

HAWAII PURCHASE GUIDELINES

A real estate agent is vital to the home buying process and can provide a variety of services in locating a property, negotiating the sale, and advising the buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist a buyer in finding qualified inspectors and provide the buyer with documents and other resources containing vital information about a prospective new home.

This advisory is designed to make a buyer's home purchase as smooth as possible. Some of the more common issues that a buyer may decide to investigate or verify concerning a home purchase are summarized in this Advisory. Included in this Advisory are: (1) common documents a buyer should review; (2) physical conditions in the property the buyer should investigate; and (3) conditions affecting the surrounding area that the buyer should investigate. In addition, a buyer must communicate to the real estate agents in the transaction any special concerns the buyer may have about the property or surrounding area, whether or not those issues are addressed in this Advisory.

REMEMBER: This Advisory is supplemental to obtaining professional inspections. Professional inspections are absolutely essential: there is no practical substitute for a professional inspection as a measure to discover and investigate defects or shortcomings in a home.

COMMON DOCUMENTS A BUYER SHOULD REVIEW

The documents listed below may not be relevant in every transaction, nor is the list exhaustive. Unless otherwise stated, the information contained in these documents has not been independently verified by the real estate agent.

MLS Printout

A listing is an agreement between the seller and the listing agent and authorizes the listing agent to submit information to the Multiple Listing Service ("MLS"). The MLS printout is similar to an advertisement and contains various abbreviations and symbols. Neither the listing agreement nor the printout is a part of the purchase contract between the buyer and seller. The printout contains a limited description of a property, such as its size, encumbrances, utilities, amenities, etc. The information was probably secured from the seller, the builder, or a governmental agency, and could be inaccurate, incomplete or an approximation. Therefore, the buyer should verify any important information contained in the MLS.

The Subdivision Public Offering Statement (Public Report)

This statement is required to be given to buyers by the subdivider of a subdivision and should be read before signing any contract to purchase a new home or land. The purpose of this document is to point out material information about the development that a buyer might want to know when making a decision to purchase. The Public Offering

Statement is prepared by the subdivider, could be inaccurate, and should be verified. Additional information about the Public Offering Statement may be found by contacting the Hawaii Department of Commerce and Consumer Affairs:
<http://www.hawaii.gov/dcca/>

Seller's Real Property Disclosure Statement

Under Hawaii Revised Statute 508D, a seller is obligated to fully and accurately disclose in writing to a Buyer any fact, defect or condition, past or present, that would be expected to measurably affect the value of the property to a reasonable person. This statement is intended to provide the Buyer with notice concerning the condition of the property and to assist the buyer in evaluating the property. The buyer should read the seller's real property disclosure statement and check every item on it. Ask to see receipts for repairs to the home. Look behind large pictures on the wall and behind anything on the floor that conceals large areas.

Look for stains on the ceilings or carpets that might indicate water damage. Read the Deposit Receipt Offer and Acceptance (DROA) carefully to determine the deadlines for examining the statement and rescinding the DROA; or for having your own inspections conducted.

Remember, your review of the Seller's Real Property Disclosure Statement is not a substitute for professional inspections. The text of the entire Hawaii Revised Statute 508D can be found at:http://www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0508D/HRS_0508D-.htm

Appraisals

Usually the appraisal is ordered through the buyer's lender and is delivered directly to the lender by the appraiser. Aside from estimating the value of the property the appraisal may indicate various conditions that could affect the value of the property such as the accurate measurement of the building's square footage. If the buyer pays for an appraisal the buyer has the right to receive a copy of it.

Appraisers are regulated by the Hawaii Department of Commerce and Consumer Affairs.
http://www.hawaii.gov/dcca/pvl/areas_real_estate_appraiser.html

Covenants, Conditions and Restrictions ("CC&Rs")

The CC&Rs or Deed Restrictions are recorded against the property and generally empower a former owner, developer or homeowner's association to control certain aspects of property use. By purchasing a property the buyer agrees to be bound by the CC&Rs. Thus, the CC&Rs form an enforceable contract. The association, the homeowners as a whole, and individual homeowners can enforce the contract. It is essential that the buyer review and agree to these restrictions prior to purchasing a home.

