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# A BILL FOR AN ACT

RELATING TO REAL ESTATE SELLER DISCLOSURE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the adequate  
2 disclosure of documents is a critical component of all real  
3 property transactions. The seller's disclosure law, codified as  
4 chapter 508D, Hawaii Revised Statutes, requires the disclosure  
5 of restrictive covenants to be provided at the same time as the  
6 seller's real property disclosure form, if the property is  
7 located within a planned community. The legislature notes that  
8 other chapters within the Hawaii Revised Statutes contain  
9 different definitions for a "planned community." These multiple  
10 definitions create confusion about whether and how the  
11 disclosure provision applies to planned community associations.

12           The purpose of this Act is to eliminate confusion relating  
13 to application of the seller disclosure law by:

14           (1) Establishing a uniform standard for disclosure for  
15           condominium projects, cooperative housing  
16           corporations, and other community associations;

17           (2) Clarifying the types of documents that are required to  
18           be disclosed;



1 (3) Requiring the disclosure of documents within ten days  
2 after the title report is received; and

3 (4) Allowing for the electronic receipt of documents with  
4 the buyer's consent.

5 SECTION 2. Chapter 508D, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8 **"§508D- Disclosure of documents; required documentation.**

9 (a) If the residential real property being offered for sale is  
10 subject to a recorded declaration, the seller shall provide the  
11 following documents and any amendments or supplements thereto,  
12 to the extent applicable:

13 (1) Articles of incorporation or other document, if any,  
14 creating the corporation or association whereby the  
15 corporation or association has the power to enforce  
16 the declaration;

17 (2) Bylaws of the corporation or association;

18 (3) Declaration or similar organizational documents, and  
19 any exhibits thereto; and

20 (4) Any rules relating to the use of common areas,  
21 architectural control, maintenance of units, or  
22 payment of money as a regular assessment or otherwise



1           in connection with the provisions, maintenance, or  
2           service for the benefit of the residential real  
3           property or other real property or common areas.

4           (b) If the residential real property is otherwise subject  
5           to restrictions or conditions on use, either because of  
6           covenants contained in the deed for the property or because of  
7           another recorded document, the disclosure shall also include all  
8           documentation relating to any restrictions or conditions,  
9           including but not limited to any unrecorded rules or guidelines  
10           that may have been issued by any entity responsible for  
11           enforcing those restrictions or guidelines.

12           (c) Notwithstanding any other provision in this chapter to  
13           the contrary, the seller shall not be required to provide the  
14           documentation required under subsection (a) until ten calendar  
15           days after the seller and buyer have received a current title  
16           report for the property offered for sale. Upon receipt of the  
17           required documentation, the buyer shall have fifteen calendar  
18           days to examine the documents and decide whether to rescind the  
19           real estate purchase contract. If the buyer decides to rescind  
20           the real estate purchase contract, the buyer shall deliver to  
21           the seller within the fifteen-day period written notification of  
22           the buyer's decision to rescind the real estate purchase



1 contract. Failure to deliver the written notification to the  
2 seller within the fifteen-day period shall be deemed an  
3 acceptance of the property offered for sale with the conditions,  
4 covenants, or restrictions on use set forth in the documents.

5 The right of rescission set forth in this subsection shall  
6 be in addition to the rights of rescission set forth in sections  
7 508D-5, 508D-6, and 508D-13.

8 The seller and the buyer may agree in writing to reduce or  
9 extend the time periods and deadlines set forth in this  
10 subsection.

11 (d) If the required documents under this section are  
12 available electronically on the Internet, the seller, in lieu of  
13 providing hard copies of the documents and with the buyer's  
14 consent, may provide a written statement to the buyer that  
15 directs the buyer to the internet address or addresses where the  
16 documents are located.

17 (e) Compliance with this section shall fulfill the  
18 seller's duty of disclosure of material facts relating to a  
19 recorded declaration or other recorded restrictions or  
20 conditions on use of the property being offered for sale."

21 SECTION 3. Section 508D-1, Hawaii Revised Statutes, is  
22 amended as follows:



1           1. By adding four new definitions to be appropriately  
2 inserted and to read:

3           "Common area" means real property that is designated as  
4 common area in or pursuant to a declaration, that is owned or  
5 leased by the association under the declaration, or that is  
6 otherwise available for the use of members of the association.

7           "Condominium project" means a real estate condominium  
8 project; or a plan or project whereby a condominium of two or  
9 more units located within the condominium property regime have  
10 been sold or leased or are offered or proposed to be offered for  
11 sale or lease.

12           "Cooperative housing corporation" means a corporation  
13 having only one class of stock outstanding, each of the  
14 stockholders of which is entitled by reason of the stockholder's  
15 ownership of stock in the corporation to occupy for dwelling  
16 purposes a dwelling unit in a building owned or leased by the  
17 corporation, and no stockholder of which is entitled, either  
18 conditionally or unconditionally, to receive any distribution  
19 not out of earnings and profits of the corporation except in a  
20 complete or partial liquidation of the corporation.

