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“Before You Buy” Advisory Guide

Keller Williams Realty Maui (KWRM)

BEFORE YOU BUY:

Purchasing real estate is a major financial investment. To support you through the process, this advisory guide will help you understand more clearly the complexities of purchasing property in Hawaii. Our real estate agents are vital to the real estate buying process and can provide variety of services in locating property, negotiating a sale, and advising a Buyer.

Real Estate agents are generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist the Buyer in finding qualified inspectors and provide the Buyer with documents and other resources containing vital information about a prospective property.

This document is designed to make a Buyer's purchase as smooth as possible. Some of the more common issues that a Buyer may decide to investigate or verify concerning a property purchase are summarized in this "Before You Buy" Advisory Guide. Included in this guide are common documents a Buyer should review, physical conditions in the property the Buyer should investigate and conditions affecting the surrounding area that the Buyer should evaluate. In addition, the 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 Guide.

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

AGENCY (REPRESENTATION)

KWRM (KWRM) represents many property owners. In showing you properties, we will probably show you some which are being offered by Sellers who are our clients. We understand that you want us to show you homes owned by people whom we represent, as well as homes listed by other real estate companies.

Whenever we have a relationship with a Seller of a property, we will disclose this to you before presenting any offer. Please be sure to ask us any questions you have concerning that relationship.

In the event you are interested in purchasing a home from an owner KWRM represents, you understand that we must honor the contractual agreement we have with the Seller, and that we will receive payment from the Seller for the transaction. In these circumstances, although we can show you the property and discuss its relative merits, we will not be able to share with you any confidential information we have received from the Seller. By the same token, we will not compromise your interests by sharing any confidential information that you may give us in the course of our relationship. When a real estate company represents both the Seller and the Buyer it is commonly referred to as a "dual agency."

As you can see, the existence of a dual agency will place some limitations on our representation of you. It also places the same limitations on our representation of the Sellers. Whenever we find ourselves representing both your interest and those of the Seller, we will help facilitate the closing of a transaction between you and the Seller. We will also respond accurately to your questions about the property and are ethically bound to disclose all material facts.

Multiple KWRM Buyers: KWRM represents many Buyers, so it is possible that another potential Buyer who is also a KWRM client may submit an offer on the same property you are interested in, or have submitted an offer to purchase. The property could be a KWRM listing or another brokerage company's listing. Just as we will not share confidential information with a Seller in a dual agency situation, we will not share confidential information with another Buyer. We want you to know that our role as agent for more than one Buyer could present a conflict, even when different salespeople are involved. Lastly, please understand that, in some circumstances, we may not be aware that another offer has been submitted by another KWRM agent on the same property. This fact is only known by the Seller's agent and the Seller. It is the Seller's decision whether or not to inform those who have submitted offers that there is more than one offer on the property.

We understand that you wish to continue our relationship even when we represent both sides, the Seller and Buyers. You agree on any given transaction, our work with a Seller and other Buyers will not impair our right to compensation in the event that a purchase is made.

SELLER'S DISCLOSURE LAW

The Mandatory Seller Disclosures in Real Estate Transaction Act (Chapter 508D, Hawaii Revised Statutes) requires a Seller of residential property to accurately disclose material facts about the property. "Material fact" means any fact, defect, or condition, past or present, which would be expected to measurably affect the value of the property to a reasonable person. Material facts are based on the Seller's or the Seller's agent's knowledge or observation of: visible, accessible areas; certain information relating to flood, tsunami, noise; and information within the knowledge and control of the Seller. 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.

Upon receipt of the disclosure statement, the Buyer has fifteen (15) days (unless otherwise agreed in the contract to purchase) to read and check every item on it. The Buyer should ask for clarification, if necessary and continue the transaction or rescind the offer and receive a refund of deposits if the disclosure statement is unsatisfactory. If any of the information contained in the disclosure statement materially changes after it is delivered to the Buyer, the Seller must provide the Buyer with an update to the Seller's Real Property Disclosure Statement, and the Buyer then has the same option and time period as outlined in the original DROA to approve or rescind the contract.

The disclosure statement should not be considered a warranty of the condition of the property or a substitute for any expert inspections, professional advice or warranty that the Buyer is encouraged to obtain.