You might find some of the CC&Rs are very strict, especially those addressing landscaping, RV parking, play equipment, satellite antennas, and other common amenities — particularly if the subdivision is governed by a homeowner organization. A short but informative document on the purpose and effect of CC&Rs may be read at www.realtor.com/BASICS/condos/ccr.asp. Buyers should consult legal counsel if uncertain of the application of particular provisions in the CC&Rs.

Homeowner Organization Governing Documents

In addition to CC&Rs, Homeowner Organizations may be governed by Articles of Incorporation, Bylaws, Rules and Regulations, and often architectural control standards. The Homeowner Organization is in place to enforce these rules and to preserve the value of homes in the condominium or planned community. Condominium and planned community Homeowner Organizations are also regulated by Hawaii statutes.

What makes a development a condominium or planned community? Common area, that is, community ownership of real estate for use by community residents, is the common denominator.

In a condominium, the common property is actually deeded as undivided interests to the condominium owners. In a planned community, the ownership of the common property vests in the homeowner's association. If you have questions about your rights and remedies regarding homeowner's associations or community associations, please read the information provided at <http://www.hawaii.gov/hirec/>

Homeowner Organization Disclosures

If purchasing a home governed by a Homeowners Organization the buyer should review and approve the Homeowner Organization documents. The Deposit Receipt Offer and Acceptance (DROA) contains a contingency in which the buyer can request these documents.

Title Report or Title Commitment

The title report or commitment contains important information and is provided to the buyer by the title/escrow company or agent. This report or commitment lists documents that are exceptions to the title insurance (Schedule B Exceptions). Schedule B Exceptions may include encumbrances, easements, and liens against the property, some of which may affect the use of the property, such as a future addition or swimming pool. Make sure you receive and review all of the listed documents.

Questions about the title commitment and Schedule B documents may be answered by the title or escrow officer, legal counsel, or a surveyor. General information regarding title issues may be found at www.titlelawannotated.com or obtained from the title/escrow company employed in the transaction.

Home Warranty Policy

A home warranty may be part of the sale of the home. Buyers should read the home warranty document for coverage and limitation information. Be aware that pre-existing property conditions are generally not covered under these policies.

Lead-Based Paint Disclosure Form

If the home was built prior to 1978, the seller must provide the buyer with a lead-based paint disclosure form. More information about lead-based paint may be obtained at:

<http://www.epa.gov/lead/> or <http://www.epa.gov/opptintr/lead> or <http://www.hud.gov/offices/lead/>

County Assessor's/Tax Records

The county assessor's records contain a variety of valuable information including the assessed value of the property for tax purposes and some of the physical aspects of the property, such as the reported square footage (which should always be verified for accuracy). Information is available on county websites:

Hawaii County <http://www.hawaiipropertytax.com/>

Honolulu County <http://www.honolulupropertytax.com/>

Maui County <http://www.mauipropertytax.com/>

Kauai County <http://www.kauaipropertytax.com/>

Professional Home Inspection Report

For the buyer's protection, the importance of having a home inspected by a professional home inspector cannot be over-emphasized. A home inspection is a visual physical examination, performed for a fee, designed to identify material defects in the home. The home inspector will generally provide the buyer with a report detailing information about the home's condition. The inspector and the report will point out existing and possible potential problems. The buyer is strongly encouraged to be in attendance for the entire inspection process to determine the scope of the inspection and any portions of the property excluded from the inspection. The buyer should carefully review this report with the inspector and ask the inspector about any item of concern.

Additional information on inspections may be found at the American Society of Home Inspectors website: www.ashi.com Guidance on hiring a home inspector and more information may be found at <http://www.realtor.org/libweb.nsf/pages/fg311> or at http://www.homeinspections-usa.com/main/insp/home_inspection_organizations/Hawaii

Termites and Other Wood Destroying Organisms

Termites are commonly found throughout Hawaii. Investigating past and current evidence of termites or other wood infestation is the job of the pest control operator. The Hawaii Department of Commerce and Consumer Affairs regulates these inspectors.

http://www.hawaii.gov/dcca/pvl/areas_pest_control_faq.html

Free literature about termites in Hawaii is available through the University of Hawaii at Manoa, <http://www.ctahr.hawaii.edu/ctahr2001/PIO/FreePubs/FreePubs06.asp>

COMMON PHYSICAL CONDITIONS IN THE PROPERTY A BUYER SHOULD INVESTIGATE

Every buyer and every home is different, so the physical property conditions requiring investigation will vary.

