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A marketplace for Aloha Tower

By Stephany L. Sofos

The state wants to combine some agencies to create better energy and productivity. One such plan would merge the Aloha Tower Development Corp., which oversees Aloha Tower Marketplace, with the state's development arm for all of Kakaako, the Hawaii Community Development Authority. It is thought this combination will help private developers kick start Aloha Tower Marketplace and other projects.

While I applaud the vision, I believe in the reality of retail, it would take a Herculean effort for the Marketplace to be successful.

In 1993, before Aloha Tower Marketplace opened for business, I was given a hard-hat tour. As I walked the property, I noted the center was too dense and the buildings were perpendicular rather than parallel to the ocean, so the gross leasable area would be increased to maximized rents for the state. But doing that meant the ocean and harbor views were not fully optimized. There were no overhead pedestrian crosswalks

across the intimidating Nimitz Highway. The parking was inadequate. And the most important segment not there was ancillary commercial activities, such as adjacent office buildings and/or hotels. Those are integral in creating the synergy needed for a festival marketplace.

Since that walk-through, nothing has changed.

The Aloha Tower Marketplace was built for \$100 million and was to be the first of five phases of a development plan organized by the state to revitalize downtown. It was the era of "If you build it, they will come." No one much cared about costs or sustainability. Everyone involved was a bit arrogant and believed the center could carry itself alone and, in time, the other components would compliment its great success. Aloha Tower started out with a bang, but within a year, was suffering from the effects of high rents, low consumer acceptance and no excitement.

Since then, the center has lost millions annually. The original private developers went bankrupt, as did the Marketplace, twice. Numerous tenants and small businesses have failed.

The state and the private owners of the center are looking at different development proposals to build around the complex to revitalize it. They may include an office building of 200,000 square feet, time shares, a 250-room hotel and a ferry system. More restaurants and retail also are planned.

All of this sounds great, but in today's world, when creating or rebuilding a shopping center, retail must think globally while fitting within the local culture. You cannot separate the two. In addition, the obsolescence of retail space occurs at a faster pace than any other property type. Retail centers, like no other commercial properties, experience the constant change of major users, competition from new arenas and evolving consumer tastes.

In Asia, the sophistication of shopping centers is world class. Retailers may be smaller due to both competition and available space, but they are generally of high quality and very focused.

So in order to have the Aloha Tower Marketplace yield the success the state desires, there must be an overall plan to reshape the center itself and its retailers to make it a destination location. Retail is all about profit and risk-taking for merchants and they will not participate in a center with a poor history unless they believe they will grow and have a future.

If the Aloha Tower Marketplace is going to succeed it will have to become competitive on an international scale.

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Relationships matter in choosing a trustee for your estate

By Judith Sterling and Michelle Tucker

There are many factors that must be considered when selecting someone to serve as your trustee. Of course, the person's age, maturity, responsibility and financial acumen are all important. However, clients and advisors often overlook the importance of relationships.

A trustee must manage and distribute the assets in accordance with your wishes. In accomplishing these goals, the trustee must interact with beneficiaries, advisors and other fiduciaries.

In fulfilling the duties of trustee, he or she often has broad discretion to accomplish your goals. For example, a trustee often is given discretion to make distributions to beneficiaries based upon the needs of a beneficiary. There can be some friction between a trustee and the beneficiaries as a result of this discretion. Already strained relationships can turn ugly when one of them is the trustee and has control over money that could go to the other.

For example, the Knuths appointed a family member as trustee of a family trust set up for the benefit of other family members. The tensions escalated and the beneficiaries went into the trustee's home and placed a listening device under his bed. Two days later he and his wife discovered the bug. The couple sued the beneficiaries for invasion of privacy and trespass and were awarded \$475,000 in damages by a Southern California court.

Of course, you can never entirely eliminate the possibility for friction between beneficiaries and trustees. However, you can reduce the possibility by avoiding typically problematic situations such as one sibling serving as trustee for another adult sibling or a subsequent spouse serving as trustee for children from a prior marriage. Also, if the trustee and the beneficiary have a history of friction, that should be considered.

Besides beneficiaries, trustees also must work with advisers and other fiduciaries. A trustee may have co-trustees with whom he or she will need to work. The trustee might have to work together with the guardians of minor beneficiaries. It is wise to consider these relationships, as well. Feuding fiduciaries can wreak havoc on an otherwise well thought-out estate plan.

