

ACT 276

H.B. NO. 1985

A Bill for an Act Relating to Residential Lease Disclosure.

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

SECTION 1. Section 467-14, Hawaii Revised Statutes, is amended to read as follows:

“§467-14 Revocation and suspension of licenses. The real estate commission may revoke any license issued under this chapter, or suspend the right of the licensee to use the license, for any of the following causes:

- (1) Making any misrepresentation concerning any real estate transaction;
- (2) Making any false promises concerning any real estate transaction of a character likely to mislead another;
- (3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;
- (4) Without first having obtained the written consent to do so of both parties involved in any real estate transaction, acting for both the parties in connection with the transaction, or collecting or attempting to collect commissions or other compensation for the licensee’s services from both of such parties;
- (5) When the licensee, being a real estate salesperson, accepts any commission or other compensation for the performance of any of the acts enumerated in the definition set forth in section 467-1 of real estate salesperson from any person, copartnership, or corporation other than the salesperson’s employer or the broker with whom the salesperson associates or, being a real estate broker or salesperson,

- compensates one not licensed under this chapter to perform any such act;
- (6) When the licensee, being a real estate salesperson, acts or attempts to act as a real estate broker or represents, or attempts to represent, any real estate broker other than the salesperson's employer or the broker with whom the salesperson is associated;
 - (7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;
 - (8) Any other conduct constituting fraudulent or dishonest dealings;
 - (9) When the licensee, being a copartnership, permits any member of the copartnership who does not hold a real estate broker's license to actively participate in the real estate brokerage business thereof or permits any employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (10) When the licensee, being a corporation, permits any officer or employee of the corporation who does not hold a real estate broker's license to have the direct management of the real estate brokerage business thereof or permits any officer or employee thereof who does not hold a real estate salesperson's license to act as a real estate salesperson therefor;
 - (11) When the licensee, being a real estate salesperson, fails to file with the commission a written statement setting forth the name of the real estate broker by whom the licensee is employed or with whom the licensee is associated;
 - (12) When the licensee fails to obtain on the contract between the parties to the real estate transaction confirmation of who the broker represents;
 - (13) Violating this chapter, chapter 484, 514A, 514E, 515[;], or section 516-71[or 516D-11;], or the rules adopted pursuant thereto;
 - (14) Splitting fees with or otherwise compensating others not licensed hereunder for referring business; provided that notwithstanding paragraph (5), a licensed broker may pay a commission to:
 - (A) A licensed broker of another state, territory, or possession of the United States if such broker does not conduct in this State any of the negotiations for which a commission is paid;
 - (B) A broker lawfully engaged in brokerage activity under the laws of a foreign country if such broker does not conduct in this State any of the negotiations for which a commission is paid; or
 - (C) A travel agency that in the course of business as a travel agency or sales representative, arranges for compensation the rental of transient vacation rental; provided that for purposes of this paragraph "travel agency" means any sole proprietorship, organization, trust, group, association, partnership, corporation, society, or combination of such, which for compensation or other consideration, acts or attempts to act as an intermediary between a person seeking to purchase travel services and any person seeking to sell travel services, including an air or ocean carrier;
 - (15) Commingling the money or other property of the licensee's principal with the licensee's own;
 - (16) Converting other people's moneys to the licensee's own use;

- (17) The licensee is adjudicated insane or incompetent; and
- (18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact; and
- (19) When the licensee obtains or causes to be obtained, directly or indirectly, any licensing examination or licensing examination question for the purpose of disseminating the information to future takers of the examination for the benefit or gain of the licensee.

Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf.

No license shall be suspended for longer than two years and no person whose license has been revoked shall be eligible to apply for a new license until the expiration of two years."