Repairs and New Construction

The seller may have made repairs or added a room to the property. For example, the property may have an obvious improvement, or a lanai or garage may have been remodeled. The buyer should feel comfortable that the work was properly done or have an expert evaluate the work. Request copies of any invoices or other documentation regarding the work performed. The Hawaii Department of Commerce and Consumer Affairs is the agency responsible for licensing contractors. To determine if a contractor is licensed or has any complaints against them go to:

<http://www.hawaii.gov/dcca/consumerdial/71111.html> or for complaints

<http://www.hawaii.gov/dcca/rico/index.html>

For information regarding permits, contact the city or county building department.

Roof

The home inspector might recommend that you have the roof further inspected by a licensed roofer. If the roof is 10 years old or older, a roof inspection by a licensed roofer is highly recommended.

Swimming Pools and Spas

If the home has a pool or a spa, the home inspector might determine that the cleaning system is not working properly or may exclude the pool or spa from the general inspection. It would then be necessary to have a pool or spa company inspect the pool or spa to evaluate their condition.

Swimming Pool & Ocean Safety

In Hawaii, approximately sixty-one (61) persons - residents, military, and visitors - drown each year [with an average of thirty-six (36) residents drowning per year] according to the Hawaii Dept. of Health. Learn more about pool and ocean safety at:

<http://www.aloha.com/~lifeguards/kipc.html>

Square Footage

Square footage on the MLS printout, an Internet listing or as listed by the county assessor's tax records is often only an estimate and generally should not be relied upon for the exact square footage in a home. An appraiser or architect can measure the home's size to verify the square footage.

Contact the Hawaii Department of Commerce and Consumer Affairs

For information about licensed appraisers;

http://www.hawaii.gov/dcca/pvl/areas_real_estate_appraiser.html

And for information about licensed architects;

http://www.hawaii.gov/dcca/pvl/areas_engineer.html

Sewer

Even if the listing or Seller's Real Property Disclosure Statement indicates that the home is connected to the sewer, the connection should be verified by a plumber, home inspector, or other professional. Based on a number of variables including age, landscaping, etc., a professional video sewer inspection may be warranted to determine the internal condition of the sewer line under the structure and across the yard.

Wastewater Treatment Facilities

The Wastewater Branch of the Hawaii Dept. of Health administers the statewide engineering and financial functions relating to water pollution control, municipal and private wastewater treatment works program, individual wastewater systems program and the water pollution control revolving fund program. The various program activities include the review and approval of all new wastewater systems including septic tanks and monitoring of all existing wastewater systems including cesspools. The Wastewater Branch consists of three sections: the Planning/Design, Construction/Operations, and the Grants Management Sections. A Hawaii DOH publication on individual wastewater systems can be found at <http://www.state.hi.us/doh/eh/www/>

and lists of wastewater companies can be found at

http://www.hawaii.gov/dcca/dca/water_companies.html or

<http://www.hawaii.gov/dcca/dca/water.html>

Expansive Soil

The soil in some areas of Hawaii has “clay-like” tendencies, sometimes referred to as “expansive soil.” Although it is not very common for homes built on expansive soils to experience significant movement, it can be a major problem if it does occur. If it has been disclosed that the home has expansive soil or if the buyer has any concerns about evidence of cracking, the buyer should secure an independent assessment of the home and its structural integrity or the quality of the soil on which a home is to be built by a licensed, bonded, and insured professional engineer.

For information about licensed engineers;

http://www.hawaii.gov/dcca/pvl/areas_engineer.html

A guide to the services of professional engineers can be found at

http://www.hawaii.gov/dcca/pdf/pvl_pamphlet2.pdf

Previous Fire/Flood

If it is disclosed there has been a fire or flood in the property, a qualified inspector should be hired to advise you regarding any possible future problems as a result of the fire or flood damage and/or any subsequent repairs. For example, if the property was not properly cleaned after a flood, mold issues may result. Your homeowner’s insurance agent may be able to assist you in obtaining information regarding fire, flood, or other past damage to the property. Also, the insurability of the home may be affected.

