



# KA NU HOU

The Newsletter of the Real Property & Financial Services Section of the Hawaii State Bar Association

## From the Chair

October 2002

Aloha, and welcome to the latest issue of *Ka Nu Hou*, the newsletter of the Real Property and Financial Services Section of the Hawaii State Bar Association.

So far, 2002 has been a busy year for the Section. Many Section members are very actively involved in the ongoing efforts to draft legislation to update, revise and recodify Hawaii Revised Statutes Chapter 514A. That legislation is scheduled to be introduced in the Legislature's 2003 session, and drafts should be available for review and comment by the end of this year.

The Section has also been busy putting on seminars for Section members and other practitioners. Mahalo to Deb Chun, Lorrin Hirano, David Rair, and Mitchell Imanaka for putting on this year's Legislative Update Seminar, and also to Nancy Grekin and

Carl Schlack for putting on the Section's Commercial Leases seminar at the annual Bar Convention. Mahalo also to Paulette Suwa of the HSBA for her excellent support of the Section's continuing legal education efforts. Keep an eye out for the Section's final seminar of the year, the 2002 Litigation Update, chaired by William Deeley and scheduled for November 22, 2002.

Finally, our annual meeting will be held on December 5, 2002, prior to which ballots will be sent out for the election of new Board officers and directors.

Your comments and suggestions for the Section are always welcome at [RKiefer@Carlsmith.com](mailto:RKiefer@Carlsmith.com).

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## Technology: Deal Rooms and Extranets for Fun and Profit By Nancy Grekin

Let's take a walk down transactional memory lane and review the evolution of deal-making and the revolution of the not too distant future. It's a tale of ever-increasing demands on our time and ability to produce because of the technological tools available to us.

### The Distant Past

Remember the 70's when the only way to make a deal was to meet with the other lawyer in the same

room, mark up the documents by hand as you negotiated them, and hand them off to a secretary who went to her Selectric to type the changes? Federal Express as it called itself then, had just come into existence and it was all the rage. Instead of having to mail documents out of town you could be sure of getting them there tomorrow for only \$18. And your only written contact with the world outside your firm came with the mail (or the Federal Express delivery man).



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## Technology, cont.

**The More Recent Past**

Next came the 80's when the fax machine became popular. We couldn't imagine how we lived without it. Now we could mark up the documents with a pen and fax them to the other lawyer. The documents were probably on a computer now so at least the secretary didn't have to retype everything. And now a steady stream of faxes came across our desks in addition to the daily mail, and in the thermal beginning they had the shape of a paper towel roll and faded out with time.

**The Present**

With the 90's came the Internet and e-mail, and Type A lawyers could finally indulge our need for instant gratification. E-mail could put anything on someone else's desk instantly, and we could make our own changes to a document, run the red-liner and e-mail them to the other lawyer. Endless negotiations without ever having to get on a plane. No more fuzzy faxes, and executable documents could be anywhere in the world in a flash.

What! You're still e-mailing your documents to the other lawyer? How old-fashioned. Welcome to the 21<sup>st</sup> century. Soon you'll be using deal rooms and extranets, the next wave in technological deal making.

**The Future**

What are deal rooms and extranets? Like everything else in the world of technology they've proliferated and now come in all sizes and shapes. A deal room is a Web hosted site where you can upload and store documents. The site is password protected and allows you to create different "rooms" for different deals granting privileges to others to view, download, upload and modify documents. Often the site provides version control and notifies users when new documents have been posted. You pay a fee to make use of the site. The more space you want, the more you pay.

An extranet is a software-based deal room which a law firm can run from its own servers but it is Web based so anyone with access to the Internet can make use of it. Typically it includes the same features as external Web-hosted deal rooms, but in addition can integrate with the law firm's document management system, permitting uploading directly from the system or even linking to documents within the document management system directly. Many permit threaded discussions by participants, and some offer instant messaging. Extranets are described as collaborative networks because they facilitate sharing documents and information, and negotiating and closing a deal. With the electronic signatures acts in place, it is now possible to draft, revise, negotiate and even execute documents entirely in a secure on-line environment.

What's the advantage of a deal room or extranet over simply e-mailing documents? Ever done a deal with a lot of lawyers and clients in which multiple drafts of many documents were being e-mailed to all of the parties? Chances are you lost track of what the current version of a document was, or whether it had been transmitted to all who needed to see it, and keeping track of which document is which when they come with DMS assigned catchy names like "987QW!.doc" is all but impossible. Deal rooms and extranets solve all of the organizational problems by allowing storage of everything on one place.

Check out some of the deal rooms and vendors which sell extranet software. And be ready for the revolution. One of these days soon the deal room is going to be like the fax. Anyone without it will be deemed a dinosaur.