What can be done if the only logical choice as trustee may have friction with the beneficiaries or other fiduciaries? You can reduce the possibility for friction by reducing the discretion granted to the trustee. However, this diminishes both the flexibility of your plan and the likelihood your goals will be met. Perhaps the best way to reduce the friction is to name a bank or trust company as a co-trustee. This combination can work well in many instances. The individual trustee knows the family dynamics and the beneficiaries on a personal level. The bank is unbiased and is not embroiled in the family politics. If the beneficiary wants an unreasonable distribution, your individual trustee can let the bank be the bad guy.

If the family landscape is littered with wreckage from old disputes and you could imagine your beneficiaries planting listening devices, it may be best to name a bank as the sole trustee. Family relationships are often tenuous after the death of the patriarch or matriarch. Some cannot survive the frictions inherent in working together. In such cases, a bank can be an excellent option to avoid risking family friction by choosing a family member as trustee.

A carefully chosen trustee is critical to implementing your estate plan. An attorney that specializes in estate planning and who is sensitive to the family issues can help you design a plan and select a trustee to achieve your goals.

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[ON TECHNOLOGY]

Cracking hacker

case requires attention to details

By John Agsalud

In picture postcards of the Aloha State, beaches are never crowded, the sun always shines and networks never get hacked.

Alas, Hawaii is not a perfect place, and the day might come when your company will have to respond to a system break-in or some other network security "incident."

Be aware that firewalls are no guarantee against getting hacked. As long as your firewall allows for some traffic to pass through, your network is at risk. The culprit may be a malevolent e-mail attachment, a downloaded virus, an acne-ridden 17-year-old with too much time on his hands or even a company insider with an ax to grind.

In any case, after an attack you might end up scratching your head, wondering if you should report the incident to the police. The answer is not always straightforward. Many companies -- it's hard to even speculate what percentage -- don't even report these kinds of episodes. People don't like to advertise the fact that their security has been compromised. On the other hand, reporting an incident also may depend on what damage was done and what your company's policies are pertaining to security reports.

Hawaii law is quite clear about computer crimes. According to intellectual-property attorney Tony Clapes, accessing a computer without authorization and with criminal intent is a felony even if it's handing off someone's password to a third party with intent to defraud or trying to abscond with as little as a \$300 checking account. The state also dictates that transmitting code, commands or information to a computer or network that causes damage of more than \$5,000 or alters medical records is a felony.

What do you do?

The first issue to resolve before you call law enforcement is to know with certainty that you have been hacked. Often security incidents turn out to be human error, such as faulty configuration or even computer error. The last thing you want to do is go to the police and find out (to your great embarrassment) that your admin was tweaking the server over the weekend and forgot to tell you about it.

As in any crime scene, the first thing you need to do is to preserve any evidence. Keep copious notes and record anything you did during the investigation. You'll want to make certain that the actions of the investigators are not confused with those of the criminals. By definition, computers are easily tampered with, and circumstantial

evidence can always be questioned by the defendant's attorney.

You should definitely make a copy of the hard drive that you believe was compromised, and then store the original in safe location. You can scrutinize the copy for evidence and possibly utilize the original in any prosecution.

When you call law enforcement, you need to be prepared. Investigators will want to see a detailed account of the incident.

Begin with an executive summary that chronicles the event with evidence such as log files, timestamps or missing or modified files to support your claims. Computer crime is still a relatively new area in Hawaii, and state, federal and city authorities we spoke to said that laws and jurisdictions often overlap. Therefore, it's not often immediately clear which law enforcement agency should handle your case.

According to FBI Special Agent Larry Futa, supervisor of a new cybersquad crime unit, the rule of thumb is this: The FBI has jurisdiction over Internet crimes because the Internet crosses state boundaries. Aside from hacking child pornography, Futa said the FBI should also be contacted in regards to intellectual property theft, Internet fraud and other cybercrimes.

He can be reached at 566-4300, via the FBI switchboard.

Detective Chris Duque, of the Honolulu Police Department's White Collar Crime Unit, suggested citizens call him at 529-3112 or to call 911 if it is urgent. He said that the HPD is interested in tracking cybercrimes; depending on the nature of the activity, he would route the caller to appropriate authorities at state or federal law enforcement agencies.

Deputy Attorney General Kristin Izumi-Nitao, who directs the Hawaii High-Technology Crime Unit (HHTCU), said her group collaborates closely with other law enforcement entities and that if she could not help personally, would route a caller to the city or federal agencies. She said that the Hawaii High-Technology Crime Unit is a new agency tasked with assessing the threats posed by cybercrime and implementing solutions on a statewide level including training for law enforcement personnel. She can be reached at 587-4114.

If you do decide to go to the police, be methodical in your preparation and make sure that you are reporting a real crime.

This will go a long way in recovering damages -- or perhaps preventing an embarrassing anecdote about your company that will be discussed at the Plaza Club for some time to come.

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