

**"CHAPTER 508D
MANDATORY SELLER DISCLOSURES IN REAL ESTATE
TRANSACTIONS**

Section

- 508D-1 Definitions
- 508D-2 Applicability
- 508D-3 Exemptions
- 508D-3.5 Disclosure of documents; required documentation
- 508D-4 Prohibitions on sales of residential real property
- 508D-4.5 Release or waiver of construction defect
- 508D-5 Delivery of disclosure statement to buyer; procedures
- 508D-6 Later discovered inaccurate information
- 508D-7 Seller's agent's duties and responsibilities for disclosure
- 508D-8 Excluded facts from the disclosure statement
- 508D-9 Good faith and due care in preparing the disclosure statement
- 508D-10 Repealed
- 508D-10.5 Energy-efficiency consumer information in sale or lease
 - of real property
- 508D-11 Disclosure form
- 508D-12 Indication of receipt of disclosure statement
- 508D-13 Later material facts
- 508D-14 Additional disclosure requirements
- 508D-15 Notification required; ambiguity
- 508D-16 Remedies; voidable contracts
- 508D-16.5 Rescission
- 508D-17 Limitation of actions
- 508D-18 Alternative dispute resolution
- 508D-19 Severability
- 508D-20 Repealed

Cross References

Contractor repair act, see chapter 672E.

Law Journals and Reviews

Seller Beware: New Law Protects Hawai'i Home Buyers. 18 UH L. Rev. 981.

" **§508D-1 Definitions.** As used in this chapter, unless the context requires otherwise:

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

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

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

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

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

- (1) Are within the knowledge or control of the seller;
- (2) Can be observed from visible, accessible areas; or

- (3) Are required to be disclosed under sections 508D-4.5 and 508D-15.

"Material fact" means any fact, defect, or condition, past or present, that would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale. The disclosure statement shall not be construed as a substitute for any expert inspection, professional advice, or warranty that the buyer may wish to obtain.

"Real estate purchase contract" means a contract, as it may be amended, by which a seller agrees to sell and a buyer agrees to buy residential real property which shall include a deposit, receipt, offer, acceptance, or other similar agreement for the sale or lease with option to buy.

"Residential real property" means fee simple or leasehold real property on which currently is situated:

- (1) From one to four dwelling units; or
- (2) A residential condominium or cooperative apartment, the primary use of which is occupancy as a residence.

"Sale of residential real property" means the transfer or disposition of residential real property for consideration including, without limitation, a sale by exchange (provided that the transferor to an exchange accommodator but not the exchange accommodator who has acquired the residential real property for tax purposes prior to transfer to the buyer is deemed to be the seller for purposes of this chapter), auction, or lease with option to buy. [L 1994, c 214, pt of §2; am L 1996, c 161, §1; am L 2001, c 224, §1; am L 2004, c 186, §2; am L 2006, c 276, §1; am L 2008, c 191, §2; am L 2013, c 186, §3]

" **§508D-2 Applicability.** Except as otherwise provided for in this chapter, this chapter applies to any sale of residential real property. The failure of the seller or the seller's agent to comply with this chapter shall not affect the validity of title to any residential real property sold. [L 1994, c 214, pt of §2; am L 1996, c 161, §2]

" **§508D-3 Exemptions.** This chapter shall not apply to the following sales of residential real property:

- (1) Sale to a co-owner;
- (2) Sale to a spouse, parent, or child of the seller;
- (3) Sale by devise, descent, or court order;
- (4) Sale by operation of law, including but not limited to any transfer by foreclosure, bankruptcy, or partition, or any transfer to a seller's creditor incident to a deed (or assignment) in lieu of foreclosure, workout, or the settlement or partial settlement of any

- preexisting obligation of a seller owed a creditor and any later sale of residential real property by such creditor;
- (5) Sale by a lessor to a lessee resulting from conversion of leased land to fee simple;
 - (6) Initial sale of new residential real property pursuant to chapter 484 under a current public offering statement or chapter 484 exemption;
 - (7) Sales of condominium apartments or units accompanied by delivery of an unexpired developer's public report; or
 - (8) Sale of time share interests as defined under chapter 514E. [L 1994, c 214, pt of §2; am L 1995, c 172, §1; am L 1996, c 161, §3; am L 2001, c 224, §2; am L 2008, c 28, §31]

Note

The 2008 amendment is retroactive to July 1, 2006. L 2008, c 28, §43.

