

# Hawaii Mandatory Residential Seller Disclosure Law HRS 508D

Under Hawaii law, no seller may sell Hawaii residential real property unless prior to the sale of the Hawaii residential real estate property, a disclosure statement is: (a) signed and dated by the seller within six (6) months before or ten (10) calendar days after the acceptance of a Hawaii real estate purchase contract by the buyer and (b) delivered to the buyer no later than ten (10) calendar days from acceptance of a Hawaii real estate purchase contract (or other similar agreement for the sale or lease with the option to buy).

Under Hawaii Revised Statutes Section 508D-3, a Hawaii Seller disclosure statement is not required for the following sales of Hawaii residential real property:

- Sale to a co-owner;
- Sale to a spouse, parent, or child of the seller;
- Sale by devise, descent, or court order;
- Sale by operation of law (i.e: transfer by foreclosure, bankruptcy);
- Sale by lessor to a lessee resulting from conversion of leased land to fee simple;
- Initial sale of new residential real property pursuant to Chapter 484 of the Hawaii Revised Statutes under a current public offering statement or Chapter 484 exemption; or
- Sales of condominium apartments accompanied by delivery of an unexpired public report; or sale of time share interests as defined under Chapter 514E of the Hawaii Revised Statutes

A Hawaii Seller's disclosure statement consists of a written statement prepared by the seller that purports to fully and accurately disclose all "material facts" relating to the Hawaii residential real property being offered for sale that:

- Are within the knowledge or control of the seller;
- Can be observed from visible, accessible areas; or
- Are required to be disclosed under Hawaii Revised Statutes Sections 508D-4.5 and 1.5

A "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.

Under Hawaii Revised Statutes Section 508D-8, except as provided by law, the seller may exclude the following facts from the Hawaii Seller's disclosure statement:

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

Pursuant to Hawaii Revised Statutes Section 508D-9, the seller is obligated to prepare the Hawaii Seller's disclosure statement in good faith and with due care. "In good faith and with due care" includes honesty in fact in the investigation, research and preparation of the Hawaii Seller's disclosure statement. However, the seller is under no obligation to engage the services of any person in the investigation, research or preparation of the Hawaii Seller's disclosure statement and the failure to do so is not deemed to be an absence of good faith or due care by the seller.

Upon receipt of the Hawaii Seller's disclosure statement, the buyer has fifteen (15) calendar days to:

- Examine the disclosure statement; and
- Decide whether to rescind the real estate purchase contract

If the buyer decides to rescind the Hawaii real estate purchase contract, the buyer needs to deliver to the seller within the fifteen (15) day time period written notification of the buyer's decision to rescind. A timely rescission by the buyer requires the seller to return all deposits to the buyer.

If the buyer fails to deliver such written notification to the seller within the fifteen (15) day time period, such failure is deemed an acceptance of the Hawaii Seller's disclosure statement. The seller and buyer may agree in writing to reduce or extend such time period provided for the delivery or examination and rescission period.

Under Hawaii Revised Statutes Section 508D-6, prior to closing the real estate contract, a buyer who receives a Hawaii Seller's 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 rescind the purchase contract within fifteen (15) days of the earlier to occur of (a) the discovery of the failure or inaccuracy or (b) receipt of an amended disclosure statement correcting the failure or inaccuracy.

Under Hawaii Revised Statutes Section 508D-13, if there is information in a Hawaii Seller's disclosure statement that has not been disclosed or becomes inaccurate regarding a material fact as a result of an act, agreement, or occurrence after the disclosure statement is provided to the buyer and such information directly, substantially, and adversely affects the value of the Hawaii residential property, the seller is required to provide the buyer with an amended disclosure statement.

The buyer has fifteen (15) calendar days to examine the amended disclosure statement and, if the buyer was not already aware of such information, may rescind estate the purchase contract. However, if the sale of the Hawaii residential real property has been recorded, then the buyer loses his right to rescind the Hawaii purchase contract despite the seller's failure to comply with the requirements of Hawaii Revised Statutes Section 508D. The buyer may pursue other remedies provided by law.