Finally, the Act contains exemptions and exclusions that apply in certain circumstances. For additional information on the original act, please go to:

<http://www.capitol.hawaii.gov/site1/docs/searchhrs.asp?press1=docs&qu=508D>

TITLE INSURANCE

Buyers often do not pay much attention to title insurance. However, it is an important insurance policy that remains in effect for as long as you own your home and, because policies vary, the kind of policy you obtain will determine what “hidden risks” and title defects are covered.

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 which may affect the use of the property, such as a future addition or a 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 counselor or a surveyor. General information about title insurance may be found at www.titlelawannotated.com

Each escrow and title company has a standard title insurance policy and a more comprehensive title insurance policy. Contact your escrow officer to evaluate both policies and determine which policy best fits your needs. You should inquire about coverage and differences in cost. A more comprehensive policy may cost more, but the peace of mind it purchases may well be worth the added cost.

PROFESSIONAL INSPECTIONS & OTHER RECOMMENDATIONS

Professional Recommendation: As you know, Keller William Realty Maui is licensed as a real estate company only. We are not attorneys, certified public accountants, home inspectors, termite specialists, mold specialists, construction professionals, etc. Our inspection of the property, for example, will be that of a lay person, not an expert, even when we perform diligently. You are, therefore, encouraged to contact the professionals of your choice should you have any questions about any aspect of the purchase of a property.

Caution: If you decide to use non-professionals or friends/relatives who may not be experts, you do so at your own risk. You will also be asked by your KWRM agent to sign a Professional Home Inspection Waiver stating that you choose not to work with a professional Home Inspector.

In addition, if you fail to do the inspection by the deadline set forth in the DROA, you will waive your right to an inspection.

KWRM does not endorse particular professionals. We may provide you with the names of several professional in each specific field and you should procure the services of the company or professional of your choice.

Professional Property Inspection: 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 inspection, performed for a fee, designed to identify defects in the home. The home inspector will generally give the Buyer 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.

In the event the Buyer cannot attend the inspection, it is recommended that the Buyer hire an inspector that provides photo reports. The Buyer should carefully review the inspection report with the inspector and ask the inspector about any items of concern. Additional information on home inspections may be found at the American Society of Home Inspectors (ASHI) website: <http://www.ashi.com>

Home Warranty Policy: Several companies in Hawaii offer home warranty policies that insure certain appliances and electrical and plumbing fixtures. The Buyer should read the home warranty coverage and limitation information. Be aware that pre-existing property conditions may not be covered.

If the Seller does not obtain such a warranty for you, we strongly recommend that you obtain a policy at your cost. This may help avoid problems that often arise after closing with respect to coverage items. Your agent will ask you to sign an addendum stating that you accept or decline the purchase of a Home Warranty policy.

We strongly recommend that you employ and rely on qualified experts of your choice for different aspects of the inspection, i.e. a contractor, professional home inspector, electrician, plumber, environmental professional to inspect for mold, etc. Because real estate is a major purchase, you should know as much about the property as possible so that you may make the best possible informed decisions.

Inspection of Public Records and Applicable Laws The property inspection provision in the DROA (term C-51) is extremely comprehensive. In addition to inspection of the physical improvements, this provision includes inspection of public records and applicable laws and regulations. We strongly recommend that public records such as building permits, zoning and land use restrictions, etc. be reviewed by qualified construction professionals who are specific experts.

Covenants, Conditions and Restrictions (CC&R's):

The CC&R's or Deed Restrictions are recorded against the property and generally empower a former owner, developer or homeowners association to control certain aspects of property use. By purchasing a property the Buyer agrees to be bound by the CC&R's. Thus the CC&R's form an enforceable contract. The association, the homeowners as a whole, and individual owners 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 CC&R's very strict, especially those addressing landscaping, RV or boat parking, street parking, satellite dishes and other common amenities—particularly if the subdivision is governed by a homeowner's organization. A short but informative document on the purpose and effect of CC&R's may be read at: www.realtor.com/BASICS/condos/ccr.asp

Homeowner Organization Governing Documents:

In addition to CC&R's, Homeowner's Organizations may be governed by Articles of Incorporation, Bylaws, Rules and Regulations, and often architectural control standards. The Homeowner's Association is in place to enforce these rules and to preserve the value of the homes in the condominium or planned community. Condominium and planned community Homeowner's 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 the use by community residents is the common denominator.

