I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2019 (FIRST) Regular Session

Bill No. -35 ( )

Introduced by:

AN ACT TO *ADD* CHAPTER 105 TO DIVISION 3, OF TITLE 21, GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF THE "SELLER DISCLOSURE STATEMENT" TO THE REAL ESTATE [DEALERS] LAW.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. Legislative Findings and Intent. *I Liheslaturan Guåhan* finds that unlike the 50 states, Guam does not have any statutes in place that require a seller of any real estate to disclose known material facts about the unit or property they are selling. By establishing a mandate where a "Seller Disclosure Statement" shall be presented to prospective buyers of residential property would enhance a consumer benefit within the real estate industry.

If sellers are aware of such facts with the unit they are selling that has issues with structural, plumbing, electrical or water issues, or even if there is infestation or environmental concerns that would result in additional costs for the buyer, then this information needs to be officially disclosed. If a condominium has association fees or if there are legal issues with a piece of property, that a seller is aware of, it would be an injustice if these problems were not laid on the table during the selling process for the buyer to attain a better scope of.

While there are many sincere sellers in Guam's real estate industry, who proudly display all the positives and negatives of the real estate they are selling, a mandate of a "Seller Disclosure Statement" would assure that the few "bad apples" that choose to hide these issues are also held to a higher standard. Nationally almost two thirds of all complaints filed against real estate licensees involve the disclosure (or lack of) of material defects on the property.

Passage of this Act would require the creation of a "Seller Disclosure Statement' by the Guam Real Estate Commission, which would be an industry standard on island. Further the passage of this legislation would bring Guam up to the same standards as every state in the country with respect to real estate consumer protection laws. There are protections in place within the Act which would shelter those sellers who are unaware of the material disclosures during the time of the sale.

Section 2. Chapter 105 is hereby *added* in its entirety to Division 3 of Title 21, Guam Code Annotated as follows:

"CHAPTER 105

SELLER DISCLOSURE STATEMENT

§ 105101. Definitions.

§ 105102. Seller Disclosure Statement.

§ 105103. General Rule and Exceptions.

§ 105104. Disclosure of Material Facts.

§ 105105. Promulgation of the Seller Disclosure Statement.

§ 105106. Information Unavailable to Seller.

§ 105107. Disclosure Statement: Form and Content.

§ 105108. Disclosure Statement: Delivery.

§ 105109. Disclosure Statement: Buyer Examination.

§ 105110. Disclosure Statement: Buyer Rescission.

§ 105111. Disclosure Statement: Failure to Disclose Material Fact.
§ 105112. Seller's Agent Duties.
§ 105113. Affirmative Duty of Seller.
§ 105114. Cause of Action.
§ 105115. Non-Liability of Seller.
§ 105116. Non-Liability of an Agent.
§ 105117. Non-Liability of Escrow Agents.
§ 105118. Failure to Comply.
§ 105119. Alternate Dispute Resolution.
§ 105120. Statute of Limitations.

§ 105101. Definitions.

As used in this Act.

(a) *Agent* means any licensed broker, associate broker or salesperson.

(b) *Agreement of Transfer* means a contract between a buyer and seller setting forth the terms of a residential real estate transfer.

(c) *Buyer* means any person receiving any estate or interest in real property in a transfer subject to this part.

(d) *Commission* means *The Guam Real Estate Commission*.

(e) *Seller Disclosure Statement* means a written statement prepared by the seller or at the seller's direction, that is designed to fully and accurately disclose all material facts, past and present, relating to the residential real property being offered for sale that are:

1). within the knowledge or control of the seller, and

2). can be observed from visible, accessible areas. 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.

(f) *Final Settlement* means the time at which the buyer and seller have signed and delivered all papers and consideration necessary to convey title to the estate or interest in real property being conveyed.

(g) *Material Defect* means a problem with a residential real property or any portion of it that would have a significant adverse impact on the value of the property or that involves an unreasonable risk to people on the property. The fact that a structural element, system, or subsystem is near at or beyond the end of the normal useful life of such a structural element system or subsystem is not by itself a material defect.