- CynOps from TyMetrix - <http://www.cynops.com/collaborative.htm>
- Merrill e-Collaborate - <http://www.e-collaborate.com/>
- RecordsCenter - [http://www.recordscenter.com/public\\_web/index.asp](http://www.recordscenter.com/public_web/index.asp)
- T-Lex - <http://www.tlex.com/promo/pages/about.lasso>
- eRoom - <http://www.eroom.com/>
- LawCommerce.com - <http://www.lawcommerce.com/>
- NetDocuments - <http://www.netdocuments.com/>
- Lextranet - <http://www.legalintranet.com/lextranet/home/home.htm>
- DealPlanner - <http://www.dealplanner.com/>
- DealCentral - [http://www.casecentral.com/cc/dc\\_about](http://www.casecentral.com/cc/dc_about)
- Elite Encompass - [http://www.eliteis.com/solutions/prod\\_encompass.asp](http://www.eliteis.com/solutions/prod_encompass.asp)

**Recent Developments . . .**

**New Kamehameha Schools Limited Power of Attorney.** A new Limited Power of Attorney for the Trustees of the Estate of Bernice Pauahi Bishop became effective as of July 1, 2002. The Limited Power of Attorney was recorded on June 26, 2002 in the Bureau of Conveyances as Document No. 2002-112217 and in the Office of the Assistant Registrar of the Land Court as Document No. 2817679. It supersedes the previously recorded Limited Power of Attorney which expired by its own terms on June 30, 2002. All documents to be executed and intended to be recorded on behalf of the Trustees should contain the full names of the five Trustees in the body of the document, and "as aforesaid" should be added to any reference to the Trustees within the document thereafter, including the signature block and the acknowledgement page. The Limited Power of Attorney recordation information must be included in the acknowledgement. Questions regarding this may be directed to Elizabeth Omura (523-6233) or Janice Torres (534-3987).

**Condominium Review Committee Clarifies Metes and Bounds Requirement.** The Condominium Review Committee of the Real Estate Commission recently issued an informal non-binding opinion clarifying Sections 514A-11(1), (4), (5), and 514A-36(a). These sections require that the Declaration of Condominium Property Regime contain, among other things, "descriptions" of the land, buildings, common elements, and limited common elements of the project. Questions had arisen regarding the necessity of metes and bounds descriptions for all limited common elements, as there are many instances where it is difficult or impractical to conduct such a survey. The Committee's informal non-binding opinion clarifies that metes and bounds are not required to define limited common element areas where there are "visible demarcations," "physical boundaries," "permanent," or "structural monuments," including without limitation roads, walls, fences and parking stall striping; however, metes and bounds are required to define limited com-

mon element areas where there are no such indicators. A discussion of this issue can be found in the August 14, 2002 minutes of the Condominium Review Committee at <http://www.state.hi.us/hirec/>.

**Summary judgment reversed in foreclosure case.** In a case following the line of *Hawaii Community Federal Credit Union v. Keka*, 94 Haw. 213, 11 P.3d 1 (2000), the Hawaii Intermediate Court of Appeals reversed a summary judgment in favor of the lender in *Associates Financial Services Company of Hawaii, Inc. v. Richardson, et al.*, Supreme Court No. 22595 (slip op., September 5, 2002). The Circuit Court had granted summary judgment, finding that there were no genuine issues of material fact regarding, among other things, the applicability of the Truth in Lending Act. The circuit court had ruled that the mortgaged property was not the defendant's "principal dwelling" and that the loan was to purchase heavy equipment; accordingly, TILA did not apply. The defendant, however, had submitted affidavits, which the Intermediate Court of Appeals indicated the Circuit Court did not consider, stating that the mortgaged property was his personal residence, that he had not received the required TILA notices and disclosures, and that the loan was "to invest funds in a local company for his retirement and to pay down other personal liens and personal bills." Slip op. at 13. The Intermediate Court of Appeals vacated and remanded the summary judgment on the grounds that the defendant's affidavits created genuine issues of material fact as to the applicability of TILA and whether the defendant had rescinded the loan transaction.