In a condominium, the common property is actually deeded as undivided interest to the condominium owners. In a planned community, the ownership of the common property vests in the homeowner's association.

If purchasing a property governed by a Homeowner's Organization, the Buyer should review and approve all Homeowner's Association Documents. We recommend that you take the time to carefully review the records and ask questions about any items of concern. The condition of a project, the financial stability of the Homeowner's association, anticipated repairs or litigation can adversely affect values and the ability to resell the property

C 64of the DROA is a contingency in which the Buyer can request these documents and review and approve or disapprove.

Buyer Special Assessment Following Foreclosure: If you are buying property from a foreclosing lender, following judicial or non-judicial foreclosure, the AOA (association of apartment owners) has the right to assess you for any delinquent common expenses up to \$1,800 that has been assessed and budgeted during the six-months prior to the "completion" of the foreclosure. Please discuss this with your agent. A copy of the bill is available at the web site:

[www.capitol.hawaii.gov/sessionscurrent/bills.sb2333_sd2 .htm](http://www.capitol.hawaii.gov/sessionscurrent/bills.sb2333_sd2.htm).

Condominium Association Budgets: In 1991, the Legislature passed a law requiring all condominium associations to (i) adopt and follow budgets and (ii) establish adequate reserves. The law's intent is to require condominium owners and boards to realistically evaluate the actual cost of running their project – not just the day-to-day expenses but the long-term costs of major repairs and replacement.

Planned Community Associations: If you are planning to purchase property in a planned community where there is a community association, ask if there are restrictive covenants, association fees, or any other information you may be interested in as a prospective owner.

BUILDING PERMITS, NON-COMPLIANCE, AND NON-CONFORMITY

Many residential properties in the State of Hawaii are not in compliance with building permit and the Uniform Building code requirements. Some violations are minor; some are of greater concern and may adversely affect value. There are two specific areas that require attention; non-conforming structure and non-conforming use.

Non-conforming structure means that the building or part of the building was constructed without building permits. It is strongly recommended that Buyers obtain information found in the

public records. Buyers should be aware, however, that records may be inconsistent, incomplete, inaccurate, and/or illegible. Therefore a permit review may or may not reflect the true and correct history and status of the property.

There is risk in purchasing property that does not have proper building permits and approvals, and/or which do not comply with county, state, and federal laws and regulations. Adverse consequences that could result include a fine or citation and the necessity to remove, rebuild, and/or discontinue use. Improper and/or illegal construction or land use can also create hazardous conditions as well as impact a Buyer's financing which would in turn impact the resale of the property.

Non-conforming use means that although the building may be permitted, the use of the structure is nonconforming to Maui County Building Code. The most common violations are the use of the interior square footage of the structure or a conversion of a carport or garage to create multiple Ohana (rental) units.

Maui County Building Code states that the lot size must be between **7,500 and 9,999** to legally have **one 500 square foot ohana (rental) unit** on the property. If the lot size is between **10,000 square feet and one half acre** it may legally have **one 600 square foot ohana (rental) unit**. Any lot **over one half acre** may legally have **one 700 square foot ohana (rental) unit** and **agricultural zoned land** may legally have **one 1,000 square foot accessory dwelling that supports its farming operation**. Some subdivisions have CC &R's that do not permit ohana (rental) units, regardless of the lot size.

For all these reasons, Buyers are advised to obtain sufficient information to make an informed decision. It is advised that Buyers and their representatives use the inspection period in the DROA to inspect both the property and the public records. The Buyer should engage and rely on construction professionals such as architects and contractors who are qualified to properly examine and analyze a permit file and other records in matters relating to building permits, zoning and land use, occupancy limits, protected view channels in certain subdivisions, etc. For additional information go to: <http://www.co.maui.hi.us> or <http://ordlink.com/codes/maui/index.htm>

PROPERTY BOUNDARIES AND ENCROACHMENTS

A common area of dispute for single-family residences as well as CPR and other types of properties with boundaries are boundary discrepancies. We therefore suggest that, even if staking pins are visible, a survey is done by a qualified surveyor and that a survey map showing any encroachments is obtained. If the Seller does not agree to this, we recommend that you request and pay for it. The cost to remedy encroachment and other boundary problems can be much greater than the cost of a survey.