Pests

Termites and other pests are common in parts of Hawaii. Fortunately, most pests can be controlled with pesticides. If the buyer has any concerns or if the Seller’s Real Property Disclosure Statement indicates problems with insects or other pests you should seek the advice of a pest control company. For information on licensed pest control operators contact the Hawaii Department of Commerce and Consumer Affairs

http://www.hawaii.gov/dcca/pvl/areas_pest_control.html

Free literature about termites and other pests in Hawaii is available through the University of Hawaii at Manoa,

<http://www.ctahr.hawaii.edu/ctahr2001/PIO/FreePubs/FreePubs06.asp>

Deaths, Suicides and Felonies on the Property

The Seller’s Real Property Disclosure Statement asks the seller to disclose any history of homicides, felonies or suicides that occurred on the property but sellers may not know of any history of these events.

This information is often difficult to uncover; however, the local law enforcement agency may be able to assist with information relating to the property address.

Mold

Mold has always been with us, and it is a rare home that does not have some mold. However, over the past few years a certain kind of mold has been identified as a possible contributor to illnesses. Allergic individuals may experience symptoms related to mold. Mold growth is found underneath materials where water has damaged surfaces, or behind walls.

The United States Environmental Protection Agency website contains valuable information about mold at www.epa.gov/iaq/molds/moldresources.html

More information about mold, the problems it may cause, and how it may be removed can be found at the Center for Disease Control www.cdc.gov/nceh/airpollution/mold/default.htm

More information can be found at:

<http://www.realtor.org/realtororg.nsf/pages/moldfaq?OpenDocument> or <http://www.epa.gov/iaq/molds/moldguide.html>

Other Indoor Air Quality Concerns

Radon gas and carbon monoxide poisoning are two of the more common and potentially serious indoor air quality ("IAQ") concerns. Both of these concerns can be addressed by the home inspector, usually for an additional fee. As for the many other IAQ concerns, the EPA has a host of resource materials and pamphlets available at www.epa.gov/iaq/iaqinfo.html and www.epa.gov/iaq/pubs/index.html

Volcanoes

The Island of Hawaii has several active and inactive volcanoes. There are times when air quality is affected by volcanic emissions known as "Vog." Vog may affect persons with respiratory problems and may also affect water catchment systems if precautions are not taken. The buyer should contact the State of Hawaii, Department of Health <http://www.state.hi.us/doh/index.html>

for information about recommended precautions as well as other professionals.

In addition, the U.S. Department of the Interior, Geological Survey, has classified various "hazard zones" for lava flows. For more information go to:

<http://volcanoes.usgs.gov/Hazards/Where/WhereHaz.html#USHazards> or <http://www.fema.gov/hazards/volcanoes/>

The locations of such hazard zones may affect the availability, limits and costs of property and/or liability insurance. Other affects of volcanic activity that may occur include lava tubes and periodic earthquakes.

Property Boundaries

Property boundaries and corners are always of concern. The Hawaii Association of REALTORS® Deposit Receipt Offer and Acceptance (DROA) contains provisions for the seller to either stake the property corners or to provide a survey.

A survey may be advisable if there is a concern about or an obvious use of property by others (i.e., a well-worn path across a property and/or parked cars on the property) or fences or structures of adjacent property owners that appear to be built on the property. The Hawaii Department of Commerce and Consumer Affairs licenses surveyors and more information can be obtained at

http://www.hawaii.gov/dcca/pvl/areas_engineer.html

Flood and Shoreline Hazard Status

If the property is in a flood zone, an additional annual insurance premium of several hundred dollars may be required. If the property is in an area deemed high risk, the buyer may be required by the lender to obtain flood hazard insurance through the National Flood Insurance Program. Some information can be found at The Federal Emergency Management Association's (FEMA) Flood Map Service Center:

www.fema.gov/maps or <http://www.fema.gov/hazards/floods/>

Coastal property owners bear tremendous risks. Their property is vulnerable to tsunamis (tidal waves,) storm surges, floods, high wave impacts, and hurricanes. In addition, owners along the shoreline bear the risk that their property may erode.

