complain about or block unpleasant people. According to Facebook’s website, the company has:

- 1.28 billion daily active users on average for March 2017
- 1.94 billion monthly active users as of March 31, 2017
- Approximately 85.8% of the company’s daily active users are outside the US and Canada

The Bad: People have casually described Facebook as a “time suck.” Why? Because you log on either to post a comment or check out what your connections are doing, and the next thing you know you’re going down various rabbit holes: clicking on links to read articles, commenting on other posts, and rolling through your ever-expanding post-feed are some ways that you’ll see time slip away.

VIRTUAL FIELD TRIP: To learn more about using Facebook to promote your real estate business, check out the following: Field Guide to Facebook for REALTORS®:
Lesson: LinkedIn
Billing itself as the “world’s largest professional network on the Internet,” LinkedIn officially launched in 2003 and now has more than 433 million members in more than 200 countries and territories.

The Good: According to information released by the company, its members include more than 40 million student and recent college graduates who represent the social media site’s fastest-growing demographic.

The Bad: LinkedIn is a site for professionals to network, so this can either be good or bad, depending on what your expectations are. If you are looking for customers, it may be a much longer process since the site is meant to build networking opportunities and professional relationships.

Lesson: YouTube
YouTube, launched in February 2005, is the largest, most popular site for online video sharing and viewing.
The Good: In just over a decade, the site has managed to garner some pretty impressive stats. According to the site:

- YouTube has over a billion users—almost one-third of all people on the Internet
- YouTube overall, and even YouTube on mobile alone, reaches more 18 to 34 year olds and 18 to 49 year olds than any cable network in the U.S.
- Growth in watch time on YouTube has accelerated and is up at least 50% year over year for three straight years
- The number of people watching YouTube per day is up 40% year over year since March 2014
- YouTube is the world’s second biggest search engine, trailing only Google for top honors

In addition to those statistics, YouTube is one of the top real estate video marketing platforms. Having a strong YouTube marketing strategy can boost an agent’s brand and generate new leads.

The Bad: You need to learn a few things about video, including good sound quality. While it doesn’t have to be a Steven Spielberg production, you don’t want to post anything that looks too amateurish, as this reflects on your professional reputation and can negatively impact your ability to market a property.


Lesson: Pinterest
Launched in March 2010, Pinterest acts as a visual idea board where you can “pin” ideas, articles, inspirational images, videos, and so on, creating “pin boards” or collages that you can then share with others. Pinterest has more than 100 million active users, with thousands of new users signing up each day. 100 million people translates into a huge market base – people shop with their eyes and there’s a lot of buying power behind these users. According to content-
sharing site Shareaholic, Pinterest is driving more traffic to websites and blogs than Twitter, YouTube, Google+, and LinkedIn combined. Some other interesting statistics about Pinterest: According to Business 2 Community, 83% of Pinterest users are women and 45% of them are between the ages of 35 and 54. And there’s this: The average Pinterest user has a six-figure annual household income.

VIRTUAL FIELD TRIP: To learn more, check out NAR’s Field Guide to Pinterest for REALTORS®: [http://www.realtor.org/field-guides/field-guide-to-pinterest-for-realtors](http://www.realtor.org/field-guides/field-guide-to-pinterest-for-realtors)

The Good: So, as a real estate professional, how exactly can you tap into the power of Pinterest? Well, it’s a great forum for telling a story with images and videos. Since a big part of your job is helping homebuyers visualize themselves living in a certain house—transforming a house into a home—this visual medium is a natural fit. Plus, it allows you to humanize your brand, showing your customers more about who you are and what sparks you. Pinterest also provides you with a unique opportunity to interface with your clients and work collaboratively with them in a visual way—something that other social media sites really don’t allow.

The Bad: There are no real relationships built here—only people pinning something from your board onto their own board to create almost a visual wish list—but you can gain followers. Also, be careful to post your own photos, as you don’t want to run afoul of copyright law.

VIRTUAL FIELD TRIP: Inman Real Estate News has a Pinterest page that contains real estate news and is publically accessible. [https://www.pinterest.com/inmannews](https://www.pinterest.com/inmannews)
Lesson: Instagram

Instagram is a free mobile phone app available to smartphone devices that provides a photo-sharing application and service. Users may upload photographs and short videos and follow other users’ feeds—just like Facebook and Twitter. Instagram can also connect to other social networking sites, such as Facebook and Twitter, and users may follow, comment on, and “like” each other’s shared posts. You can find other users (and they can find you) based on shared interests. Posted images may also be tagged to a geographical location.