A 1997 law called "De minimus structure position discrepancy" establishes acceptable tolerances for encroachments which are "tolerable" or "de minimus." However, even when discrepancies are "de minimus," a survey is still recommended so that you are aware of any improvement that may extend into neighboring properties and, if so, to what extent. Neighbors' improvements can also extend into the subject property. The law does not apply to shoreline boundaries, encroachments into public or government property and building requirements such as setbacks.

If you have any questions about the “acceptable tolerances”, walls/fences, boundaries, etc., please go to: <http://www.internetcrusade.com/hawaii/chap6692.htm> After you receive the surveyor’s report, you are encouraged to contact the surveyor to discuss the results and any discrepancies.

TERMITE ISSUES:

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

For more information please go to:

<http://www.hawaii.gov/dcca/areas/pvl/boards/pestcontrol/>

Areas of Concern: Termite problems fall in three areas which may exist alone or in combination: 1) Termite INFESTATION, 2) termite DAMAGE which can be the result of past or current infestation and 3) CONDUCIVE CONDITIONS which must be resolved.

Limitations of Inspection and Disclosure: The Termite Inspection Report (TIR) addresses the major areas of concern listed above, but only to a limited extent. The TIR addresses only evidence of termite infestation and DAMAGE in ACCESSIBLE areas AT THE TIME OF INSPECTION. It does NOT address inactive infestation, or damage occurring in inaccessible or non-visible areas, nor the effect of termite damage on the structural integrity of the property’s improvements. Also, the TIR is only valid for 15 days and does not come with any warranty or guarantee.

You should also be aware that, because termites, like the Formosan variety, can work very rapidly in spite of a clear TIR or treatment, infestation or re-infestation can occur within a short period of time. And, notwithstanding the statement in the DROA, “Seller agrees to disclose in the Seller’s disclosure, any prior and/or current infestation and damage of which Seller is aware,” there may be hidden infestation and/or damage which Seller and Seller’s agent are not aware and which may not be revealed in the TIR.

Review the Report: When you receive the TIR, please review the report carefully. If you have any questions or would like to know more about infestation, damage, and conditions, we encourage you to call the termite inspector to address your specific concerns. If you would like to be present at the termite inspection, please ask your agent to make arrangements for you.

Infestation and Treatment: The DROA provides that purchase of the property is contingent upon timely delivery of a TIR stating there is no visible evidence of active termite infestation. If there is visible evidence, the Seller is only responsible for any treatment recommended in the TIR to kill the pests. Either the Buyer or Seller may select the Pest Control Inspector.

Termite damage to Structure As indicated above, the TIR does not address termite damage adequately. Therefore, when a professional inspection is scheduled with a contractor or other qualified professional (DROA term C-51), ask the inspector to look for damage and to assess the structure of the improvements.

OTHER BUYER CONCERNS & DISCLOSURES

LEAD PAINT: If the home was built prior to 1978, the Seller must provide the Buyer with a lead based paint disclosure form. In 1996, two Federal Agencies (EPA & HUD) joined together to ensure that the public receives the information necessary to prevent lead poisoning in homes that may contain lead-based paint hazards. Additional information is available at: <http://www.hud.gov/offices/lead/disclosurerule/index.cfm> Please be sure to read the pamphlet "Protect Your Family from Lead in Your Home" which is located on the site referenced above.

ASBESTOS: Asbestos may be present in the ceilings, flooring and other materials. It is very important that asbestos fibers not be released into the air. If you would like to determine the content of material, we recommend that you contact a qualified laboratory to conduct a test. Our agents cannot be involved in removal or abatement. For additional information go to: <http://www.epa.gov/asbestos/>

MOLD: Mold has always been with us, and it is a rare home that does not have mold. Over the past several years certain kinds of mold have been identified as a possible contributor to illnesses. Allergic individuals may experience symptoms related to mold. Mold growth is found under materials where water has damaged surfaces and behind walls.

