

JAN 18 2013

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, either directly
11 or through the seller's agent, shall provide the following
12 documents and any amendments or supplements thereto, to the
13 extent applicable:

- 14 (1) Articles of incorporation or other document, if any,
- 15 creating the corporation or association whereby the
- 16 corporation or association has the power to enforce
- 17 the declaration;
- 18 (2) Bylaws of the corporation or association;
- 19 (3) Declaration or similar organizational documents, and
- 20 any exhibits thereto; and
- 21 (4) Any rules relating to the use of common areas,
- 22 architectural control, maintenance of units, or



1 payment of money as a regular assessment or otherwise
2 in connection with the provisions, maintenance, or
3 service for the benefit of the residential real
4 property or other real property or common areas.

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

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



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

7 The right of rescission set forth in this subsection shall
8 be in addition to the rights of rescission set forth in sections
9 508D-5, 508D-6, and 508D-13.

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

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

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



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

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

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

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

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



1 "Declaration" means any recorded document, however
2 denominated, in favor of or enforceable by a cooperative housing
3 corporation, an association of owners of a condominium project,
4 or other nonprofit, incorporated or unincorporated association,
5 that restricts or conditions the use of the real property being
6 offered for sale, or imposes obligations on the owner of the
7 residential real property being offered for sale with respect to
8 maintenance or operational responsibility for the common areas,
9 architectural control, maintenance of the residential real
10 property being offered for sale, or services for the benefit of
11 the residential real property being offered for sale or other
12 property subject to the declaration including the common areas."

13 2. By amending the definition of "disclosure statement" to
14 read:

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

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



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

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

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



1 in good faith and with due care. For purposes of this section,
2 "in good faith and with due care" includes honesty in fact in
3 the investigation, research, and preparation of the disclosure
4 statement and may include information on the following:

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

21 Notwithstanding this subsection, a seller or seller's agent
22 shall be under no obligation to engage the services of any



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

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

12 "(c) Except as required under subsections (a) and (b), and
13 [~~in the definition of "disclosure statement" in section 508D-1,~~]
14 as required under section 508D-10.5, the seller shall have no
15 duty to examine any public record when preparing a disclosure
16 statement."

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

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect upon its approval;
 2 provided that the documents relating to condominium projects,
 3 cooperative housing corporations, and other community
 4 associations required under this Act shall be provided as part
 5 of all contracts or agreements entered into on or after May 1,
 6 2014.

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S.B. NO. 902

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. Requires the disclosure of documents within ten days after the title report is received. Allows for the electronic receipt of documents with the buyer's consent.

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