The Good: One of the most important strengths Instagram has is the use of hashtags to group similar items, and Instagram users can—and often do—attach one or more hashtags to each of their images. These hashtags become clickable links that take users to feeds of images that use the same tags. This is a huge bonus, because it allows marketers to use smartly-placed hashtags that not only help enhance their brand, but also connect with interested users and potentially even generate conversation.

The Bad: Instagram doesn’t work well unless you’re communicating or selling a visual product. It also doesn’t work well for posts that are of a particularly urgent nature.

VIRTUAL FIELD TRIP: Here is an article which contains a more detailed description of Instagram and how it can be used: https://www.lifewire.com/instagram-tips-for-beginners-3485872
Lesson: Snapchat
Snapchat is another free mobile app that allows for the creation and sharing of messages referred to as "snaps"—videos and pictures—that can be edited to include filters and effects, text captions, and drawings. Any pictures and messages sent literally pull a disappearing act: this content is available for just ten seconds before it disappears, unless the recipient takes special measures to save the message. Snapchat messages can also be linked to Facebook.

The Good: Snapchat is relatively new, growing fast and is very popular with its user base. It is also good for creating a sense of urgency because each “snap” only lasts 10 seconds.

The Bad: Currently Snapchat’s user base is fairly narrow (core users’ ages are 13-24 years old and 70% are women). Also, that disappearing act! You share something, and then it’s gone.

VIDEO: This quick YouTube video gives an overview of Snapchat.

Lesson: Periscope
Periscope is an application that lets user share and experience live video streams direct from the user’s mobile device such as a smartphone or tablet. Videos broadcast on Periscope are saved, automatically, and can be replayed for up 24 hours after the initial broadcast. It is also possible to save video streams so users have a record of the video once it expires and the app is well integrated with Twitter which allows users to notify Twitter followers of Periscope broadcasts.
The Good: The “live” nature of this experience encourages people who view the stream to participate in what’s happening in the video by sending comments, which the person sharing the video can respond to in real time. This makes for a more interactive viewing experience, compared with more traditional ways of experiencing video.

The Bad: As with Snapchat, content posted on Periscope is available only for a limited time before it disappears. Unless you change the settings, streams are available for a maximum of 24 hours before they disappear.

Lesson: Minimize the Dangers of Social Media

Acknowledging Dangers
Because of its friendly nature, it’s easy to get complaisant about the dangers inherent in social networking. However, the same dangers that exist with any type of advertising and exposure are also present when networking via the Internet.

In fact, the dangers may be even more prevalent online due to the broad reach, the anonymity or “cloak” of web viewers, and the ability to extract additional information readily from other online sources. Criminals have been known to harvest all manner of information quickly and easily in order to steal identities, learn the whereabouts of victims, and know when a home’s belongings are ripe for the picking.

Precautions to Stay Safe
You may be subject to data theft, viruses, predators, and people who claim to be someone they are not. Use caution when interacting via the Internet, just as you would in the real world, when meeting someone for an appointment, to show a house, etc. Be aware of your Internet surroundings and with whom you are corresponding, just as you would in person. Your clients’ homes may be subject to burglary or vandalism based on their increased exposure to the public. Take the following precautions:
• Be careful when disclosing personal information, such as date of birth, account numbers, Social Security numbers, etc.
• Be careful when posting photos. You may unknowingly make personal photos available to the public that may not convey the professional image you would like to present. If it is your client’s photo or house tour, be sure to get written permission by way of a photo release form before posting online.

**Safety Concerns When Posting Open Houses**
Having the ability to post in-the-moment onto social media sites such as Facebook and Twitter is a quick way to promote open houses, new listings, and details of your schedule and travel. It’s also a way for criminals to track where you will be. For example, it’s recommended that people don’t advertise that they are either leaving for vacation or on vacation, because burglars like to receive that sort of notice. For agents, advertising that you are holding an open house at 123 Main Street and the home is vacant so buyers can better envision their furniture there can also be a signal to a criminal that you will be by yourself for a certain period of time.