Warm temperatures, high humidity, frequent rain, and moisture are conducive to the growth of mold and other types of potentially harmful growths (collectively, "Mold"). A property could have hidden mold and the Seller will not be aware of the problem. If you have any concerns about mold, it is important that you hire an environmental professional and/or other qualified professionals to assist you in your inspection of the property. The U.S. EPA website contains valuable information about mold at <http://www.epa.gov/iaq/molds/moldresources.html>

WASTEWATER TREATMENT

The Wastewater Branch of the Hawaii Department of Health administers 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 revolving fund program. The various program activities include the review and approval of all wastewater systems including septic tanks and the monitoring of all existing wastewater systems including cesspools.

If the property you are purchasing is currently on a cesspool, there are rules and regulations in place which may create an additional expense to an upgrade to a septic tank. For additional information on cesspools go to: <http://www.epa.gov/region09/water/groundwater/uic-hicesspools.html>

For information on the effect a cesspool could have on a future building permit, go to: <http://co.maui.hi.us>

PROPERTY TAX ASSESSMENTS

The county assessor's records contains 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 interior square footage which should always be verified for accuracy.

HOME EXEMPTION FOR PROPERTY TAX: Claim for Home Exemption: Under Hawaii law, a homeowner may qualify for an exemption, which would reduce the net taxable, assessed value of a property in determining the property tax. You are entitled to the basic exemption (currently \$120,000) if you own and occupy the property as your principal home. Upon the close of escrow, it is the homeowner's responsibility to file a claim for a tax exemption with the County of Maui Real Property Tax office on or before December 31 preceding the tax year for

which you claim the exemption. For more information about property taxes and exemption go to: <http://www.mauipropertytax.com>

LEASEHOLD PROPERTY & LEASEHOLD OR MIXED LEASE-FEE BUILDINGS/PROJECTS (CPRs)

In 1989, the State of Hawaii enacted laws requiring disclosure of lease terms in connection with the sale of residential leasehold property. These laws apply to all leasehold homes, condominiums, cooperatives and planned unit developments.

Sellers are required to provide you (1) a complete and accurate copy of the lease and all amendments, (2) a plain language summary of the important lease terms and (3) a plain language glossary of lease terms. You should also ask the Seller to provide you any pertinent information regarding mandatory conversion, fee offering, etc. of which he is aware.

Most Sellers employ qualified professionals to prepare the leasehold disclosures. In the event you receive one that is prepared by the Seller or the broker of another company, we recommend that you seek the advice of an attorney. The decision to approve a leasehold disclosure not prepared by someone or some firm qualified to interpret/practice law will be your decision and contrary to our recommendation.

Fee Purchase: If the fee purchase is available and you wish to purchase the fee together with the leasehold interest, please let your agent know and clearly explain your requirements. Provisions in the DROA and financing will depend on your needs. Please keep in mind that we can only assist in facilitating your purchase; we cannot monitor the actions of the courts, lessors, and owners' associations.

BASIC LEASE TERMS:

Leasehold Property: Very basically, a leasehold estate is created by a lease between a Lessor and Lessee (the Lessor holds the fee-simple title to the land and rents it to the Lessee). The Lease contains all of the terms, provisions, covenants and agreements between the parties including, but not limited to, the lease rents, the Re-negotiation Date, the Expiration Date and the Reversionary or Surrender Clause (as applicable). The Seller is the holder of the Lessee's interest in the lease (or is the purchaser of an Agreement of Sale concerning such interest). The Buyer is purchasing the remaining term of the lease, which will be transferred to the Buyer by way of an Assignment of Lease. This transfer will occur at the time of closing, at which time the Lessor's consent to the transfer may be required. The term "Lease" includes such terms as "Apartment Lease," "Master Lease," "Ground Lease," "Sub-lease," "Condominium Conveyance Document," etc.

Re-negotiation Date The Lease has a "Re-negotiation Date." This means that the Lease rent after the Re-negotiation Date is not fixed or already agreed upon. Depending on the terms of the Lease, the lease rent may increase substantially when renegotiated.

Expiration Date The Lease has an “Expiration Date.” This means that the Buyer’s right to possess the property will end on the Expiration Date unless the Lease is extended, the Buyer purchases the Lessor’s fee simple interest, or other arrangements are made (if these options are available or possible).

Reversionary or Surrender Clause Most leases contain a “Reversionary Clause” or “Surrender Clause” which describes what will happen on the Expiration Date, including the disposition of any improvements on the Property. The Buyer should be very careful to ensure that he/she understands these clauses.