" **§508D-3.5 Disclosure of documents; required documentation.**

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

- (1) Articles of incorporation or other document, if any, creating the corporation or association whereby the corporation or association has the power to enforce the declaration;
- (2) Bylaws of the corporation or association;
- (3) Declaration or similar organizational documents, and any exhibits thereto; and
- (4) Any rules relating to the use of common areas, architectural control, maintenance of units, or payment of money as a regular assessment or otherwise in connection with the provisions, maintenance, or service for the benefit of the residential real property or other real property or common areas.

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

consistent with and subject to the seller's duty of good faith as provided for under section 508D-9.

(c) Notwithstanding any other provision in this chapter to the contrary, the seller shall not be required to provide the documentation required under subsection (a) until ten calendar days after the seller and buyer have received a current title report for the property offered for sale. Upon receipt of the required documentation, the buyer shall have fifteen calendar days to examine the documents and decide whether to rescind the real estate purchase contract. If the buyer decides to rescind the real estate purchase contract, the buyer shall deliver to the seller within the fifteen-day period written notification of the buyer's decision to rescind the real estate purchase contract. Failure to deliver the written notification to the seller within the fifteen-day period shall be deemed an acceptance of the property offered for sale with the conditions, covenants, or restrictions on use set forth in the documents.

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

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

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

(e) Compliance with this section shall fulfill the seller's duty of disclosure of material facts relating to a recorded declaration or other recorded restrictions or conditions on use of the property being offered for sale. [L 2013, c 186, §2; am L 2015, c 135, §2]

" **§508D-4 Prohibitions on sales of residential real property.** Except as provided in section 508D-3, no seller may sell residential real property unless:

- (1) Prior to the sale of such residential real property, a disclosure statement is:
 - (A) Signed and dated by the seller within six months before or ten calendar days after the acceptance of a real estate purchase contract by the buyer; and
 - (B) Delivered to the buyer as provided in section 508D-5;

- (2) The buyer acknowledges receipt of the disclosure statement on the real estate purchase contract or in any addendum attached to the contract, or in a separate document; and
- (3) The buyer is afforded the opportunity to examine the disclosure statement as provided in section 508D-5. [L 1994, c 214, pt of §2; am L 1996, c 161, §4]

" **[\$508D-4.5] Release or waiver of construction defect.** Any release from or waiver of liability, or release from a warranty by a seller to any government agency, contractor as defined in section 444-1, or engineer, architect, land surveyor, or landscape architect licensed to practice that profession under chapter 464, for any defect, mistake, or omission in the design or construction of any residential real property that measurably affects the value of the residential real property is a material fact that shall be contained in a disclosure statement. [L 2004, c 186, §1]

Cross References

Contractor repair act, see chapter 672E.

" **§508D-5 Delivery of disclosure statement to buyer; procedures.** (a) No later than ten calendar days from acceptance of a real estate purchase contract, the seller, either directly or through the seller's agent, shall provide the disclosure statement to the buyer.

(b) Upon receipt of the disclosure statement, the buyer shall have fifteen calendar days to:

- (1) Examine the disclosure statement; and
- (2) Decide whether to rescind the real estate purchase contract.