Check with <http://www.fema.gov/rrr/talkdiz/tsunami.shtm> or <http://www.fema.gov/kids/tsunami.htm> for information about tsunamis.

For hurricane information go to: <http://www.fema.gov/hazards/hurricanes/> or <http://www.fema.gov/kids/hurr.htm> More information is available through the Hawaii State Dept. of Health, Office of Environmental Quality Control at:

<http://www.state.hi.us/health/oeqc/guidance/shoreline.htm>

or the Hawaii Coastal Zone Management Program at:

<http://www.hawaii.gov/dbedt/czm/program.html>

Homeowner's Insurance (Claims History)

Many factors affect the availability and cost of homeowner's insurance. Depending on the insurance company, these factors may include past insurance claims filed on the home being purchased, past insurance claims filed by the buyer on previous residences, and the buyer's credit score. Even claims made for lost belongings under a renter's policy can affect the buyer's ability to obtain homeowner's insurance. Some insurance companies use a database known as the Comprehensive Loss Underwriting Exchange ("C.L.U.E.") in their underwriting practices to track the insurance claim history of a home and of the person applying for insurance coverage.

These companies may use such information to cancel a buyer's homeowner's insurance policy after close of escrow. To reduce the risk of homeowner's insurance cancellation, a buyer should ask their insurance agent about the company's underwriting practices and request that their insurance agent confirm in writing the availability and cost of homeowner's insurance early in any real estate transaction and during the home inspection contingency period. And, although a buyer cannot directly obtain the claims history of a home, a buyer may ask the seller to provide a copy. However, be aware that obtaining a claims history or C.L.U.E. report on a home will not give a buyer all the necessary information to determine insurability, since not all insurance companies use this information or use it in the same manner.

Homeowners may request a five year claims history from their insurance agent or purchase a C.L.U.E. report online at

www.choicetrust.com or by calling 800/456-6004 or 866/527-2600.

For more detailed information on homeowner's insurance, please read

The New Reality of Property Insurance - What You Should Know at

<http://www.realtor.org/realtororg.nsf/pages/propinsbrochure?OpenDocument>

For general insurance information or to file a complaint against an insurance company, contact the Hawaii Dept. of Commerce and Consumer Affairs, Insurance Division at:

<http://www.hawaii.gov/dcca/ins/>

CONDITIONS AFFECTING THE AREA SURROUNDING THE HOME THE BUYER SHOULD INVESTIGATE

Every property is unique; therefore, important conditions vary.

Environmental Hazards

It is often very difficult to identify environmental hazards. See the Hawaii Dept. of Health web site at: <http://www.state.hi.us/health/oeqc/index.html>

Another source of environmental information may be found at:

<http://consumerlawpage.com/brochure/home-haz.shtml>

Superfund Sites

There are a few sites in Hawaii where the soil and groundwater have been contaminated by improper disposal of contaminants. To check if a property is in an area designated by the federal government as requiring cleanup, see

http://oaspub.epa.gov/webi/meta_first_new2.try_these_first or

<http://www.epa.gov/superfund/sites/npl/hi.htm>

More information can be found at the Hawaii Dept. of Health web site:

<http://www.state.hi.us/health/oeqc/index.html>

Road & Freeway Construction

Although the existence of a freeway near the property may provide highly desirable access, sometimes it contributes to undesirable noise. To search for roadway construction and planning, go to the Hawaii Department of Transportation website at:

<http://www.state.hi.us/dot/highways/index.htm>

Crime Statistics

Crime statistics, while an imperfect measurement at best, may provide some indication of the level of criminal activity in an area. To check the crime statistics for Hawaii go to the Hawaii State Department of the Attorney General, Crime Prevention and Justice Assistance Division at:

<http://www.cpja.ag.state.hi.us/rs/index.shtml>

Other information may be available from local police departments.

