

ACT 186

S.B. NO. 502

A Bill for an Act Relating to Real Estate Seller Disclosure.

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

SECTION 1. The legislature finds that the adequate disclosure of documents is a critical component of all real property transactions. The seller's disclosure law, codified as chapter 508D, Hawaii Revised Statutes, requires the disclosure of restrictive covenants to be provided at the same time as the seller's real property disclosure form, if the property is located within a planned community. The legislature notes that other chapters within the Hawaii Revised Statutes contain different definitions for a "planned community". These multiple

definitions create confusion about whether and how the disclosure provision applies to planned community associations.

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

- (1) Establishing a uniform standard for disclosure for condominium projects, cooperative housing corporations, and other community associations;
- (2) Clarifying the types of documents that are required to be disclosed;
- (3) Requiring the disclosure of documents within ten days after the title report is received; and
- (4) Allowing for the electronic receipt of documents with the buyer's consent.

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

“§508D- 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.

(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."

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

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

"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."

2. By amending the definition of "disclosure statement" 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) Can be observed from visible, accessible areas; or
- (3) Are required to be disclosed under sections 508D-4.5 and 508D-15.

~~[If the residential real property being offered for sale is in a planned community as defined in section 421J-2, "disclosure statement" includes the planned community declaration and association documents as those terms are defined in section 421J-2, and if the 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 statement 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 conditions. Except~~

~~for the disclosures required under section 508D-15 and this definition, no seller shall have any duty to examine any public records when preparing a disclosure statement.]”~~

SECTION 4. 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; 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.”

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

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

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

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on November 1, 2013.

(Approved June 25, 2013.)

Note

1. Edited pursuant to HRS §23G-16.5.