

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
383-35 (COR)	Sabina Flores Perez	AN ACT TO ADD A NEW 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.	7/27/20 9:49 a.m.						

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 383-35 (COR)

Introduced by:

Sabina Flores Perez *SFP*

AN ACT TO *ADD A NEW 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.*

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

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

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

15 While there are many sincere sellers in Guam’s real estate industry, who
16 proudly display all the positives and negatives of the real estate they are selling, a

1 mandate of a “Seller Disclosure Statement” would assure that the few “bad apples”
2 that choose to hide these issues are also held to a higher standard. Nationally
3 almost two thirds of all complaints filed against real estate licensees involve the
4 disclosure (or lack of) of material defects on the property.

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

12 **Section 2.** A new Chapter 105 is *added* to Division 3 of Title 21, Guam
13 Code Annotated, to read:

14 **“CHAPTER 105**

15 **SELLER DISCLOSURE STATEMENT**

- 16 § 105101. Definitions.
17 § 105102. Seller Disclosure Statement.
18 § 105103. General Rule and Exceptions.
19 § 105104. Disclosure of Material Facts.
20 § 105105. Promulgation of the Seller Disclosure Statement.
21 § 105106. Information Unavailable to Seller.
22 § 105107. Disclosure Statement: Form and Content.
23 § 105108. Disclosure Statement: Delivery.
24 § 105109. Disclosure Statement: Buyer Examination.
25 § 105110. Disclosure Statement: Buyer Rescission.
26 § 105111. Disclosure Statement: Failure to Disclose Material Fact.
27 § 105112. Seller’s Agent Duties.
28 § 105113. Affirmative Duty of Seller.

1 § 105114. Cause of Action.

2 § 105115. Non-Liability of Seller.

3 § 105116. Non-Liability of an Agent.

4 § 105117. Non-Liability of Escrow Agents.

5 § 105118. Failure to Comply.

6 § 105119. Alternate Dispute Resolution.

7 § 105120. Statute of Limitations.

8 **§ 105101. Definitions.**

9 As used in this Act.

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

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

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

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

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

21 (1) within the knowledge or control of the seller, and

22 (2) can be observed from visible, accessible areas. The
23 disclosure statement shall not be construed as a substitute for
24 any expert inspection, professional advice, or warranty that the
25 buyer may wish to obtain.

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

1 conveyed.

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

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

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

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

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

28 **§ 105102. Seller Disclosure Statement.**

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

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

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

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

11 **§ 105103. General Rule and Exceptions.**

12 (a) The term “residential real estate transfer” when used in this
13 subsection shall mean a transfer of any interest in residential real property
14 located within the Territory of Guam, other than a transfer pursuant to §
15 105103(b) of this Chapter, that consists of not less than one (1), nor more
16 than four (4) residential dwelling units to include single-family homes,
17 duplexes, triplexes, fourplexes, and individual residential condominium
18 units, whether by sale, exchange, installment sales contract, lease with an
19 option to purchase which has been exercised, or grant.

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

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

27 (2) To a mortgagee by a mortgagor or successor in interest
28 who is in default; to a beneficiary of a deed of trust by a trustee or

1 successor in interest who is in default; by any foreclosure sale after
2 default in an obligation secured by a mortgage; by a sale under a
3 power of sale or any foreclosure sale under a decree of foreclosure
4 after default in an obligation secured by a deed of trust or secured by
5 any other instrument containing a power of sale; or by a mortgagee or
6 a beneficiary under a deed of trust who has acquired the real property
7 at a sale conducted pursuant to a power of sale under a mortgage or
8 deed of trust or a sale pursuant to a decree of foreclosure or who has
9 acquired the real property by a deed in lieu of foreclosure.

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

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

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

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

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

21 (8) Of unimproved real property; and

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

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

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

1 building code; and

2 (iii) a certificate of occupancy or a certificate of code
3 compliance has been issued for the dwelling by the appropriate
4 government agency.