When advertising on social media, think about the amount of information you share. Keep business and personal information as separate as possible. This means don’t share your home address or personal phone number using social media.

**Additional Precautions When Using Social Media**
Here are a few additional safety tips to keep in mind as you build your social media presence:

- Choose friends and followers carefully.
- Protect your passwords. Don’t give access to your social media accounts to the wrong people.
- Never write or post something about someone that you would not say in person.
- Remember that information you post online may also be available to criminals who want to find out when someone is not at home or when you may be alone in a home.
- Follow fair housing and truth in advertising laws.
- Know the rules of the platform you are using and obey them.
- Don’t take photographs or video footage of expensive artwork, musical instruments, etc. This will just help burglars create a “shopping list.”

**HANDOUT:** This handout, [Security Precautions for Social Media](#), is a quick go-to list to keep handy as a reminder of how to keep your social media usage in the safe column.

**Lesson: Copyright**
“Copyright is a legal device that provides the creator of a work of art or literature, or a work that conveys information or ideas, the right to control how the work is used.”


**Understanding Copyright Law**
The purpose of **copyright law** is to protect a person’s property and to provide economic incentive for authors to create new works. Exercising any of the copyright owner’s exclusive rights without permission may be copyright infringement. The key word here is permission. Always get permission from the author to use his or her work, preferably in writing. Rather than
focus on the restrictions of copyright law, we need to learn how to use copyrighted works safely to reduce exposure to risk. This is where fair use comes into play. The United States Copyright Office website is a valuable resource for acquiring more information on Copyright Law. Go to: http://www.copyright.gov/.

TIP: The United States Library of Congress has some fun materials about copyright law and the steps of the copyright process. To access the materials, go to: http://www.loc.gov/teachers/copyrightmystery/.

Content Protected by Copyright Law
Copyright law covers works of authorship and expression that are fixed in any tangible medium of expression. Since 1978 in the U.S., copyright is automatic—that is, you don’t need to register something or even put a notice on it to signify that it is covered by copyright. Copyrightable works include the following:

- Literary works
- Musical works, including any accompanying words
- Dramatic works, including any accompanying music
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Motion pictures and other audiovisual works
- Sound recordings
- Architectural works

Real Estate Items Protected by Copyright
You may be wondering how copyright laws impact real estate. There are many ways you may encounter copyrighted materials in your real estate practice. The following items can be copyright protected:

- Photographs
- Virtual tours and video
- Artistic renderings
- Floor plans
- List prices
- Architectural drawings
- Listing descriptions, where descriptions/remarks, include creativity versus the “raw facts” of the property
- Blog posts

NOTE: The best way to stay in compliance with copyright rules is to obtain permission to use others’ copyrighted works. Also, do not copy photos, illustrations, graphics, or significant amounts of text from another website without permission and proper credit notice.

Copyright Infringement and Plagiarism
Plagiarism occurs when someone uses another individual’s work without giving proper attribution or credit to the individual.
Copyright infringement is using someone else’s creative work without authorization or compensation, if compensation is required. Authors of any original work (including books, essays, web pages, songs, pictures, and videos) automatically are entitled to the copyright to that work, even if they don’t label it with the copyright symbol and their name.

The Fair Use Doctrine
Under the fair use doctrine of the U.S. copyright statute, it is permissible to use limited portions of a work, including quotes, for purposes such as commentary, criticism, news reporting, and scholarly reports. There are no legal rules permitting the use of a specific number of words, a certain number of musical notes, or percentages of a work.

Unless permitted in writing or for some form of compensation, the following practices are punishable by law:
- Framing third-party commercial sites into your web page
- Wholesale copying of materials into your text
- Placing links to third-party content behind a “private” or “for pay” area of your site
- Including third-party materials in email messages/attachments

TIP: It’s a good idea to always provide links to content you feel is useful versus “copying and pasting” things onto your page. Make sure each link opens in its own window at the site where the material was found. Additionally, if a vendor created materials for you to use, make sure you secure the copyright or right of unlimited usage for the materials. This usage right should be obtained from:
- Photographers
- Graphic designers
- Web developers

Complying with Copyright Laws for Images You Use
Using photographs can enhance your listings, website or blog. These images are entitled to copyright protection if they are original works that organize existing information into a unique format or arrangement. Creating a watermark is an effective way to protect your images from theft while still allowing the image to be seen by clients and customers. You can copyright photos that you put on the web by applying a watermark, a semi-transparent overlay that identifies the photo’s ownership, using various programs.