(h) *Material Fact* means any fact, defect, or condition, past or present, which would be expected to measurably affect the value to a reasonable person of the residential real property being offered for sale.

(i) *Residential Real Property* means fee simple or leasehold real property on which currently is situated from one to four dwelling units; or a residential condominium, the primary use of which is occupancy as a residence.

(j) *Seller* means any person transferring any estate or interest in residential real property in a transfer subject to this part.

(k) *Stigmatized Property* is property that has been psychologically impacted by an event, which occurred or was suspected to have occurred on the property, such event being one that has no physical impact of any kind, but could potentially be considered a material fact to some buyers since the stigma of the occurrence may make it psychologically impossible for them to buy the property. Stigmatized factors shall include murder, suicide, serious crime including drug activity, proximity to registered sex offenders, haunting and other paranormal activity.

§ 105102. Seller Disclosure Statement.

No seller *shall* sell residential real property on Guam unless prior to the sale of such residential real property, a seller disclosure statement is:

(a) delivered to the proposed buyer within ten (10) calendar days of the acceptance of a real estate purchase contract submitted by the buyer;

(b) acknowledged by the buyer on the real estate purchase contract, or in any addendum attached to the contract, or in a separate document; and

(c) the buyer is afforded the opportunity to examine the disclosure statement.

§ 105103. General Rule and Exceptions.

(a) The term "residential real estate transfer" when used in this subsection *shall* mean a transfer of any interest in real property located within the Territory of Guam, other than a transfer pursuant to § 105103(b) of this Chapter, that consists of not less than one (1), nor more than four (4) residential dwelling units to include single-family homes, duplexes, triplexes, fourplexes, and individual residential condominium units, whether by sale, exchange, installment sales contract, lease with an option to purchase which has been exercised, or grant.

(b) The seller disclosure statement requirement *shall not* apply to a transfer:

(1) Pursuant to court order, including, but not limited to, transfers ordered by a probate court in the administration of an estate, transfers pursuant to a writ of execution, transfers by a trustee in bankruptcy, transfers by eminent domain and condemnation and transfers resulting from a decree for specific performance;

(2) To a mortgagee by a mortgagor or successor in interest who is in default; to a beneficiary of a deed of trust by a trustee or successor in interest who is in default; by any foreclosure sale after default in an obligation secured by a mortgage; by a sale under a power of sale or any foreclosure

sale under a decree of foreclosure after default in an obligation secured by a deed of trust or secured by any other instrument containing a power of sale; or by a mortgagee or a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or who has acquired the real property by a deed in lieu of foreclosure.

(3) From one co-owner to one or more other co-owners;

(4) Made to a spouse or to a person or persons in the lineal line of consanguinity of one or more of the transferors;

(5) Between spouses resulting from a decree of dissolution of marriage or a decree of legal separation or from a property settlement agreement incidental to the decree;

(6) By a corporation, partnership or other association to its shareholders, partners or other equity owners in connection with the liquidation of the corporation, partnership or other association;

(7) Of a property to be converted by the buyer into a use other that residential use or to be demolished;

(8) Of unimproved real property; and

(9) Transfers of new residential construction that has not been previously occupied when:

(i) the buyer has received an eighteen-month or longer written warranty covering such construction;

(ii) the dwelling has been inspected for compliance with the applicable building code or, if there is no applicable code, for compliance with a nationally recognized model building code; and

(iii) a certificate of occupancy or a certificate of code compliance has been issued for the dwelling by the appropriate

government agency.

Any seller of a unit in a condominium *shall be* obligated to make disclosures under this chapter only with respect to the seller's own unit and *shall not* be obligated by this Chapter to make any disclosure with respect to any common elements or common facilities of the condominium.

§ 105104. Disclosure of Material Facts.