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

9 **§ 105104. Disclosure of Material Facts.**

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

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

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

24 **§ 105105. Promulgation of the Seller Disclosure Statement.**

25 A form of a seller disclosure statement that satisfies the requirements
26 of this Chapter shall be promulgated by the Commission within ninety (90)
27 days from the enactment of this Act. The approved seller disclosure
28 statement shall be submitted to the Guam Legislature within thirty (30) days

1 from its promulgation for adoption. Nothing in this Chapter shall preclude a
2 seller from using a form of seller disclosure statement that contains
3 additional provisions that require greater specificity or that call for the
4 disclosure of the condition or existence of other features of the property, as
5 long as the minimum requirements adopted by the Commission are inclusive.

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

13 A seller disclosure statement shall consist of a written statement
14 prepared by the seller or at the seller’s direction that purports to fully and
15 accurately disclose all “material facts” relating to the residential real
16 property being offered for sale that are:

- 17 (a) within the knowledge or control of the seller;
- 18 (b) can be observed from visible, accessible areas; or
- 19 (c) are required to be disclosed under Guam Revised
20 Statutes.

21 The disclosure statement shall not be construed as a substitute for any
22 expert inspection, professional advice, or warranty that the buyer may wish
23 to obtain.

24 **§ 105106. Information Unavailable to Seller.**

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

1 **§ 105107. Disclosure Statement: Form and Content.**

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

5 (1) Seller's expertise in contracting, engineering, architecture
6 or other areas related to the construction and conditions of the
7 property and its improvements.

8 (2) Electrical Systems

9 (3) Plumbing Systems

10 (4) Sewer and Septic Systems

11 (5) Cooling Systems

12 (6) Structural

13 (7) Land Conditions

14 (8) Environmental

15 (9) Lead Based Paint

16 (10) Fungi and Mold

17 (11) Water and Waste Water

18 (12) Infestation

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

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

22 (15) Condominium and other homeowners associations.

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

25 (17) Stigmatized events related to the property

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

28 (a) the buyer may wish to obtain professional advice

1 and inspections of the real property;

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

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

5 **§ 105108. Disclosure Statement: Delivery.**

6 No later than ten (10) calendar days from acceptance of a real estate
7 purchase contract, the seller, either directly or through the seller's agent,
8 shall provide the disclosure statement to the buyer or buyer's agent. The
9 seller shall deliver the seller disclosure statement to the buyer by personal
10 delivery; first class mail; certified mail; return receipt requested; electronic
11 delivery via email; or facsimile transmission to the buyer or buyer's agent.

12 For purposes of this chapter, delivery to one prospective buyer or
13 buyer's agent is deemed delivery to all persons intending to take title as co-
14 tenants, joint tenants, or as a tenant by the entireties with the buyer. The
15 buyer shall indicate receipt of the seller's disclosure statement on the real
16 estate purchase contract, or in any addendum attached to the contract, or in a
17 separate document. Receipts taken for the disclosure statement shall be kept
18 on file in possession of the seller or seller's agent for a period of three years
19 from the date the receipt was taken.

20 **§ 105109. Disclosure Statement: Buyer Examination.**

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

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

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

26 **§ 105110. Disclosure Statement: Buyer Rescission.**

27 If the buyer decides to rescind the real estate purchase contract, the
28 buyer shall deliver to the seller directly or through the seller's agent on or

1 before the ten (10) calendar day period expires, written notification of the
2 buyer's decision to rescind the real estate purchase contract. Failure to
3 deliver the written notification to the seller within the ten (10) calendar day
4 period shall be deemed an acceptance of the disclosure statement.

5 When the buyer is provided a disclosure statement prepared and
6 delivered in accordance with this chapter and the buyer decides to rescind
7 the real estate purchase contract, the buyer shall not be entitled to any
8 damages but shall be entitled to the immediate return of all earnest money
9 deposits.

10 Notwithstanding anything to the contrary in this chapter, any action
11 for rescission brought under this chapter shall commence prior to the
12 recorded sale of the real property. The seller and buyer may agree in writing
13 to extend such time period provided for the delivery or examination and
14 rescission period.