Ways to stay in compliance with copyright requirements include:
- Refrain from copying photos from another website without permission and giving proper credit. Using someone else’s photograph without obtaining permission infringes on the creator’s copyright.
- Add watermarks to your own photos to discourage copyright infringement.
- Check your image editing software—you may have watermark capabilities already. There are also new apps for smartphones that apply a watermark when you take a picture.

Websites like iStockphoto.com, Fotolia.com, and Flickr.com are member-generated image and design communities. This means that members sell or offer use of their works through the
website and retain their copyrights to the works. If there is a fee, the contributor is paid a portion of each sale of the work through these websites.

**Give Credit Where Credit Is Due**

As we discussed, it is illegal to copy large sections of someone else’s copyrighted work without permission, even if you give the original author credit. Fortunately, a fair use exemption allows you to legally copy small amounts of someone else’s work. Just make sure to give the author credit so you won’t be guilty of plagiarism.

Between the consequences for plagiarism and copyright infringement, it’s just not worth it to copy other people’s work. If you do need to use a few words from another source, take some precautions:

- Put those words in quotation marks, or indent them and use italics and quotation marks to indicate clearly that they are not your own words.
- Add a footnote or citation to give credit to the original author.
- Limit the length of your quotation to a few sentences so you won’t be guilty of copyright infringement.

**Lesson: Trademarks**

Trademark is a word, name, symbol or device that is used in trade with goods to indicate the source of the goods and to distinguish them from others’ goods. A service mark (℠) is almost the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product. The terms “trademark” and “mark” are commonly used to refer to both trademarks and service marks.

**Using Trademark and Service Marks to Distinguish Goods and Services**

Trademark rights may be used to prevent others from using a confusingly similar mark, but not to prevent others from making the same goods or from selling the same goods or services under a clearly different mark. Trademarks that are used in interstate or foreign commerce may be registered with the U.S. Patent and Trademark Office (USPTO).

**Additional Resources**


**Trademark vs. Copyright**

It is easy to confuse copyrights and trademarks. Although there are similarities between these kinds of intellectual property protections, they are different and serve different purposes.

**Copyright** protects original works of authorship, while a **trademark** protects words, phrases, symbols, or designs identifying the source of the goods or services of one party and distinguishing them from those of others.

Also, the registered trademark symbol (®) means that the trademark has been registered with the USPTO. The trademark symbol (™), on the other hand, provides notice to would-be infringers that you view your mark as a trademark, and that you will defend it against would-be infringers. A ® mark should not be used if a trademark has not been registered. Doing so may disqualify
your ability to register the mark if you have used the registered trademark symbol without USPTO permission.

In contrast to the trademark, the copyright symbol “©” means that the work is copyrighted; however, a work may be copyrighted even if the symbol is not used.

Lesson: Public Domain Content

When a work is in the public domain, it may be used by anyone for any purpose without restriction under copyright law. Sometimes authors will uncover old manuscripts or books that have been out of print and “resurrect” them, publishing them under their own name and collecting royalties. This is legal, provided the copyright for the original work was not renewed.

Examples of public domain content

- Older works with expired copyrights (note that the expiration date can vary depending on the type of work produced and its date of original publication)
- Government content, such as government publications
- Content released into the public domain by the author

Expiration of Copyright Protection

Materials in the public domain generally can be used without limitation, although attribution may be necessary to avoid false advertising claims. The length of copyright protection (the length of time before which a work enters public domain) varies for each country and can be changed by legislation in that country, so it is important to research information about the specific country where the work was published before assuming that a work is in the public domain. In the U.S., for example, some copyright protection applies for 70 years from the author’s death.

Attributing Public Domain Content

When you use public domain content, proper attribution to the author or source of a work should be made in some fashion. Even if it is in the public domain, and even if there is no risk of copyright infringement, attribution is still required to avoid plagiarism.


NOTE: The best way to stay in compliance with copyright rules is to obtain permission to use others’ copyrighted works. Also, do not copy photos, illustrations, graphics, or significant amounts of text from another website without permission and proper credit notice.
Unit 3: Client Trust Accounts
(Time: 45 minutes)

Introduction to Unit 3
You know that earnest money is money given to show good faith on a contract—it shows the serious intent of the purchasing party. There are statutory requirements that brokers must heed in order to be in compliance in managing such money, as well as properly maintaining trust accounts.