SECTION 2. Section 514A-61, Hawaii Revised Statutes, is amended to read as follows:

"§514A-61 Disclosure requirements. (a) Each developer of a project subject to this chapter shall prepare and provide to each prospective initial purchaser an abstract which shall contain the following:

- (1) The name and address of the project, and the name, address, and telephone number of the developer or the developer's agent and of the project manager or the project manager's agent;
- (2) A breakdown of the annual maintenance fees and the monthly estimated cost for each apartment, revised and updated at least every twelve months and certified to have been based on generally accepted accounting principles;
- (3) A description of all warranties for the individual apartments and the common elements, including the date of initiation and expiration of any such warranties; and if no warranties exist, the developer shall state that no warranties exist;
- (4) A statement of the proposed number of apartments to be used for residential or hotel use in a mixed use project containing apartments for both residential and hotel use;
- (5) A statement of the extent of commercial or other non-residential development in the project.

(b) In the case of a project which includes one or more existing structures being converted to condominium status:

- (1) A statement by the declarant, based upon a report prepared by an independent registered architect or engineer, describing the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;
- (2) A statement by the declarant of the expected useful life of each item reported on in paragraph (1) or a statement that no representations are made in that regard;
- (3) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the cost of curing these violations;

(4) A statement whether the project is on a lot, or has structures, or uses which do not conform to present zoning requirements; provided that paragraphs (1), (2), and (3) apply only to apartments that may be occupied for residential use, and only to apartments that have been in existence for five years.

[(c) In the sale of residential leasehold properties, the disclosure requirements set forth in section 516D-11 shall be complied with.

(d) (c) This section shall be administered by the real estate commission. The real estate commission may waive the requirements of subsections (a) and (b) if the information required to be contained in the disclosure abstract is included in the real estate commission's public report on the project."

SECTION 3. Section 516-71, Hawaii Revised Statutes, is amended to read as follows:

"~~[[~~**§516-71**~~]]~~ **Residential lease; disclosure.** (a) [Notwithstanding any provision to the contrary,] Except as otherwise provided for in this section, for any sale of a leasehold residential [leasehold property,] lot, no later than ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract [must state that no later than ten calendar days from acceptance], the seller shall directly or through the seller's agent provide to the buyer, a copy of the original recorded lease and any amendments thereto for the buyer's approval and acceptance. A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent or child of the seller, or to any stranger by devise, descent, court order, or by operation of law, including, but not limited to, any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the original lease and amendments thereto, the buyer shall have [five] ten calendar days to review, accept, or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer shall acknowledge receipt of the lease documents specified under subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary, as set forth on the optional standardized summary form in this chapter, or in a form similar to the optional standardized summary form, [major provisions of] of the lease provisions in plain language[, such as] which shall contain information on the following: the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary, satisfied by use of a Hawaii governmental publication, of commonly used lease terms in plain language; and
- (3) A statement that the buyer has read and understands the provisions of the [lease document.] standardized summary of the lease provisions;

(c) Within [five] ten calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer [may], on a standardized form, may agree to reduce or extend the time period provided herein for production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer.

Buyers other than natural persons may waive, in writing, all the requirements of this section."

SECTION 4. Chapter 516, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516- Civil penalty. Failure to furnish disclosures substantially complying with the requirements of section 516-71 shall entitle the buyer to the recovery of a civil penalty of \$1,000 in any proceeding at law brought within one year of the violation and the violator shall be liable further for the actual damages of the buyer, if any, reasonable attorneys' fees and court costs."

SECTION 5. Chapter 516, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516- Suggested form of standardized summary of lease provisions. A standardized summary of lease provisions executed pursuant to Section 516-71 of this chapter may, but need not, be substantially in the following form:

STANDARDIZED SUMMARY OF LEASE PROVISIONS

This receipt dated _____, 19____ between
 (the "buyer"), and
 (the "seller"),
 tax map key no. _____ () / / / (the "property").
 Lessor:
 Sublessor:
 Lease Expiration: _____ Surrender Clause: (yes or none)
 Lease Rent: \$ _____ per _____ until
 \$ _____ per _____ until
 \$ _____ per _____ until
 Renegotiation Dates:
 Renegotiation Terms:

I understand the information above is a summary of the terms of the lease and that for more detailed information I should read the lease.