If you are purchasing a fee unit (CPR) in leasehold or mixed lease-fee building or project, be aware that a 1999 legislation (Act 241) specifies that owners who choose not to purchase the leased-fee will still be liable for special assessments and/or maintenance fee increases resulting from any bulk purchase by the Association Of Apartment Owners (AOAO). The Act does not directly address whether an owner who previously purchased the leased-fee directly from the Lessor or who acquired the unit after it had undergone fee conversion would also be liable for such costs; however, there has been at least one court decision in Honolulu to this effect.

Keep in mind that many actions approved by the AOAO do not benefit every unit in the complex though all units generally share in the costs; this is the nature of condos and CPRs as compared to single-family dwellings.

TRANSACTIONS INVOLVING FOREIGN PERSONS AND/OR NON-RESIDENTS

FIRPTA (Foreign Investors Real Property Tax Act) The Foreign Investors Real Property Tax Act is a Federal statute which requires a BUYER of a United States real property interest to withhold the lesser of 10% of the amount realized by the Seller from the sale or the Seller’s maximum Federal income tax liability if the Seller is a non-resident alien individual or a foreign corporation or partnership (foreign Seller). A report of the transaction along with the withheld amount must then be sent to the Internal Revenue Service (IRS) within twenty (20) days from the date of the transaction.

A Seller will sometimes ask escrow NOT to forward the withheld amount immediately but to hold it for a period of time after closing. Because the law places the burden of the tax on the BUYER, it is in the Buyer’s best interest that the amount be forwarded to the IRS prior to closing and soon enough to avoid penalties and interest. Otherwise, there is risk that the IRS could demand payment from the Buyer, sometimes years later. These payments can include penalties and interest.

A purchaser may be exempted from withholding the amounts otherwise required by FIRPTA if:

1. The Seller provides the purchaser with a certificate (generally, in the form of an affidavit) that the Seller is not a “foreign Seller” as defined by FIRPTA. Purchasers will not be excused from withholding if the Seller provides the purchaser with a certificate that the purchaser knows is false;
2. The property does not fall within the definition of a “United States real property interest” (USRPI) as defined by FIRPTA. Generally, a USRPI is any interest in real property located in the United States or the Virgin Islands or any interest in a U. S. corporation in which the fair market value of the corporation’s real property holding in the United State equals or exceeds fifty percent (50%) of the corporation’s total assets;

3. The purchaser is acquiring the real property for use as his or her principal residence and the purchase price is equal to \$300,000 or less;
4. The USRPI is a class of stock that is publicly traded on a U. S. securities exchange and the Seller held no more than five percent (5%) of the corporation's total shares of stock during the five year period prior to the transactions; or
5. The Seller provides the purchaser with a Withholding Certificate issued by the IRS which authorizes either elimination or a reduction of the required withholding.

FIRPTA has special rules for certain types of foreign Sellers: partnership, trust or estate or where transaction is the result of a foreclosure.

HARPTA (Hawaii Real Property Tax Act) Under Hawaii Law, if a Seller is a non-resident of the State of Hawaii or entity (corporation , partnership, trust or estate), the Buyer must withhold a specified percentage of the "amount realized" by Seller on the sale of the Property and forward the amount with the appropriate form to the State Department of Taxation. Such withholding may not be required if Seller obtains and provides Buyer with an authorized exemption or waiver from withholding.

Certain features of HARPTA are:

1. The amount of withholding is five percent (5%) of the amount realized by the Seller.
2. The Seller is permitted to apply for a withholding certificate from the State Department of Taxation which could lessen or eliminate the amount of tax to be withheld or the Seller will not realize any gain from the sale or there will be insufficient proceeds to pay Hawaii taxes after payment of transaction costs.
3. Foreign corporations and foreign partnerships, which have registered with the State Department of Commerce and Consumer Affairs to transact business in the State of Hawaii, are deemed to be "residents."
4. The transaction is exempt from HARPTA and no taxes need to be withheld. If the property was used by the Seller as his/her principal residence and the amount realized by the Seller does not exceed \$300,000.
5. The definition of "transferee" includes the State, the counties and their respective subdivision, agencies, authorities and boards.
6. The State Department of Taxation may enter into written agreements with persons who engage in more than one real property transaction per calendar year and for whom it is not practicable to meet the requirements. The State has the discretion to use another withholding method or to waive the withholding requirement altogether.

