

ACT 224

H.B. NO. 79

A Bill for an Act Relating to Real Property Disclosures.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 508D-1, Hawaii Revised Statutes, is amended by amending the definitions of “disclosure statement” and “material fact” to read: ““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) Are disclosed by documents recorded in the bureau of conveyances; or~~
- ~~(3)]~~ (2) Can be observed from visible, accessible areas[-]; or
- (3) Are required to be disclosed under section 508D-15.

Except for the disclosures required under section 508D-15, no seller shall have any duty to examine any public records when preparing a disclosure statement.

“Material fact” means any fact, defect, or condition, past or present, [~~which materially affects~~] 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.”

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

“**§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) Sale where the seller is an absentee owner who has complied with the requirements of section 508D-10;~~
- ~~(8)~~ (7) Sales of condominium apartments accompanied by delivery of an unexpired public report; or
- ~~(9)~~ (8) Sale of time share interests as defined under chapter 514E.”

SECTION 3. Section 508D-6, Hawaii Revised Statutes, is amended to read as follows:

“**§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 [~~which materially~~] 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 thereof, or (2) the~~]:

- (1) The discovery of the failure or inaccuracy; or
- (2) The receipt of an amended disclosure statement correcting the [foregoing] 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.”

SECTION 4. Section 508D-7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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 ~~[their agents.]~~ the buyer's agent. Nothing in this chapter precludes all other obligations of the seller's or the buyer's agent under Hawaii law."

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

"(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;
- ~~[(4) An approximation of the information, when sufficient information regarding material facts is not available to the seller, and the seller or seller's agent makes reasonable efforts to ascertain the information; provided the approximation is:~~
 - ~~(A) Clearly identified as an approximation;~~
 - ~~(B) Reasonable;~~
 - ~~(C) Based on the best information available to the seller or seller's agent;~~
 - ~~(D) Not used for the purpose of circumventing or evading the requirements of this chapter; and~~
- ~~(5)] 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."

SECTION 6. Section 508D-11, Hawaii Revised Statutes, is amended to read as follows:

"**§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."

SECTION 7. Sections 508D-13 to 508D-15, Hawaii Revised Statutes, are amended to read as follows:

“§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 [~~materially~~] 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, [~~may~~] to rescind the real estate purchase contract in accordance with section [508D-5:] 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.

§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.

§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 civil defense 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), the seller shall have no duty to examine any public record when preparing a disclosure statement.”

SECTION 8. Section 508D-10, Hawaii Revised Statutes, is repealed.

SECTION 9. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.