I understand that the subject property is leasehold property and I will acquire the right to occupy and use the leased real property for the time stated in the lease agreement. I will not acquire outright or absolute ownership of the land or fee simple ownership. The land is owned by lessor or the leased fee owner, to whom I, the lessee, will agree to make lease rent payments and comply with the terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed for specific amounts at fixed periods of time, then subject to renegotiation. Renegotiation may be based on formula or arbitration set in the lease agreement or by law or by agreement between the lessor and lessee. **THE RENEGOTIATED LEASE RENTS MAY INCREASE SIGNIFICANTLY. AT THE END OF THE LEASE, I MAY HAVE TO SURRENDER THE PROPERTY (SURRENDER CLAUSE) AND THE LAND BACK TO THE LESSOR WITHOUT ANY COMPENSATION.**

I understand when leasehold property is acquired, title is normally conveyed by means of an assignment of lease, whose purpose is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease to the property, not the property itself.

I UNDERSTAND THAT IF I HAVE ANY LEGAL QUESTIONS ABOUT LEASEHOLD PROPERTY, ABOUT THE LEASE DOCUMENTS, ABOUT THE TERMS OF THE LEASE, AND ITS CONSEQUENCES, I SHOULD SEEK THE ADVICE OF AN ATTORNEY.

[] I HAVE READ AND UNDERSTAND THE PROVISIONS OF THE LEASE DOCUMENTS RECEIVED, AND ACCEPT THE TERMS OF THE LEASE.

[] I DO NOT ACCEPT THE TERMS OF THE LEASE AND CANCEL THE ACCEPTANCE CONTRACT (DROA).

 Buyer's signature
 Date: _____, 19____

 Buyer's signature
 AM/PM"

SECTION 6. Section 516D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~§516D-11~~]] Residential lease; disclosure.~~ (a) [Notwithstanding any provision to the contrary,] Except as otherwise provided for in this section, for any sale of a condominium or a cooperative residential leasehold [property,] apartment, no later than¹ ten calendar days after the acceptance of the deposit, receipt, offer, and acceptance contract (DROA) or other similar contract [must state that no later than ten calendar days from acceptance], the seller [shall, either directly or through the seller's agent, shall provide to the buyer for the buyer's approval and acceptance one of the following lease documents which provide the major provisions of the lease, such as the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated, and surrender clause provisions:

- (1) Master lease and any amendments thereto; or
- (2) Apartment lease and any amendments thereto; or
- (3) For initial buyers of condominium apartments only, an unexpired preliminary, final or supplemental condominium property regime public report.

A sale for the purposes of this subsection shall not be deemed to include any transfer to a co-owner, or to a spouse, parent or child of the seller, or to any transfer by devise, descent, court order, or by operation of law, including, but not limited to, any transfer by foreclosure, bankruptcy, or partition sale. Upon receipt of the applicable lease document, the buyer shall have [five] ten calendar days to review, accept or reject the terms of the lease.

(b) In addition to the requirements set forth in subsection (a), the buyer, on resale of the unit, shall acknowledge receipt of the lease documents specified in subsection (a) through a signed receipt or a signed DROA or other contract. The receipt or contract shall include at least the following information:

- (1) A standardized summary, as set forth on the optional standardized summary form in this chapter or in a form similar to the optional standardized summary form, [of major provisions] of the provisions in plain language[, such as] which shall contain information on the following: the length of the lease, lease rent terms, lease rent renegotiation dates, how renegotiated lease rents will be calculated; and surrender clause provisions;
- (2) A standardized glossary, satisfied by use of a Hawaii governmental publication, of commonly used lease terms in plain language;
- (3) A statement that there are currently no statutory provisions for the mandatory conversion of leasehold condominiums and cooperatives,

and that there are no assurances that such measures will be enacted in the future; and

- (4) A statement that the buyer has read and understands the provisions of the [lease document.] standardized summary of the lease provisions.

(c) Within [five] ten calendar days of acknowledged receipt of the contract specified in subsection (a), the buyer shall have the right to cancel the offer to purchase with no loss of deposit.