Any seller who intends to transfer any interest in residential real property *shall* disclose, in writing, to the buyer any material facts with the property known to the seller by completing all applicable items in a seller disclosure statement. A signed and dated copy of the seller disclosure statement *shall* be delivered to the buyer prior to the signing of an agreement of transfer by the seller and buyer with respect to the property. The disclosure shall be completed, signed, and dated by the seller within ten (10) calendar days after the acceptance of a real estate purchase contract submitted by the buyer

Except as provided by law, the seller *may* exclude the following facts from the seller disclosure statement:

(1) that an occupant of the residential real property was afflicted with acquired immune deficiency syndrome (AIDS) or AIDS related complex, or had been tested for AIDS.

§ 105105. Promulgation of the Seller Disclosure Statement.

A form of a seller disclosure statement that satisfies the requirements of this Chapter shall be promulgated by the *Commission* within ninety (90) days from the enactment of this Act. The approved seller disclosure statement *shall be* submitted to the Guam Legislature within thirty (30) days from its promulgation for adoption. Nothing in this Chapter *shall* preclude a seller from using a form of seller disclosure statement that contains additional provisions that require greater specificity or that call for the disclosure of the condition or existence of other

features of the property, as long as the minimum requirements adopted by the *Commission* are inclusive.

The seller is obligated to prepare the sellers disclosure statement in good faith and with due care. "*In good faith and with due care*" *shall* include honesty in the investigation, research, and preparation of the seller disclosure statement. However, the seller is under no obligation to engage the services of any person or organization in the investigation, research, or in the preparation of the seller disclosure statement. The failure to do so is not deemed to be an absence of good faith or due care by the seller.

A seller disclosure statement *shall* consist of 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 are:

(a) within the knowledge or control of the seller;

(b) can be observed from visible, accessible areas; or

(c) are required to be disclosed under Guam Revised Statutes.

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.

§ 105106. Information Unavailable to Seller.

If at the time disclosures are required to be made, an item of information required to be disclosed is unknown or not available to the seller, the seller *may* make a disclosure based on the best information available to the seller.

§ 105107. Disclosure Statement: Form and Content.

The form of the seller disclosure statement promulgated by the *Commission shall* call for disclosures with respect to all of the following, but not limited to, conditions:

(1) Seller's expertise in contracting, engineering, architecture or other

areas related to the construction and conditions of the property and its improvements.

(2) Electrical Systems

(3) Plumbing Systems

(4) Sewer and Septic Systems

(5) Cooling Systems

(6) Structural Defects

(7) Land Conditions

(8) Environmental Issues

(9) Lead Based Paint

(10) Fungi and Mold Issues

(11) Water and Waste Water Issues

(12) Infestation Concerns

(13) Additions, improvements, and repairs made to the property

(14) Other equipment and appliances included in the sale.

(15) Condominium and other homeowners associations.

(16) Legal issues affecting title or that would interfere with use and enjoyment of the property.

(17) Stigmatized events related to the property

In addition to providing information about the condition of the property, the disclosure statement *shall* include a statement that:

(a) the buyer *may* wish to obtain professional advice and inspections of the real property;

(b) information contained in the disclosure is the representation of the seller, not the seller's agent; and

(c) a notice of the buyer's right of recession.

§ 105108. Disclosure Statement: Delivery.

No later than ten (10) 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 or buyer's agent. The seller shall deliver the seller disclosure statement to the buyer by personal delivery; first class mail; certified mail; return receipt requested; electronic delivery via email; or facsimile transmission to the buyer or buyer's agent.

For purposes of this chapter, delivery to one prospective buyer or buyer's agent is deemed delivery to all persons intending to take title as co-tenants, joint tenants, or as a tenant by the entireties with the buyer. 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. 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.

§ 105109. Disclosure Statement: Buyer Examination.

Upon receipt of the disclosure statement, the buyer *shall* have ten (10) calendar days to examine the disclosure statement and decide:

(a) whether to accept the disclosure statement, or;

(b) reject the disclosure statement and rescind the real estate purchase contract.

§ 105110. Disclosure Statement: Buyer Rescission.

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 on or before the ten (10) calendar day period expires, 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 ten (10) calendar day period *shall be* deemed an acceptance of the disclosure statement.

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 earnest money deposits.