Lesson: Definition & Fiduciary Duties
As a real estate professional, you are familiar with receiving deposits. There are specific guidelines that must be adhered to in order to be in compliance with statutory requirements for handling these funds. This lesson will review the statutory requirements for trust accounts and trust funds.

Definition
Section 16-99-2 of the Hawaii Administrative Rules (HAR) provides a definition of trust properties as follows:

“Trust properties” includes funds in the form of cash or checks and personal property, other than cash or checks, received by the licensee to be held in trust for the benefit of the depositor of the property or for the benefit of third persons, or both.”

Simply put, trust properties can be anything that is given to you, as a real estate agent, to hold on behalf of a client or customer as part your real estate sales or management business. If funds are given to you, you will be responsible for making sure these funds are safe, protected, and disbursed correctly when required.

Fiduciary Duties
Real estate licensees, whether engaged in sales or property management transactions, are acting as agents on behalf of their sellers, buyers and owners. As such, the agents are deemed to be fiduciaries and therefore owe their clients specific duties. These include the duties of reasonable skill and care and accounting.

<table>
<thead>
<tr>
<th>Reasonable Skill and Care</th>
<th>To use your professionalism, education, and skill to perform your duties for your clients to the best of your ability.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounting</td>
<td>To account for money and personal property entrusted in your care as it relates to transactions.</td>
</tr>
</tbody>
</table>

As you perform your duties, licensees must understand the rules that a brokerage company or principal broker must follow in order to:

1. Set up trust fund accounts
2. Manage funds in those accounts through proper recordkeeping and reconciliation.
If you don’t do these things properly, you could be subject to disciplinary action that could result in fines and the possibility of your real estate license being suspended or revoked. Failing to fulfill your fiduciary duties can also subject you to liability to your client as well.

Lesson: Legal Requirements

HAR §16-99-3 states:

“(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.”

When and Where a Trust Fund Account Must Be Maintained

HAR §16-99-4 provides the requirement for when and where a trust fund account must be maintained:

“(a) Every brokerage firm that does not immediately place all funds entrusted to the brokerage firm in a neutral escrow depository, shall maintain a trust fund account in this State with some bank or recognized depository, which is federally insured, and place all entrusted funds therein.”

Accounts used for trust funds must be a Hawaii-based account that is federally insured.

Process to Establish a Trust Account

HAR §16-99-4(c) describes the types of accounts that are required for the handling of trust funds. The accounts may be either:

- Interest bearing
- Non-interest bearing

What decides which type of account it will be? An agreement, in writing, must exist between the owner of those funds and the principal broker (or broker in charge) to whom those funds are being entrusted and also all other parties to the real estate agreement.

Interest-bearing accounts have additional requirements. When the trust fund account accrues interest, the same parties to the agreement must additionally identify in writing who will pay any early withdrawal penalty. The principal broker must keep any interest belonging to others in the trust fund account.

All trust fund accounts, including interest-bearing accounts, are required to provide for payment of the funds upon demand.

Monies That Must Be Deposited in a Trust Account

Property received may include (but is not limited to) cash or checks given as:

- Down payments
- Earnest money deposits
- Security deposits
- Rental income
The received property can also include other checks payable to third persons or trust accounts, and any other personal property that’s not cash or checks.

**Chain of Custody**
It’s highly likely that a principal broker will not be the first person to receive trust funds or property to be held in trust. A salesperson or broker-salesperson will likely be the initial party to come into possession, custody or control of the funds or property to be held in trust for the depositor’s benefit on behalf of the principal broker or broker in charge. The salesperson must deliver these funds or property immediately by the next business day after receipt to his or her principal broker or broker in charge, unless the depositor instructs in writing a different time to do so.