(d) The seller and buyer [may], on a standardized form, may agree to reduce or extend the time period provided herein for the production and review of the applicable lease documents; provided that the agreement shall not constitute a waiver of the requirement to provide the applicable lease documents to the buyer. Buyers other than natural persons may waive, in writing, all the requirements of this section."

SECTION 7. Chapter 516D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516D- Civil penalty. Failure to furnish disclosures substantially complying with the requirements of section 516D-11 shall entitle the buyer to the recovery of a civil penalty of \$1,000 in any proceeding at law brought within one year of the violation and the violator shall be liable further for the actual damages of the buyer, if any, reasonable attorneys' fees and court costs."

SECTION 8. Chapter 516D-11,¹ Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§516D- Suggested form of a standardized summary of lease provisions. A standardized summary of lease provisions executed pursuant to section 516D-11 of this chapter may, but need not, be substantially in the following form:

STANDARDIZED SUMMARY OF LEASE PROVISIONS

The receipt dated _____, 19____ between _____ (the "buyer"), and _____ (the "seller"), _____ for the sale of the property at tax map key no. _____ () / / / (the "property").

Lessor:

Sublessor:

Lease Expiration:

Surrender Clause: (yes or none)

Lease Rent: \$ _____ per _____ until \$ _____ per _____ until \$ _____ per _____ until

Renegotiation Dates:

Renegotiation Terms:

I understand the information above is a summary of the terms of the lease and that for more detailed information I should read the lease.

I understand that the subject property is leasehold property and I will acquire the right to occupy and use the leased real property for the time stated in the lease agreement. I will not acquire outright or absolute ownership of the land or fee simple ownership. The land is owned by lessor or the leased fee owner, to whom I, the lessee, will agree to make lease rent payments and comply with the

terms of the lease or be subject to the lessor's enforcement actions. The lease rent payments are usually fixed for specific amounts at fixed periods of time, then subject to renegotiation. Renegotiation may be based on formula or arbitration set in the lease agreement or by law or by agreement between the lessor and lessee. THE RENEGOTIATED LEASE RENTS MAY INCREASE SIGNIFICANTLY. AT THE END OF THE LEASE, I MAY HAVE TO SURRENDER THE PROPERTY (SURRENDER CLAUSE) AND THE LAND BACK TO THE LESSOR WITHOUT ANY COMPENSATION.

I understand when leasehold property is acquired, title is normally conveyed by means of an assignment of lease, whose purpose is similar to that of a deed. The legal and practical effect is different because the assignment conveys only the rights and obligations created by the lease to the property, not the property itself.

I understand that the original developer of this project may have entered into a master ground lease with the fee simple owner of the land in order to develop the project. The developer or the cooperative corporation may then have entered into a sublease or a new lease of the land with the lessee (apartment owner). The developer may lease the improvements to the apartment owner by way of an apartment lease or sublease, or sell the improvements to the apartment owners by way of a condominium conveyance or apartment deed.

I understand that there are currently no statutory provisions for the mandatory conversion of leasehold condominium and cooperatives, and that there are not¹ assurances that such measures will be enacted in the future.

I UNDERSTAND THAT IF I HAVE ANY LEGAL QUESTIONS ABOUT LEASEHOLD PROPERTY, ABOUT THE LEASE DOCUMENTS, ABOUT THE TERMS OF THE LEASE, AND ITS CONSEQUENCES, I SHOULD SEEK THE ADVICE OF AN ATTORNEY.

Buyer's signature
Date: _____, 19

Buyer's signature
AM/PM"

- [] I HAVE READ AND UNDERSTAND THE PROVISIONS OF THE LEASE DOCUMENTS RECEIVED, ACCEPT THE TERMS OF THE LEASE, AND ACCEPT THE SUBJECT DROA.
- [] I DO NOT ACCEPT THE TERMS OF THE LEASE AND CANCEL THE SUBJECT DROA.

Buyer's signature
Date: _____, 19

Buyer's signature
AM/PM"

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.²

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

(Approved June 17, 1991.)

Notes

- 1. So in original.
- 2. Edited pursuant to HRS §23G-16.5.