



REBI GMM: Hot Topics from the HAR Legal Hotline
June 23, 2020
Speaker: Andrew Nguyen, Legal Counsel

Webinar Questions & Answers

1. Hot topic - STVR and lawsuit proposed by Elite Pacific Properties. We do have the standard form regarding STVR so am wondering if you have had questions regarding the form?
 - Answered on webinar – HBR created the STVR form.
2. Even though Pre-Occupancy Agreement is not mandated by Hawaii Landlord Tenant act. If a Buyer defaulted, would the Emergency Order Protect them from Eviction if they refused to leave.
 - Maybe, maybe not. Pre-closing and post-closing occupancies are exempt from landlord-tenant code, but emergency proclamation may be broad enough to cover it. Not sure what the answer would be.
3. Condo docs - some management companies do not seem to know that their documents are outdated. Repeated phone calls/emails does not correct this situation. I like your suggestion of approaching the association attorney.
4. You said that a Seller must amend based on what Buyer informs from inspection...but then you said then the Seller amends and that's when the date starts??? I thought it actually starts when Buyer discovers per I-4?
 - There are two timelines, one is when Buyer discovers, another is when Buyer receives an Amended Disclosure Statement. It is the earlier between the two as laid out in I-4 and HRS 508D-6.
5. If Buyer pulls out of the deal, gives inspection report to seller, can seller submit this report to next buyer as a supplement to their SRPDS or should they break it down in detail and physically change their SRPDS?
 - Seller should look critically at the previous potential Buyer's Inspection report to determine which defects require disclosure and which do not.
6. Why is the date of the last completed signature not the acceptance date without exceptions
 - Delivery is more important for acceptance date, as a party can sign a contract, but not convey that acceptance until a later date.

7. Are we allowed to share a Sellers' Disclosure and Lease information on PV to a prospective buyer prior to accepted contract with the owners' permission?
 - It is up to the Seller's discretion.
8. Who is responsible for the cost to transfer the lease to the new owner?
 - That should be negotiated between Buyer and Seller, on later revisions of our forms, we may put in language regarding that.
9. Please confirm the difference between "solar"; water heating system and photovoltaic. Thank you.
 - A solar water heating system is a system that heats just the water using the sun, whereas photovoltaic systems use solar panels to capture sunlight and convert it to electricity that is used
10. I'm confused. If seller rejects the offer, broker doesn't need to sign off on rejected offer?
 - From the Hawaii Administrative Rules – "If an offer or counter offer is rejected, the rejection shall be noted on the offer or counter offer, or in the event of seller's or buyer's neglect or refusal to do so, the broker for the rejecting party shall note the rejection on the offer or counter offer and a copy shall be returned immediately to the originator of the offer or counter offer." The signature block is for the event that the Broker had to reject the offer due to the client's neglect or refusal to do so.
11. So if a Listing Agent wanted to cut a deadline shorter on Seller's Disclosure, they could cut down the contingency time period by having their seller do an amended Seller's Disclosure and the buyer will lose the remaining days on the original Seller's Disclosure? That's not right and that loophole should be revised as that could be misused.
 - HRS 508D-6 and 13 discuss this in further detail.
12. When can we expect to see the addendum for the emotional support animal? We need it asap.
 - The Standard Forms Committee is working on all the forms as hard as they can, especially given the pandemic, but we would love to hear any of your thoughts on this form.

13. What kind of insurance should get if they are forced to accept an emotional support pet that turns out to be aggressive and the owner can be held liable?
 - That's something that requires more research as I am not an expert in insurance policies.
14. Agent owned rentals are required to go through the brokerage company so having another property manager handle it is a very good idea.
15. An you review advertising laws regarding agents who post listing so marketplace sites in social media. It's obvious PBS/ BICs aren't reviewing because many agents don't even post the brokerages they are associated within or the RB or RS status.
 - That's something that will take more time and space than I can provide right now, but it's a project that I am working on.
16. If agent rents out their personal property, does the security deposit received have to go into broker's client trust account or can agent have their own client trust account and keep track of rents received? Broker receives no monies from the personal rental of agent.
 - Hawaii Administrative Rule 16-99-4 states that if a brokerage firm receives funds that is not immediately going into a neutral escrow account, then it must go a trust account that has the Principal Broker as trustee.
17. Isn't the amended disclosure for items that disclosure is of item that "directly, substantially, and adversely affects the value of the property" - I-2.
 - Correct, the right of recession exists for material facts that are adverse to the value of the property. So a Buyer telling the Seller that there are some small scuff marks on the door that were not disclosed likely does not require an amended disclosure statement.
18. Why does PC list a 1031 Addendum without providing a 1031 Addendum?
 - The Standard Forms Committee is working on creating one to help educate clients, but in the meantime it is my understanding that most exchange intermediaries have a whole packet of documents that encompass the 1031 Addendum.
19. Regarding I-4 Updated Disclosures: 1. Are items discovered under J-1 (that are not disclosed to the seller) covered under the I-4 15 day period or the J-1 deadline? 2. Is the 15 days period in I-4 statutory?

- (1) The items discovered by the Buyer can be at any time. So the J-1 inspection period may be the most likely time that a Buyer discovers new information, but it could come out later. It helps to keep the J-1 deadlines and the I Section deadlines separate. (2) The 15 days are statutory, you can find it in HRS 508D-6 and 13.

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