**Management of the Trust Account**
HAR §16-99-4 contains specific provisions which govern a broker’s management of a trust account. These include:

**Timing of deposits:** A brokerage firm is required to deposit or place trust funds into a neutral escrow depository or in a trust fund account with some bank or recognized depository by the next business day following receipt. [HAR §16-99-4(d)]

**Handling non-funds:** When a principal broker or broker in charge receives non-fund, personal property in trust, the property must be put in a secure place located in the state for safeguarding by the next business day. [HAR §16-99-4(e)]

**Who must supervise the account:** The principal broker serves as the trustee of the account and funds and is responsible for the client trust accounts and disbursements from those accounts. [HAR §16-99-4(a)]

**Who else may have custody and control:** A principal broker may allow a broker in charge to have custody and control of trust properties on behalf of the principal broker, in which case they both would be jointly responsible for those principal broker-authorized trust properties. [HAR §16-99-4(k)]

**Salesperson Handling of Trust Properties Require Written Authorization**
HAR §16-99-4(i) specifies that a salesperson, broker-salesperson, or employee may not handle trust properties in any way unless written authorization of the principal broker or broker in charge is provided, authorizing the placement of trust properties on behalf of the brokerage firm anywhere the principal broker could place them. No other disposition may be authorized. The principal broker is still held responsible for such trust properties and what that principal broker has authorized the salesperson to handle.

This means that a principal broker or broker in charge may authorize a salesperson, broker-salesperson, or employee to only make deposits into a trust account. Principal brokers or brokers in charge cannot authorize a salesperson, broker-salesperson, or employee to make withdrawals from a trust account.
**Licensee’s Personal Transactions**

Many real estate licensees dealing with their personal real estate transactions have a tendency to ignore the client trust account requirements. This occurs especially when dealing with property management. If you rent, lease, buy, and/or sell real property to others, where is that money being held? Have you set up a client trust account, or does it go into the client trust account under the supervision and control of your principal broker (PB)?

HRS 467 §467-1 states that every salesperson is under the direction of a real estate broker for all real estate transactions. “All” includes personal transactions. HRS §467-14 states that the commission may take disciplinary action whether the licensee has acted as a real estate broker or salesperson, or on the licensee’s own behalf.

According to HAR §16-99-3(g), licensees must fully inform their PB of the licensee’s intention to sell, lease, exchange, or rent real property. This includes the licensee’s own property. The PB not only needs to be informed of these transactions, these activities come under the PB’s responsibilities, which means your PB can be held responsible for your personal transactions.

Which brings us to trust funds, whether from a purchase, rental, lease, or exchange agreement. A PB is the trustee of the brokerage firm’s trust fund account. Associated real estate licensees may not open up and maintain trust accounts. Therefore, all personal-transaction funds must be deposited in the brokerage’s client trust account.

These details should be outlined in a firm’s policy manual.

**VIRTUAL FIELD TRIP:** The November 2011 edition of the REC Bulletin covers licensee’s personal transactions in detail. [Click here](#) to read more about it.

**Recordkeeping**

HAR §16-99-4(f) contains detailed requirements with respect to the records that must be maintained for trust accounts.

A brokerage firm must retain records of all received trust funds. These records and any funds must be available for inspection by the commission or its representative at the place of business, which means the records must be kept in Hawaii. The records must be maintained in Hawaii according to standard accounting principles and must clearly indicate:

1. Names of the persons from whom funds are received, for whom deposited, and to whom disbursed
2. Dates of receipt, deposit, withdrawal, and disbursements
3. Amounts received, deposited, withdrawn, and disbursed
4. Description of the trust fund and the purpose for its establishment
5. Purposes for the money, and
6. Other pertinent information concerning the trust fund transactions.

**Retention Period**

Records must be kept for at least three (3) years, which is identified in the rules as a requirement for “real estate license law purposes only.” What that means is the brokerage firm may be required to keep those records for longer for other purposes.
Interest Paid on Trust Funds
HAR §16-99-4(c) states that:

“Trust fund accounts shall be either interest bearing or non-interest bearing, as agreed to in writing between the owner of funds and the principal broker or broker-in-charge receiving the funds and all other individuals who are parties to the real estate agreement. For interest bearing accounts, these same parties to the real estate agreement shall also agree in writing as to who is responsible to pay for any early withdrawal penalty. The principal broker or broker-in-charge shall keep any interest belonging to others in the trust fund account and shall not commingle the accrued interest with the brokerage firm's, principal broker's, or broker-in-charge’s general operating account or with the brokerage firm's, principal broker's, or broker-in-charge’s own funds. All agreements relating to disbursements of the accrued interest from the client trust account shall be in writing, signed by the owner of the trust fund, the principal broker or broker-in-charge receiving the funds, and all other individuals who are parties to the real estate agreement. The interest accrued on any trust account deposit shall be disbursed in strict compliance with the written disbursement agreement.”

