



# BROKER/OWNER Conference & Expo

April 19-21  
Mohegan Sun  
Resort  
Uncasville, CT

PayProp

## Levels of Trust Fund Segregation

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## Disclaimer

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## Who is PayProp?

- Established 2004
- Offices in US, UK, Canada, Switzerland
- Integrating Property Management, Banking & Accounting into a single platform
- GivenGain (givengain.com)

**CLIENTS**



**BANKING RELATIONSHIPS**







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## Session Outline

- Defining the broker-landlord relationship
- Level 1 segregation: Trust and business funds
- Level 2 segregation: Owners' funds
- Level 3 segregation: Security deposits
- Level 4 segregation: Final month's rent

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## Defining the relationship

- To manage on behalf of 3<sup>rd</sup> party for gain = broker
- Owner is the principal, broker is the agent
- While duties usually defined in property management agreement, common law, statutes and regulations define obligation

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## Obligations

<p><b><u>FIDUCIARY</u></b></p> <p>Duties of <b><u>action</u></b></p> <ul style="list-style-type: none"> <li>• Care</li> <li>• Obedience</li> <li>• Disclosure</li> </ul> <p>Duties of <b><u>protection</u></b></p> <ul style="list-style-type: none"> <li>• Confidentiality</li> <li>• Accounting of funds</li> <li>• Loyalty</li> </ul>	<p><b><u>STATUTORY</u></b></p> <ul style="list-style-type: none"> <li>• Receive and maintain funds in trust</li> <li>• Separation of fund types</li> <li>• Reconcile funds &amp; accounts to state body</li> <li>• 'Standing in the shoes of the landlord' (landlord &amp; tenancy acts)</li> </ul>
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## Level 1: Trust and business

- Implies duty of care and trust to every person on whose behalf funds are kept
- Separate, appropriately designated account
- No commingling (some states have limits)
- No conversion
  - All income to broker first – then to agents
- All funds must be accounted for separately from business



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## Level 2: Owner funds

- Your fiduciary duty is to each owner INDIVIDUALLY
- Practically the owner experience should be single client experience – especially when it comes to money
- "Pool" trust accounts and third-party settlement accounts can create cross funding scenarios



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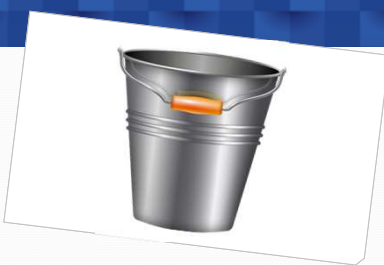
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# So?





Whose money did I scoop out?



If there was an undetected leak, how do I allocate it?



Who owns what is left?



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# The solution?



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# Level 3: Security Deposits

- Funds belong to tenant – entrusted to agent to hold on behalf of landlord
- Landlord and tenant laws often refer to "landlord or landlord's agent shall" – implies that agents must act in the same manner
- Florida example: "the landlord shall not commingle such moneys with any other funds of the landlord..."
- Cannot be held in the same 'bucket' as rental receipts
- You need to be able to account on behalf of each owner INDIVIDUALLY to each tenant INDIVIDUALLY



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## The solution?



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## Level 4: Last month's rent

- Common practice to pay over to the landlord when received
- Some agents take the last month's rent as their placement fee
- Neither has at that time been earned and the funds technically are still the tenant's
- Another Florida example: "landlord or landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences"
- "The landlord shall not commingle such monies... or in any way make use of such moneys until actually due to the landlord"



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## The solution?



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• Create divisions with separate accounts

• Create divisions with accounting ledgers

• Invest time and energy into generating reports

**That's a lot of buckets!!!**

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### What happens when I don't?

**1. Commingling**

- Mixing personal & business funds
- Mixing security deposit (tenant) funds with rental receipts (landlord)

**2. Conversion**

- Paying expenses from funds you have not earned yet (last month)
- Paying business expenses (including sales associates) from trust

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### What happens when I don't?

**3. Failing fiduciary responsibility**

- Cross-funding between properties
- Funding operational expenses from deposit funds
- Unable to account for funds down to property level

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## Things to think about...

- Am I ringfencing each property from the losses of others?
- Are my security deposits separate, but also visible?
- Am I ringfencing each tenant's deposit in the same way?
- What is my policy on last month's rent?
- I can account for overall funds, but can I account for all different fund types (rent, security deposit and last month's rent) on a per-property level?
- How do I balance these responsibilities with trying to manage a business?



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## If you want to reach out!

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