**Statute of limitations explained.** In the recent case of *Bauernfiend v. AOA O Kihei Beach Condominiums, et al.*, Supreme Court No. 24239 (slip op., October 1, 2002), the Supreme Court explained when the statute of limitations expires for an action to recover compensation for damage or injury to persons or property. The plaintiff's Second Circuit Circuit

## Recent Developments, cont

complaint alleged that on May 23, 1998, the plaintiff suffered physical injuries and severe emotional distress as the result of an "out-of-control ride" in the elevator of the condominium building where she resided. Her complaint was filed on May 23, 2000. The AOA filed a motion for summary judgment, arguing that the statute of limitations barred the claim because it had not been filed "within two years after" the cause of action accrued, as required by Section 657-7, Haw. Rev. Stat. The AOA argued that a footnote in the case of *Hoke v. Paul*, 65 Haw. 478, 653 P.2d 1155 (1982) supported its reading of the statute of limitations (the footnote read: "[i]f January 23, 1976 is the determinative date [that the plaintiff learned of the defamatory publication,] . . . the complaint was timely filed since the last day of the two-year period, January 22, 1978, was a Sunday and the complaint was filed the next day." *Hoke*, 65 Haw. at 483 n.2, 653 P.2d at

1159 n.2"). The Circuit Court agreed and granted the AOA's motion to dismiss. On appeal, however, the Supreme Court reversed. The Court focused on the statutory words "within two years after the cause of action accrue[s]" (emphasis added). Reading Section 657-7, Haw. Rev. Stat. *in pari materia* with Section 1-29, Haw. Rev. Stat. (which mandates that time be computed by "excluding the first day and including the last . . ."), the Court held that the first day that the cause of action accrued – May 23, 1998 – must be excluded from the computation and that the day two years later – May 23, 2000 – is the "last day" of the period and is therefore included. Accordingly, the complaint which was filed on May 23, 2000 was timely. This opinion was only recently released, and the time for reconsideration or for other relief may not yet have expired.

## From the William S. Richardson School of Law...

**Real Property and Financial Services Section Scholarships**

The Real Property and Financial Services Section awarded scholarships to two deserving students at the William S. Richardson School of Law. At a ceremony held at the Law School on September 13, 2002, Stanton Oishi received the RPFSS award which included a \$500 check, and Joseph F. Kotowski, III received the C. Jepson Garland Memorial Scholarship Award, which also included a \$500 check. The awards are given to students who have shown excellence in writing on issues concerning real property, including planning and environmental issues, or financial service issues such as lending, security instruments, UCC, and related matters. Excerpts from Mr. Oishi's paper will be published in the next issue of this Section newsletter. Congratulations!

**More Law School Business . . .**

The William S. Richardson School of Law seeks an instructor to teach Sales (UCC Article 2) during the Spring 2003 semester. It is a 3 credit course taught twice a week for 75 minutes each class. Students must have already completed Secured Transactions. The semester begins Tuesday, January 21, 2003 and ends May 3. Interested candidates should contact Associate Dean Carol Mon Lee as soon as possible. Send resume, indicating prior teaching experience, by e-mail to [caroll@hawaii.edu](mailto:caroll@hawaii.edu), or fax to 956-6402, or call 956-8636. Salary is \$1,447.00 per credit.

## Upcoming Events/Seminars . . .

Nancy Grekin and Carl Schlack will present a seminar at the Hawaii State Bar Association convention on October 18 starting at 8:30 a.m. The seminar will cover Commercial Leases for Transaction Attorneys. Topics will include lease economics (rent, CAM, other passthroughs), landlord concessions, use clauses, co-tenancy requirements, operating covenants, leasehold improvements, subletting and assignment, casualty, default, tenant bankruptcy and insurance. Ms. Grekin and Mr. Schlack will then be joined in an afternoon session by Gerald Clay, Charles Crumpton and Keith Hunter to cover the New Uniform Arbitration Act. Effective July 1, 2002, the most sweeping changes to arbitration law in Hawaii in over 80 years went into effect. Lawyers and clients involved in negotiating and drafting arbitration clauses and agreements must understand the breadth and consequences of the new law. For details, contact the Hawaii State Bar Association at 537-1868.

The 2002 Real Property Litigation Update seminar, moderated by William Deeley, is scheduled for November 22, 2002 at 8:30 a.m.

**Next Meeting of the Section Board**

The next scheduled meetings of the Board of Directors will be:

Friday, October 25, 12 noon

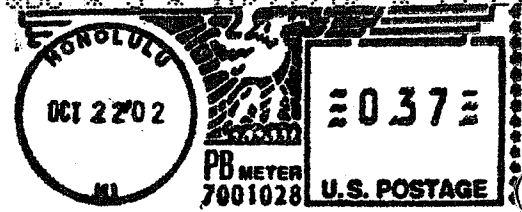
Friday, November 15, 2002, 12 noon

Meetings are held in the Carlsmith Ball Conference Room, 1001 Bishop Street, 22<sup>nd</sup> Floor.

The Real Property and Financial Services Section Annual Meeting will be held on Thursday, December 5, 2002 at noon. Be on the lookout for the announcement.

**Don't forget to visit us at our website:** [www.hsba.org/sections/rpfs](http://www.hsba.org/sections/rpfs)

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