What if there is no written agreement? The law states that the owner of the funds (i.e., the person who gave the funds in the first place) receives the accrued interest.

Lesson: Commingling
Commingling means to mingle or mix, such as a deposit of client's funds, into the broker's personal account. [HAR §16-99-2]

Commingling would occur if you:
- Deposit trust funds into personal or business accounts.
- Deposit personal or business funds into a trust account.
  - The only exception to this is when a minimum deposit of personal or business funds is made into a trust account in order to meet the minimum balance needed to keep the account open.

Commingling of client funds with other monies can include 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.

Scenarios That Would Not Be Considered Commingling
According to the rules, the following would not constitute commingling:
1- Hold an uncashed check until acceptance of an offer when directed to do so by the buyer or offeror
2- Hold an uncashed check after acceptance of an offer when directed to do so by the seller or offeree, or
3- Maintain a minimum amount in the client’s account to keep the account open.

As to the uncashed check, the fact that it’s being held in an uncashed form needs to be specifically disclosed in writing to the seller or offeree before acceptance of the offer.
Lesson: Conversion

Conversion is defined as taking money from a trust account and using it for the benefit of someone who is not entitled to it. Examples include using trust funds for personal transactions, or using funds belonging to one client for the benefit of another client.

Example: Mary Ann, a licensee, manages two different apartment complexes, Springfield Tower and City Center. Each complex is owned by a separate client and has its own trust account. Mary Ann uses funds from Springfield Tower’s trust account to make $20,000 in repairs to City Center. In doing so she has committed an illegal act of conversion.

Avoiding Conversion
Here are some recommendations to avoid conversion:

- Never withdraw funds from a trust account for general business use, such as for paying office expenses.
- Never withdraw funds out of a trust account for personal use.
- Never use non-deposited trust funds or property for personal use.
- Be absolutely clear in noting the balances in the trust account for each and every client and customer.
- Never use funds from one client or customer to pay an obligation for another client or customer.

The same penalties that can occur when funds are commingled are also applicable in cases where funds have been converted.

Violations/Penalties
Violations of the legal requirements for trust-fund handling, including commingling and conversion can result in serious penalties. The Real Estate Commission may suspend or revoke your real estate license and impose a fine on you. Even if you get to keep your license you could still be subject to a fine. In serious cases, your situation could be referred to law enforcement authorities for investigation which could result in criminal charges and penalties including imprisonment.

The most important thing to remember about trust properties? They are NOT yours. You are only holding these items (i.e., money, other property) that belong to either your clients or your customers.

Lesson: Questions, Examples & Case Studies
Real world examples serve as a great way of understanding how trust funds are handled in the course of a transaction. In this lesson, we will review potential scenarios as well as case studies.

Common Questions Received by Real Estate Commission Related to Trust Accounts
The February 2017 edition of the Real Estate Commission Bulletin contained a list of questions and answers posed to DCCA’s Real Estate Branch from entities that want to be licensed as a real estate brokerage in Hawaii, as follows:
Examples of how Funds Flow In and Out of a Trust Account

Q1: 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?
A: NO! The Principal Broker is the bottom-line, responsible individual. Only the Principal Broker or designated broker in charge has control over the brokerage’s monies.

Q2: Can the brokerage’s bank account be located in another state?
A: NO! The trust fund account must be maintained in Hawaii.

Q3: The bank requires two signatures for check disbursements. Can the 2nd signature be a non-licensee or licensee other than the Principal Broker?
A: The Principal Broker 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.

Q4: Do all monies received by the brokerage have to flow through the client’s account?
A: NO. If monies are the result of a fiduciary relationship, then these funds flow through the client’s account. 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.”

*Source: State of Hawaii Real Estate Commission Bulletin, February 2017*

Examples of how Funds Flow In and Out of a Trust Account

Each example demonstrates how funds flow in and out of a trust account for a different type of transaction. These are strictly examples and only represent a few of the many types of transactions you may encounter.

NOTE: When funds are received from a client, they need to be promptly deposited in a trust account, if not requested in writing to do otherwise. State laws typically specify how quickly funds must be deposited.