15 **§ 105111. Disclosure Statement: Failure to Disclose Material Fact.**

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

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

19 (b) contains an inaccurate assertion that directly,
20 substantially, and adversely affects the value of the residential real
21 property, and who was not aware of the foregoing failure or
22 inaccuracy, or;

23 (c) becomes inaccurate regarding a material fact as a result
24 of an act, agreement, or occurrence after the disclosure statement is
25 provided to the buyer and such information directly, substantially, and
26 adversely affects the value of the residential property may rescind the
27 purchase contract within ten (10) calendar days of the earlier to occur
28 of;

- 1 (aa) the discovery of the failure or inaccuracy, or;
- 2 (bb) receipt of an amended disclosure statement
- 3 correcting the failure or inaccuracy.

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

8 **§ 105112. Seller's Agent Duties.**

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

12 (a) When a seller's agent cannot obtain the disclosure
13 statement and does not have written assurances from the buyer that
14 the disclosure statement was received, the seller's agent shall notify
15 the buyer in writing of the buyer's rights to the disclosure statement
16 and rights of rescission provided by this chapter. However, the seller's
17 agent shall not be required to prepare the disclosure statement.

18 (b) The seller's agent responsible for delivering the
19 disclosure statement, or the aforesaid written notification of the
20 buyer's rights if applicable, shall maintain a written record of the
21 action taken by that agent to effect compliance.

22 (c) If the seller's agent is or becomes aware of any material
23 fact(s) inconsistent with or contradictory to the disclosure statement or
24 the inspection report of a third party provided by the seller, the seller's
25 agent shall immediately disclose this fact(s) in writing to the seller,
26 the buyer, and the buyer's agent.

27 **§ 105113. Affirmative Duty of Seller.**

28 The seller is not obligated by this chapter to make any specific

1 investigation or inquiry in an effort to complete the property disclosure
2 statement. In completing the property disclosure statement, the seller shall
3 not make any representations that the seller or the agent for the seller knows
4 or has reason to know are false, deceptive, or misleading, and shall not fail
5 to disclose a known material fact.

6 **§ 105114. Cause of Action.**

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

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

12 (b) material facts or defects that develop after the signing of
13 the agreement of transfer by the seller and buyer; or

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

15 **§ 105115. Non-Liability of Seller.**

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

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

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

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

28 The delivery of any information required to be disclosed by this

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

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

10 **§ 105116. Non-Liability of an Agent.**

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

15 **§ 105117. Non-Liability of Escrow Agents.**

16 Any person or entity acting in the capacity of an escrow agent for the
17 sale of residential real property subject to this chapter, shall not be deemed
18 the agent of the seller or buyer for purposes of the disclosure requirements of
19 this chapter unless the seller or buyer and the escrow agent agree in writing
20 to the establishment of the agency for such purpose.

21 **§ 105118. Failure to Comply.**

22 A residential real estate transfer subject to this chapter shall not be
23 invalidated solely because of the failure of any person to comply with any
24 provision of this chapter. However, any person who willfully or negligently
25 fails to provide the sellers disclosure statement required by this chapter shall
26 be liable to the buyer for the amount of the actual damages, if any, suffered
27 as a result of the seller's negligence. In addition to the remedies allowed, a
28 court may also award the prevailing party attorney's fees, court costs, and

1 other applicable fees. This section shall not be construed so as to restrict or
2 expand the authority of a court to impose punitive damages or apply other
3 remedies applicable under any other provision of law.

4 **§ 105119. Alternate Dispute Resolution.**

5 If the real estate purchase contract provides for alternative dispute
6 resolution, then prior to filing an action in any court to enforce this chapter,
7 a seller or buyer shall first submit the claim to alternative dispute resolution
8 as required in the real estate purchase contract.

9 **§ 105120. Statute of Limitations.**

10 Any action brought under this chapter shall commence within one (1)
11 year from the date the buyer received the disclosure statement; provided that
12 if no disclosure statement was delivered to the buyer, then the action shall
13 commence within two years of the recorded sale of the residential real
14 property.”

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

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