Questions have been raised concerning the definition of "resident person" under HARPTA. The statute states that a "resident" means "every individual domiciled in the State of Hawaii and every other individual whether domiciled in the State or not, who resides in the State." To "reside" in the State means to be in the State for other than a temporary or transitory purpose. An individual, who is the State more than 200 days altogether, in any taxable year, shall be presumed to be a resident of the State. However, this presumption may be overcome if it can

be proved that the individual maintains a permanent place of residence outside of the State and is in the State in compliance with orders of the United States military, while engaged in aviation or navigation, or while a student at any institution of learning.

Other laws and ordinances regarding foreign persons include:

Foreign persons acquiring or transferring real property are required to file the appropriate forms with the Director of Finance at the Maui County Real Property Tax Office within 30 calendar days from the date of acquisition or transfer. There are additional reporting requirements if the foreign person is a corporation, partnership or trust.

Disclosure of Purchase of Agricultural Lands by Foreign Buyer Under the Agricultural Foreign Investment Disclosure Act of 1978, foreign persons (including foreign corporations, partnerships, companies, trusts, or other legal entities in which a significant interest or substantial control is directly or indirectly held by any foreign individual, foreign government or any combination thereof) who purchases, acquires, disposes or transfers any interest in agricultural real estate in the United States must file a report containing the required information with the United States Agricultural Stabilization and Conservation Service after the date of acquisition or transfer of such interest in the agricultural land.

Any person or entity acquiring or holding an interest in agricultural land that is not a foreign person at the time of acquisition of holding but later becomes a foreign person, must file a report containing the required information within 90 days after the date of becoming a foreign person.

Any foreign person, who holds or acquires any interest in land that is not agricultural at that time but subsequently becomes agricultural land, must file a report containing the required information within 90 days after such land becomes agricultural.

Disclosure of Foreign Investment in United States Business Enterprise Under the International Investment and Trade In Services Survey Act, foreign persons or entities (including non-resident aliens), whether exempt under the Act or not, owning or acquiring ten percent (10%) or more voting interest in a United States business enterprise, must file the appropriate reporting form to the Department of Commerce, Bureau of Economic Analysis, Directory of Investment, Washington, D. C. If real estate is to be held by the foreign Buyer for any profit-making purpose, it is deemed to be a business enterprise.

MEDIATION AND ARBITRATION

The Realtors Association of Maui DROA offers mediation as a standard and arbitration as an option for parties to settle any and all disputes including those against brokers, using mediation and arbitration instead of litigation.

MEDIATION: This is a process by which parties submit their dispute to a third party neutral (the Mediator) who works with them to reach a settlement of their dispute. A mediator conducts informal joint and separate meetings with the parties to understand the issues, facts and positions of the parties. There are no formal hearings and no decisions will be forced on anyone. Since mediation is voluntary, the parties must agree in writing that their decisions will be forced on anyone. Since mediation is voluntary, the parties must agree in writing that their dispute will be conducted under the applicable mediation rules. If the parties reach an agreement, their agreement is set forth in writing and is binding on each of them. If the

mediation fails to reach a settlement of any or all of the issues, the parties may submit to binding arbitration. Please read additional information about mediation at:

<http://www.northamericanmediation.com/>

ARBITRATION: This process involves the resolution of disputes by one or more impartial persons. Generally, arbitrators hear testimony and receive evidence in a formal hearing. Based on the evidence, they render a final and binding decision, known as an award. This award can be confirmed by the court, and it has the same force and effect as a court judgment. For advice on mediation or arbitration, please seek legal counsel.

OTHER LAWS AND ISSUES

FAIR HOUSING Fair housing is a civil right protected under federal and state laws. If you are purchasing an investment property to rent out, you cannot discriminate against prospective tenants on the basis of sex, religion, color, national origin, handicap, or familial status. The latter two protected classes were added by the Fair Housing Amendments Act of 1988. In brief, "familial status" refers to the presence or expectancy of children and "handicap" includes, among other things, HIV infection, former drug addiction and emotional addiction. If you have questions or want more information, go to the following sites <http://www.fairhousing.com>
<http://www.state.hi.us/hcrc> <http://www.hud.gov/local/index.cfm?state=hi>