**Example 1: Buyer Instructs the Earnest Money Deposit Check to Be Held Uncashed**
Charles is interested in purchasing a home and has entered into an agency relationship with William, broker-owner of William Realty, to help him prepare the offer. He writes a check for the earnest money deposit, but he instructs William, in writing, to hold the check uncashed until the seller, Julie, accepts the offer. Once the seller accepts the offer, William must forward the earnest money check, payable to ABC Escrow, to the escrow company.

**Example 2: Licensee Works with a Property Manager**
Della, broker-owner of Della Properties, has contracted with Tony to be the property manager for four different homes that he owns. Part of the agreement is that Della will collect all of the security deposits and rental payments, and she will hold the security deposits, including a portion of the rents to cover maintenance costs. Della’s management fees will be deducted from the rents, and the remaining amount will be paid to Tony once a month.
Below is a typical month of payments and withdrawals:

- June 2: Received $1,100 rent from Property Three
- June 4: Received $1,200 rent from Property One
- June 5: Received $1,300 rent from Property Two
- June 15: Paid $300 for cleaning of Property Four in preparation of rental
- June 20: Received $1,500 security deposit for rental of Property Four as well as a prorated rental check of $532.26
- June 30: Paid $425 to Della Properties for property management fees
- June 30: Paid $925 to Tony for rents received

**NOTE:** All of these transactions would go through Della's trust account, not the general business account.

**Case Studies**

The following case studies illustrate real-world scenarios in other states where a real estate licensee was found to be in violation of their trust fund laws.

**NOTE:** Trust funds laws and rules may be different in each state.

**Case Study #1: Negligence in Depositing Escrow Check**

The People Involved:
- Real Estate Professional: Rick
- Seller: Sam
- Buyer: Bob

Real estate professional Rick has listed a property for seller Sam. Buyer Bob makes an offer, which Sam accepts. Bob gives Rick an earnest money check for $2000.

Sam hears nothing from Rick for three weeks. Then Rick calls and informs Sam that the sale had fallen through and that Bob’s check had been returned by the bank marked “Not Sufficient Funds.”

Sam is understandably upset. Turns out that Rick did not even deposit the earnest money check until 10 days after receipt. When he did, and the check came back NSF, he gave buyer Bob an opportunity to “make it good.” At a hearing, Rick was found negligent and his real estate license was suspended.

**Case Study #2: Clients’ Trust Accounts’ Audit Goes Awry**

A real estate commission sent a clients’ trust account audit letter to the principal broker (PB) of a brokerage firm. The PB failed to produce the requested documents. Over the next several months, two compliance department members repeatedly contacted the PB. The commission opened an investigation on the PB for failure to provide the required reconciliations for the audit. The investigator emailed the PB to make arrangements to visit her office, and a formal request was also made to provide the trust account reconciliation documents by a specific date. When the
investigator visited the PB’s office and requested the three-way reconciliations, the PB’s response was that no one had stated they needed separate reports for tenants’ security deposit. She provided several property management agreements, and three of these agreements had no client identifying code. Also, she continued to fail to deliver the requested reconciliations, and there was a discrepancy between the bank where the PB stated the trust accounts were, and what the commission database showed as the bank.

The PB was found to be in violation for:

- Property management agreements not having a client identifying code
- Failure to notify the PB’s state real estate agency within 10 business days after the date a clients’ trust account was opened
- Failure to prepare and provide the required three-way reconciliations (which must be done within 30 days of the bank statement’s date)
- Failure to provide upon the Commission’s request the property management records within five banking days
- Demonstrating incompetence or untrustworthiness in performing any act for which the licensee is required to hold a license.

As a result, the PB’s license was revoked, and she was ordered to pay a civil penalty of $10,000.

Case Study #3: Failing to Transfer a Deposit to the Broker
An associate broker received funds in trust on behalf of his PB and failed to pay over all funds to his qualifying broker immediately upon receipt. The associate broker was found in violation of the state rule. There were three counts against this associate broker, and for this first count of failing to pay over funds, his license was revoked.

Client Trust Accounts—Other Resources

The Hawaii Association of REALTORS® is currently developing a series of videos illustrating the legal requirements, examples of violations, and the process for enforcement pertaining to client trust accounts in Hawaii. More information can be obtained by contacting the Hawaii Association of REALTORS®.