

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

Bill No. -35 ()

Introduced by:

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

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.

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

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

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

16 **“CHAPTER 105**

17 **SELLER DISCLOSURE STATEMENT**

18 § 105101. Definitions.

19 § 105102. Seller Disclosure Statement.

20 § 105103. General Rule and Exceptions.

21 § 105104. Disclosure of Material Facts.

22 § 105105. Promulgation of the Seller Disclosure Statement.

23 § 105106. Information Unavailable to Seller.

24 § 105107. Disclosure Statement: Form and Content.

25 § 105108. Disclosure Statement: Delivery.

26 § 105109. Disclosure Statement: Buyer Examination.

27 § 105110. Disclosure Statement: Buyer Rescission.

1 § 105111. Disclosure Statement: Failure to Disclose Material Fact.

2 § 105112. Seller's Agent Duties.

3 § 105113. Affirmative Duty of Seller.

4 § 105114. Cause of Action.

5 § 105115. Non-Liability of Seller.

6 § 105116. Non-Liability of an Agent.

7 § 105117. Non-Liability of Escrow Agents.

8 § 105118. Failure to Comply.

9 § 105119. Alternate Dispute Resolution.

10 § 105120. Statute of Limitations.

11 **§ 105101. Definitions.**

12 As used in this Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **§ 105102. Seller Disclosure Statement.**

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

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

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

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

10 **§ 105103. General Rule and Exceptions.**

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

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

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

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

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

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

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

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

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

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

18 (8) Of unimproved real property; and

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

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

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

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

1 government agency.

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

6 **§ 105104. Disclosure of Material Facts.**

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

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

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

20 **§ 105105. Promulgation of the Seller Disclosure Statement.**

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

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

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

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

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

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

19 **§ 105106. Information Unavailable to Seller.**

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

23 **§ 105107. Disclosure Statement: Form and Content.**

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

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

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

3 (2) Electrical Systems

4 (3) Plumbing Systems

5 (4) Sewer and Septic Systems

6 (5) Cooling Systems

7 (6) Structural Defects

8 (7) Land Conditions

9 (8) Environmental Issues

10 (9) Lead Based Paint

11 (10) Fungi and Mold Issues

12 (11) Water and Waste Water Issues

13 (12) Infestation Concerns

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

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

16 (15) Condominium and other homeowners associations.

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

19 (17) Stigmatized events related to the property

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

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

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

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

27

1 **§ 105108. Disclosure Statement: Delivery.**

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

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

15 **§ 105109. Disclosure Statement: Buyer Examination.**

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

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

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

21 **§ 105110. Disclosure Statement: Buyer Rescission.**

22 If the buyer decides to rescind the real estate purchase contract, the buyer
23 shall deliver to the seller directly or through the seller’s agent on or before the ten
24 (10) calendar day period expires, written notification of the buyer’s decision to
25 rescind the real estate purchase contract. Failure to deliver the written notification
26 to the seller within the ten (10) calendar day period shall be deemed an acceptance
27 of the disclosure statement.

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

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

9 **§ 105111. Disclosure Statement: Failure to Disclose Material Fact.**

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

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

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

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

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

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

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

1 **§ 105112. Seller’s Agent Duties.**

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

4 (a) When a seller’s agent cannot obtain the disclosure statement and does not
5 have written assurances from the buyer that the disclosure statement was received,
6 the seller’s agent shall notify the buyer in writing of the buyer’s rights to the
7 disclosure statement and rights of rescission provided by this chapter. However,
8 the seller’s agent shall not be required to prepare the disclosure statement.

9 (b) The seller’s agent responsible for delivering the disclosure statement, or
10 the aforesaid written notification of the buyer’s rights if applicable, shall maintain
11 a written record of the action taken by that agent to effect compliance.

12 (c) If the seller’s agent is or becomes aware of any material fact(s)
13 inconsistent with or contradictory to the disclosure statement or the inspection
14 report of a third party provided by the seller, the seller’s agent shall immediately
15 disclose this fact(s) in writing to the seller, the buyer, and the buyer’s agent.

16 **§ 105113. Affirmative Duty of Seller.**

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

22 **§ 105114. Cause of Action.**

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

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

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

1 of transfer by the seller and buyer; or

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

3 **§ 105115. Non-Liability of Seller.**

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

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

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

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

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

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

22
23 **§ 105116. Non-Liability of an Agent.**

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

1 **§ 105117. Non-Liability of Escrow Agents.**

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

7 **§ 105118. Failure to Comply.**

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

18 **§ 105119. Alternate Dispute Resolution.**

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

23 **§ 105120. Statute of Limitations.**

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

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

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