MEGAN'S LAW In 1997, Hawaii enacted a law requiring sex offenders to register with the attorney general's office. The law required public access to relevant information regarding sex offenders including residence and employment. However, on November 21, 2001, the Hawaii Supreme Court issued a decision holding that the public notification provisions of Hawaii's Megan's Law were unconstitutional, void and unenforceable. Since 2001 there have been some revisions to the law. Therefore, the Attorney General's office and the county police departments will only release limited information regarding sex offenders. As a result, neither Sellers nor real estate agents are required to obtain information on sex offenders. For additional information go to: <http://sexoffenders.ehawaii.gov/>

EARNEST MONEY DEPOSITS The standard practice in the State of Hawaii is that the parties to the sales contract may select any licensed escrow company to accept earnest money deposits. Thereafter, this independent escrow company will accept, retain and disburse any funds (including any loans that the Buyer obtains) that are associated with the real estate transaction. By law, real estate brokers may not make any determination with regard to the entitlement of anyone to any portion of any monies deposited with Escrow Company in the event a dispute arises between the parties. Furthermore, the escrow company may not release any funds that are in dispute to anyone without the mutual written consent of both Buyer and Seller.

Checks should NOT be made payable to a sales associate or KWRM. Deposit checks should be made payable to the escrow company selected in the DROA. Payment for expenses outside escrow, e.g. to a professional inspector, should be paid directly to the vendor.

TENANCY The DROA addresses Tenancy of the property you will purchase. KWRM recommends you consult appropriate professionals if you have any questions on tenancy or vesting.

OWNER-BUILDER PERMITS. The State's Contractors Licensing law (HRS Chapter 444) specifies that a licensed contractor does not need to be hired if the total contract price for labor, material and all other items of the improvements to be constructed is less than \$1,000 or if the owner of the property obtains an "owner-builder" exemption from the Building Department. An "owner-builder" exemption must be applied for at the time the building permit is issued only for improvements constructed for the owner's own use or use by the owner's grandparents, parents, siblings or children. These 2 exemptions do not apply to electrical or plumbing work, which must be performed only by licensed persons. Under the law, a sale or lease or offer to sell or lease the property within one (1) year from the date of completion of the improvements covered by the permit presumes that the improvements were built for the purposes of resale rather than the owner's use, which is a violation of the law. Violators are subject to legal action by the State's Regulated Industries Complaint Office, and the Building Department may also revoke any building permit issued. Therefore, if you ever reach a point where you feel you may sell your property within one (1) year, you should hire a licensed contractor to perform all repairs and improvements whose total cost was more than \$1,000. Contact the Maui County Building Department for additional information.

DELINQUENT MAINTENANCE FEES COLLECTIBLE DIRECTLY FROM TENANTS. A 1999 legislation (Act 236) gives the AOA of condos/CPRs the right to collect delinquent maintenance fees directly from the tenant, provided the AOA first attempts to collect these amounts from the owner. The Act prohibits the owner from taking retaliatory action against the tenant for making direct payments to the AOA; it also gives the AOA the right to pursue non judicial foreclosures on delinquent units.

OTHER INFORMATION:

Multiple Listing 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.

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 buildings square footage. If the Buyer pays for the appraisal the Buyer has the right to receive a copy of it.

Neighbors can be an excellent source of information for the Buyer. Buyers should always drive around the neighborhood, preferably on different days and at different times of the day and evening to investigate the surrounding area.

We understand the complexities of real estate sales and are here to lead you through the process. Please do not hesitate to seek additional information through the web links provided or ask your agent to help investigate other information sources that would be beneficial to you.

“Before You Buy” Advisory Guide

Buyer Acknowledgement

Buyer acknowledges receipt of all (15) pages of the “Before You Buy” Advisory Guide revision date below. Buyer further acknowledges that there may be other disclosure issues of concern that may not be listed in the Guide. Buyer is responsible for making all necessary inquiries and consulting the appropriate persons or entities prior to the purchase of any property.

The information in this Advisory Guide is provided with the understanding that it is not intended as legal or other professional service or advice. These materials have been prepared for general information purposes only. The Buyer understands that the information or web site links provided may have been changed, or not updated. If you have any additional questions or need advice, please contact your personal attorney or other professional representative.

Buyer

Date

Buyer

Date