21           "Declaration" means any recorded document, however  
22 denominated, in favor of or enforceable by a cooperative housing



1 corporation, an association of owners of a condominium project,  
2 or other nonprofit, incorporated or unincorporated association,  
3 that restricts or conditions the use of the real property being  
4 offered for sale, or imposes obligations on the owner of the  
5 residential real property being offered for sale with respect to  
6 maintenance or operational responsibility for the common areas,  
7 architectural control, maintenance of the residential real  
8 property being offered for sale, or services for the benefit of  
9 the residential real property being offered for sale or other  
10 property subject to the declaration including the common areas."

11 2. By amending the definition of "disclosure statement" to  
12 read:

13 ""Disclosure statement" means a written statement prepared  
14 by the seller, or at the seller's direction, that purports to  
15 fully and accurately disclose all material facts relating to the  
16 residential real property being offered for sale that:

- 17 (1) Are within the knowledge or control of the seller;  
18 (2) Can be observed from visible, accessible areas; or  
19 (3) Are required to be disclosed under sections 508D-4.5  
20 and 508D-15.

21 ~~[If the residential real property being offered for sale is in a~~  
22 ~~planned community as defined in section 421J-2, "disclosure~~



1 ~~statement" includes the planned community declaration and~~  
2 ~~association documents as those terms are defined in section~~  
3 ~~421J-2, and if the property is otherwise subject to restrictions~~  
4 ~~or conditions on use, either because of covenants contained in~~  
5 ~~the deed for the property or because of another recorded~~  
6 ~~document, the disclosure statement shall also include all~~  
7 ~~documentation relating to any restrictions or conditions,~~  
8 ~~including but not limited to any unrecorded rules or guidelines~~  
9 ~~that may have been issued by any entity responsible for~~  
10 ~~enforcing those restrictions or conditions. Except for the~~  
11 ~~disclosures required under section 508D-15 and this definition,~~  
12 ~~no seller shall have any duty to examine any public records when~~  
13 ~~preparing a disclosure statement.]"~~

14 SECTION 4. Section 508D-9, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) A seller or the seller's agent shall prepare the  
17 disclosure statement in good faith and with due care. A buyer  
18 shall have no cause of action against a seller or seller's agent  
19 for, arising out of, or relating to the providing of a  
20 disclosure statement when the disclosure statement is prepared  
21 in good faith and with due care. For purposes of this section,  
22 "in good faith and with due care" includes honesty in fact in



1 the investigation, research, and preparation of the disclosure  
2 statement and may include information on the following:

- 3 (1) Facts based on only the seller's personal knowledge;
- 4 (2) Facts provided to the seller by governmental agencies  
5 and departments;
- 6 (3) Existing reports prepared for the seller by third-  
7 party consultants, including without limitation a:
  - 8 (A) Licensed engineer;
  - 9 (B) Land surveyor;
  - 10 (C) Geologist;
  - 11 (D) Wood-destroying insect control expert; or
  - 12 (E) Contractor, or other home inspection expert;  
13 dealing with matters within the scope of the  
14 professional's license or expertise for the purpose of  
15 the disclosure statement; and
- 16 (4) Facts provided to the seller by a managing agent of a  
17 homeowner's association, including without limitation,  
18 a condominium, cooperative, or community association.

19 Notwithstanding this subsection, a seller or seller's agent  
20 shall be under no obligation to engage the services of any  
21 person in the investigation, research, or preparation of the  
22 disclosure statement. The failure to engage the services of any





1 such person for this purpose shall not be deemed an absence of  
2 good faith or due care by the seller or the seller's agent in  
3 the investigation, research, or preparation of the disclosure  
4 statement. The delivery to the buyer of reports or facts within  
5 the scope of paragraph (2), (3), or (4) after the date of the  
6 initial disclosure statement shall be considered an amendment of  
7 the disclosure statement."

8 SECTION 5. Section 508D-15, Hawaii Revised Statutes, is  
9 amended by amending subsection (c) to read as follows:

10 "(c) Except as required under subsections (a) and (b), and  
11 [~~in the definition of "disclosure statement" in section 508D-1,~~]  
12 as required under section 508D- , the seller shall have no  
13 duty to examine any public record when preparing a disclosure  
14 statement."

15 SECTION 6. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

18 SECTION 7. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 8. This Act shall take effect on May 1, 2014.



**Report Title:**

Real Estate; Seller Disclosure; Required Documents

**Description:**

Establishes a uniform standard for disclosure for condominium projects, cooperative housing corporations, and other community associations and clarifies the types of documents that are required to be disclosed. Effective May 1, 2014. (HB138 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