If the buyer decides to rescind the real estate purchase contract, the buyer shall deliver to the seller directly or through the seller's agent within the fifteen-day period written notification of the buyer's decision to rescind the real estate purchase contract. Failure to deliver the written notification to the seller within the fifteen-day period shall be deemed an acceptance of the disclosure statement. Any rescission made pursuant to this subsection shall be without loss of deposits to the buyer which deposits shall be immediately returned to the buyer.

(c) The seller and buyer may agree in writing to reduce or extend the time period provided for the delivery or examination and rescission period. The form of the receipt for the disclosure statement required by section 508D-4(2) shall provide that the buyer shall have the right to examine the disclosure

statement and to rescind the real estate purchase contract in accordance with this section. [L 1994, c 214, pt of §2; am L 1996, c 161, §5]

" **§508D-6 Later discovered inaccurate information.** Prior to closing the real estate purchase contract, a buyer who receives a disclosure statement that fails to disclose a material fact or contains an inaccurate assertion that directly, substantially, and adversely affects the value of the residential real property, and who was not aware of the foregoing failure or inaccuracy, may elect in writing to rescind the real estate purchase contract within fifteen calendar days of the earlier to occur of:

- (1) The discovery of the failure or inaccuracy; or
- (2) The receipt of an amended disclosure statement correcting the failure or inaccuracy, in the manner provided by section 508D-5(b) or (c).

The buyer's right to rescind the real estate purchase contract under this section shall not apply if the sale of the residential real property has been recorded; provided that the buyer may pursue all additional remedies provided by law. [L 1994, c 214, pt of §2; am L 1996, c 161, §6; am L 2001, c 224, §3]

" **§508D-7 Seller's agent's duties and responsibilities for disclosure.** (a) Any person or entity acting in the capacity of an escrow agent for the sale of residential real property subject to this chapter, shall not be deemed the agent of the seller or buyer for purposes of the disclosure requirements of this chapter unless the seller or buyer and the escrow agent agree in writing to the establishment of the agency for such purpose.

(b) When a seller's agent cannot obtain the disclosure statement and does not have written assurances from the buyer that the disclosure statement was received, the seller's agent shall notify the buyer in writing of the buyer's rights to the disclosure statement and rights of rescission provided by this chapter. However, the seller's agent shall not be required to prepare the disclosure statement. The seller's agent responsible for delivering the disclosure statement, or the aforesaid written notification of the buyer's rights if applicable, shall maintain a record of the action taken by that agent to effect compliance.

(c) If the seller's agent is or becomes aware of any material facts inconsistent with or contradictory to the disclosure statement or the inspection report of a third party provided by the seller, the seller's agent shall disclose these

facts to the seller, the buyer, and the buyer's agent. Nothing in this chapter precludes all other obligations of the seller's or the buyer's agent under Hawaii law. [L 1994, c 214, pt of §2; am L 1996, c 161, §7; am L 2001, c 224, §4]

" **§508D-8 Excluded facts from the disclosure statement.**

Except as otherwise provided by law, the fact that:

- (1) An occupant of the residential real property was afflicted with acquired immune deficiency syndrome (AIDS) or AIDS related complex, or had been tested for human immunodeficiency virus; or
- (2) The residential real property was the site of an act or occurrence that had no effect on the physical structure or the physical environment of the residential real property, or the improvements located on the residential real property;

may be excluded from the disclosure statement. This information shall not be deemed a material fact for purposes of the disclosure statement. [L 1994, c 214, pt of §2; am L 1996, c 161, §8]

" **§508D-9 Good faith and due care in preparing the disclosure statement.**

(a) A seller or the seller's agent shall prepare the disclosure statement in good faith and with due care. A buyer shall have no cause of action against a seller or seller's agent for, arising out of, or relating to the providing of a disclosure statement when the disclosure statement is prepared in good faith and with due care. For purposes of this section, "in good faith and with due care" includes honesty in fact in the investigation, research, and preparation of the disclosure statement and may include information on the following:

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

Notwithstanding this subsection, a seller or seller's agent shall be under no obligation to engage the services of any person in the investigation, research, or preparation of the disclosure statement. The failure to engage the services of any such person for this purpose shall not be deemed an absence of good faith or due care by the seller or the seller's agent in the investigation, research, or preparation of the disclosure statement. The delivery to the buyer of reports or facts within the scope of paragraph (2), (3), or (4) after the date of the initial disclosure statement shall be considered an amendment of the disclosure statement.