Sex Offenders

On November 21, 2001, the Hawaii Supreme Court struck down Hawaii's sex offender registration law as unconstitutional. Eto Bani, who pleaded no contest to sexual assault in the fourth degree contended the statute violated his constitutional right to procedural due process, his constitutional right to privacy, prohibition against cruel and unusual punishment, and right to equal protection of the law.

The opinion by Associate Justice Mario Ramil said Bani's right to due process was violated: "The absence of any procedural safeguards in the public notification provision of (the law) renders the statute unconstitutional, void and unenforceable." "These are people who already paid a debt to society," said Brent White, legal director for the American Civil Liberties Union. Based on the ruling, the state is no longer allowed to give notice to the community on whether a person is a sex offender.

Information may be available through the Center for Sex Offender management at

<http://www.csom.org/links/links.html> or the CSOM library at

<http://www.csom.org/ref/docs.html>

Aircraft Noise and Fly-Overs

Some areas of Hawaii are subject to fly-overs by aircraft including commercial, military and Drug Enforcement Agency (DEA) aircraft. The buyer should contact the appropriate federal, state or county agencies for more information. The Hawaii Department of Transportation can be located on the web at: <http://www.state.hi.us/dot/index.htm>

Schools

Although there is no substitute for an on-site visit to the school to talk with principals and teachers, there is a significant amount of information about Hawaii's schools on the Internet. Public school information may be accessed at: <http://doe.k12.hi.us/> or www.greatschools.net/modperl/gq

Zoning/Planning/Neighborhood Services

Information about these issues in the various counties may be found at:

Hawaii County: <http://www.hawaii-county.com/planning/rules.htm>

Honolulu City and County Planning and Permitting: <http://www.honoluludpp.org/>

Kauai County: <http://www.kauaigov.org/Planning/>

Maui County: <http://www.co.maui.hi.us/departments/Planning/>

OTHER METHODS TO OBTAIN INFORMATION ABOUT A PROPERTY

Talk to the Neighbors

Neighbors can provide a wealth of information. Buyers should always talk to the surrounding neighbors about the neighborhood and the history of the home the buyer is considering for purchase.

Drive Around the Neighborhood

Buyers should always drive around the neighborhood, preferably on different days at several different times of the day and evening, to investigate the surrounding area.

For Additional Information, Visit:

Hawaii Association of REALTORS® ("HAR"): <http://www.hawaii Realtors.com/>

Honolulu Board of Realtors®: <http://www.hicentral.com>

Realtors® Association of Maui: <http://www.mauiboard.com>

Kona Board of Realtors®: <http://www.konarealtors.com>

Hawaii Island Board of Realtors®: <http://www.http://hawaiiislandrealtors.org/>

Kauai Board of Realtors®: <http://www.kauai-realtor.com>

Molokai Board of Realtors®: email: cpgroup@aloha.net

Hawaii Real Estate Commission ("HREC"):

<http://www.hawaii.gov/hirec/>

NATIONAL ASSOCIATION OF REALTORS® ("NAR"):

www.realtor.com

www.realtor.org

NAR's *Ten Steps to Homeownership* may be found at:

<http://www.homestore.com/finance/buyersguide>

Hawaii Government

For information about Hawaii Government, including links to state agency websites:

<http://www.state.hi.us/>

For Hawaii Revised Statutes go to: <http://www.hawaii.gov/dcca/hrs/>

Hawaii Mandatory Seller Disclosures in Real Estate Transactions

www.capitol.hawaii.gov/hrscurrent/Vol12_Ch0501-0588/HRS0508D/HRS_0508D-.htm

Fair Housing Laws

The Fair Housing Act and other federal and state laws have been enacted to guarantee equal housing opportunities for all. These laws prohibit discrimination in housing on the basis of race, color, religion, sex, national origin, age, disability, and familial status.

For information regarding fair housing laws, visit the following sites:

Hawaii Civil Rights Commission: <http://www.state.hi.us/hcrc/>

National Fair Housing Advocate: www.fairhousing.com

HUD's Fair Housing/Equal Opportunity Website: www.hud.gov/fhe/fhehous.html or

HUD in Hawaii at: <http://www.hud.gov/local/index.cfm?state=hi>