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. The seller and buyer *may* agree in writing to extend such time period provided for the delivery or examination and rescission period.

§ 105111. Disclosure Statement: Failure to Disclose Material Fact.

Prior to closing the real estate contract, a buyer who receives a seller's disclosure statement that:

(a) fails to disclose a material fact, or;

(b) 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, or;

(c) 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 residential property *may* rescind the purchase contract within ten (10) calendar days of the earlier to occur of;

(aa) the discovery of the failure or inaccuracy, or;

(bb) receipt of an amended disclosure statement correcting the failure or inaccuracy.

However, if the sale of the residential real property has been recorded, then the buyer loses his right to rescind the purchase contract despite the seller's failure to comply with the requirements of this section. The buyer *may* pursue other remedies provided by law.

§ 105112. Seller's Agent Duties.

While the seller's agent is not required to prepare the disclosure statement, the agent does have the following duties and responsibilities related to it:

(a) 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.

(b) 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 written record of the action taken by that agent to effect compliance.

(c) If the seller's agent is or becomes aware of any material fact(s) 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* immediately disclose this fact(s) in writing to the seller, the buyer, and the buyer's agent.

§ 105113. Affirmative Duty of Seller.

The seller is not obligated by this chapter to make any specific investigation or inquiry in an effort to complete the property disclosure statement. In completing the property disclosure statement, the seller *shall not* make any representations that the seller or the agent for the seller knows or has reason to know are false, deceptive, or misleading, and *shall not* fail to disclose a known material fact.

§ 105114. Cause of Action.

A buyer *shall not* have a cause of action under this chapter against the seller or the agent for either or both of the seller or the buyer for:

(a) material facts or defects to the property disclosed to the buyer prior to the signing of an agreement of transfer by the seller and buyer;

(b) material facts or defects that develop after the signing of the agreement

of transfer by the seller and buyer; or

(c) material facts or defects that occur after final settlement.

§ 105115. Non-Liability of Seller.

A seller *shall not* be liable for any error, inaccuracy or omission of any information delivered pursuant to this chapter if:

(a) the seller had no knowledge of the error, inaccuracy or omission;

(b) the error, inaccuracy or omission was based on a reasonable belief that a material defect or other matter not disclosed had been corrected; or

(c) the error, inaccuracy or omission was based on information provided by a public agency, home inspector, contractor or person registered or licensed about matters within the scope of the agency's jurisdiction or such other person's occupation and the seller had no knowledge of the error, inaccuracy or omission.

The delivery of any information required to be disclosed by this chapter to a prospective buyer by a public agency or other person providing information required to be disclosed under this chapter *shall be* deemed to comply with the requirements of this chapter and *shall* relieve the seller or the agent of the seller from any further duty under this chapter with respect to that item of information.

The delivery of a report or opinion prepared by a home inspector, contractor or person registered or licensed dealing with matters within the scope of the person's registration, license or expertise *shall be* sufficient compliance.

§ 105116. Non-Liability of an Agent.

An agent of a seller or a buyer *shall not* be liable for any violation of this chapter unless the agent had actual knowledge of a material fact or defect that was not disclosed to the buyer, or of a misrepresentation relating to a material fact or defect.

§ 105117. Non-Liability of Escrow Agents.

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.

§ 105118. Failure to Comply.

A residential real estate transfer subject to this chapter *shall not* be invalidated solely because of the failure of any person to comply with any provision of this chapter. However, any person who willfully or negligently fails to provide the sellers disclosure statement required by this chapter *shall be* liable to the buyer for the amount of the actual damages, if any, suffered as a result of the seller's negligence. In addition to the remedies allowed, a court *may* also award the prevailing party attorney's fees, court costs, and other applicable fees. This section *shall not* be construed so as to restrict or expand the authority of a court to impose punitive damages or apply other remedies applicable under any other provision of law.

§ 105119. Alternate 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.

§ 105120. Statute of Limitations.

Any action brought under this chapter *shall* commence within one (1) year 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."

Section 3. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 4. Effective Date. The Act *shall* become effective immediately upon enactment.