(b) The representations contained in the disclosure statement shall be construed to be made only to, and for the benefit of, the buyer and shall be deemed accurate only as to the time when made, except as otherwise provided in section 508D-13. [L 1994, c 214, pt of §2; am L 1996, c 161, §9; am L 2001, c 224, §5; am L 2013, c 186, §4]

" **§508D-10 REPEALED.** L 2001, c 224, §8.

" **[§508D-10.5] Energy-efficiency consumer information in sale or lease of real property.** Prior to the sale of residential real property, the property owner shall make a good faith declaration of electricity cost based on the most recent three-month period in which the property was occupied prior to the date of the seller's disclosure, pursuant to chapter 508D. This declaration shall only apply where the owner directly pays the electrical utility bills, and shall not apply in the case of a foreclosure of residential real property or where there are no electrical utility accounts associated with the property. [L 2009, c 155, pt of §11]

" **§508D-11 Disclosure form.** In addition to the other information required by this chapter, the form for the disclosure statement shall include the following:

- (1) A notice to the buyer that the buyer may wish to obtain professional advice and inspections of the residential real property;
- (2) A notice to the buyer that the information contained in the disclosure statement is the representation of the seller and not the representation of the seller's agent (except as to those representations, if any, specifically identified as being made by the seller's agent and not by the seller); and
- (3) A notice of the buyer's rescission rights pursuant to this chapter. [L 1994, c 214, pt of §2; am L 1996, c 161, §11; am L 2001, c 224, §6]

" **§508D-12 Indication of receipt of disclosure statement.**

(a) The buyer shall indicate receipt of the seller's disclosure statement on the real estate purchase contract, or in any addendum attached to the contract, or in a separate document.

(b) Receipts taken for the disclosure statement shall be kept on file in possession of the seller or seller's agent for a period of three years from the date the receipt was taken. [L 1994, c 214, pt of §2; am L 1996, c 161, §12]

" **§508D-13 Later material facts.** Information in a disclosure statement that has not been disclosed or becomes inaccurate regarding a material fact as a result of an act, agreement, or occurrence (or otherwise becomes known to seller) after the statement is provided to the buyer does not violate this chapter. However, if such information directly, substantially, and adversely affects the value of the residential real property, the seller shall provide an amended disclosure statement to the buyer disclosing the material fact within ten calendar days after the seller's discovery of such information if the seller discovers such information prior to the recorded sale of the residential real property, and in any event, no later than twelve noon of the last business day prior to the recorded sale of the real property. The buyer shall have fifteen calendar days to examine the amended disclosure statement and, if the buyer was not already aware of such information, to rescind the real estate purchase contract in accordance with section 508D-5(b) or (c). The buyer's right to rescind the real estate purchase contract under this section shall not apply if the sale of the residential real property has been recorded; provided that the buyer may pursue all additional remedies provided by law. [L 1994, c 214, pt of §2; am L 1995, c 108, §2; am L 1996, c 161, §13; am L 2001, c 224, pt of §7]

" **§508D-14 Additional disclosure requirements.** The requirements of this chapter are in addition to all other disclosure obligations of the seller required by law relating to the sale of residential real property. [L 1994, c 214, pt of §2; am L 1996, c 161, §14; am L 2001, c 224, pt of §7]

" **§508D-15 Notification required; ambiguity.** (a) When residential real property lies:

- (1) Within the boundaries of a special flood hazard area as officially designated on Flood Insurance Administration maps promulgated by the United States Department of Housing and Urban Development for the

purposes of determining eligibility for emergency flood insurance programs;

- (2) Within the boundaries of the noise exposure area shown on maps prepared by the department of transportation in accordance with Federal Aviation Regulation Part 150-Airport Noise Compatibility Planning (14 Code of Federal Regulations Part 150) for any public airport;
- (3) Within the boundaries of the Air Installation Compatibility Use Zone of any Air Force, Army, Navy, or Marine Corps airport as officially designated by military authorities; or
- (4) Within the anticipated inundation areas designated on the department of defense's emergency management tsunami inundation maps;

subject to the availability of maps that designate the four areas by tax map key (zone, section, parcel), the seller shall include such material fact information in the disclosure statement provided to the buyer subject to this chapter. Each county shall provide, where available, maps of its jurisdiction detailing the four designated areas specified in this subsection. The maps shall identify the properties situated within the four designated areas by tax map key number (zone, section, parcel) and shall be of a size sufficient to provide information necessary to serve the purposes of this section. Each county shall provide legible copies of the maps and may charge a reasonable copying fee.

(b) When it is questionable whether residential real property lies within any of the designated areas referred to in subsection (a) due to the inherent ambiguity of boundary lines drawn on maps of large scale, the ambiguity shall be construed in favor of the seller; provided that a good faith effort has been made to determine the applicability of subsection (a) to the subject real property.

(c) Except as required under subsections (a) and (b), and as required under section 508D-3.5, the seller shall have no duty to examine any public record when preparing a disclosure statement. [L 1994, c 214, pt of §2; am L 1996, c 161, §15; am L 2001, c 224, pt of §7; am L 2008, c 191, §3; am L 2013, c 186, §5; am L 2014, c 111, §28]

" **§508D-16 Remedies; voidable contracts.** (a) A buyer may elect to complete the purchase of residential real property even if the seller fails to comply with the requirements of this chapter. After recordation of the sale of residential real property, a buyer shall have no right under this chapter to rescind the real estate purchase contract despite the seller's failure to comply with the requirements of this chapter.

(b) When the buyer is provided a disclosure statement prepared and delivered in accordance with this chapter and the buyer decides to rescind the real estate purchase contract, the buyer shall not be entitled to any damages but shall be entitled to the immediate return of all deposits.

(c) In addition to the rights of rescission granted to the buyer under this chapter, when the seller negligently fails to provide the disclosure statement required by this chapter, the seller shall be liable to the buyer for the amount of the actual damages, if any, suffered as a result of the seller's negligence.

(d) In addition to the remedies allowed under subsection (b) or (c), a court may also award the prevailing party attorney's fees, court costs, and administrative fees. [L 1994, c 214, pt of §2; am L 1996, c 161, §16]

" **[§508D-16.5] Rescission.** Notwithstanding anything to the contrary in this chapter, any action for rescission brought under this chapter shall commence prior to the recorded sale of the real property. [L 1995, c 108, §1]

" **§508D-17 Limitation of actions.** (a) Any action brought under this chapter shall commence within two years from the date the buyer received the disclosure statement; provided that if no disclosure statement was delivered to the buyer, then the action shall commence within two years of the recorded sale of the residential real property.

(b) This chapter supersedes all other laws relating to the time for commencement of actions for failure to make the disclosures required by this chapter. [L 1994, c 214, pt of §2; am L 1996, c 161, §17]

" **§508D-18 Alternative dispute resolution.** If the real estate purchase contract provides for alternative dispute resolution, then prior to filing an action in any court to enforce this chapter, a seller or buyer shall first submit the claim to alternative dispute resolution as required in the real estate purchase contract. [L 1994, c 214, pt of §2; am L 1996, c 161, §18]

" **[§508D-19] Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [L 1994, c 214, pt of §2]

" §508D-20 REPEALED. L 1996, c 161, §19.