



***Presents:***

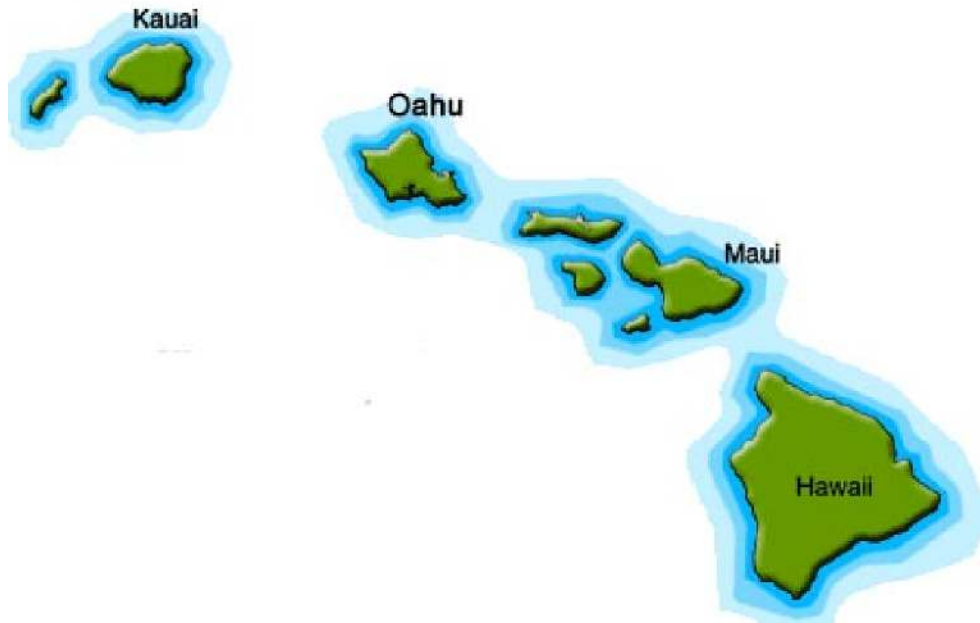
# **BUYER'S INFORMATION PACKET**

(Important information needed to purchase real property in Hawaii)

**Compliments of:**

A dark grey rectangular card for Jeannie Kong-Evarts. On the left side, there is a portrait of Jeannie Kong-Evarts, a woman with brown hair wearing a white blazer, and a landscape photo of a tropical coastline with a white sandy beach and blue water. On the right side, the text is as follows: "JEANNIE KONG-EVARTS" in white, "REALTOR® (S) RS-68054" in light blue, a green leaf-like logo, "808-276-1832" in white, "Email: Jeannie@JeannieKong.com" in white, "www.LivingOnMaui.com" in light blue, "Maui Real Estate Advisors LLC" in white, and "161 Wailea Ike Place A-102 Wailea, Maui, HI 96753" in white.

**JEANNIE KONG-EVARTS**  
REALTOR® (S) RS-68054  
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## MISSION STATEMENT

“Our commitment is to go above and beyond; Our passion is exceeding your expectations; our reward is achieving excellence in your eyes, earning your referrals and maintaining our position as your Real Estate Advisor.”



Dear Property Purchaser;

Thank you for selecting Maui Real Estate Advisors, LLC to assist you in the purchase of real property in Hawaii. The materials included in this packet are designed to be informative and explain important aspects of purchasing property. Please review the material carefully and let us know if you have any questions or concerns.

When a specific property has been selected, we will review the Purchase Contract with you. This process will take approximately 2 hours and will include discussions about home inspection, termite inspection, survey, and many important facets of the offer.

You can benefit NOW by completing a very important step:

*Obtain a free "Loan Pre-qualification Letter" so that you are knowledgeable about what you can purchase. Including the Loan Pre-Qualification Letter with your offer to the Seller can greatly strengthen your offer. We can arrange a convenient and confidential meeting with a Loan Officer at our office.*

We look forward to assisting you with a successful purchase and continued satisfaction with our services. Thank you for your business.

Respectfully,

Your Maui Real Estate Advisors, LLC Representative



## It Pays to Work with a Realtor®

Without the professional guidance and expertise of a **REALTOR**, buying or selling a home can often entail many unnecessary complications regarding real estate transactions. The following information, as prepared by the *National Association of Realtors*, best describes the many benefits of contacting a professional **Realtor** to handle all your real estate needs. The term **Realtor** is a registered, collective membership mark, which identifies real estate professionals who are members of the *National Association of Realtors* and subscribe to its strict Code of Ethics. In the state of Hawaii, the terms used for this professional designation are *Realtor*, meaning a person who has a Broker's license, and *Realtor Associate*, the designation for a Salesperson.

### BUYING A HOME

As a member of the National Association of Realtors, a **REALTOR** subscribes to its strict Code of Ethics.

A **REALTOR** has the most information in one place about what is "on the market", including homes listed by other **Realtors**. You need not waste time looking at unsuitable homes.

A **REALTOR** can help you find the home best suited to your needs – size, style, features, location, accessibility to schools, transportation, shopping, etc.

A **REALTOR** can suggest simple changes that could make a prospective home more suitable for you and improve its utility and value.

A **REALTOR** can supply information on real estate values, taxes, utility costs, municipal services and facilities.

A **REALTOR** has no emotional ties to a home, can be objective about it and can point out its advantages and disadvantages.

A **REALTOR** acts on your behalf, as your agent, to present offers and counteroffers until an agreement is reached.

A **REALTOR** will continue acting on your behalf during the "loan" and "escrow" processes and will explain the steps and help make your purchase a smooth one!



## **Tenancy in Hawaii**

The manner in which a person takes or holds real property will have important legal ramifications. The Buyer's determination as to how title should be taken and held should be made with the advice of legal counsel, and perhaps, a tax advisor or accountant. Since tenancy to real property varies from state to state in custom and interpretation, the following has been prepared to assist the reader in the selection of tenancy to real property located in Hawaii. There are additional ways to hold title to the property such as an LLC or Corporation.

### **TENANCY IN SEVERALTY:**

When one person owns property it is referred to as "solo ownership by the severalty". It simply means that it is owned by one person only and that he alone can use, mortgage, or dispose of the property. Corporations hold title to property by the severalty.

### **TENANCY IN COMMON:**

This tenancy may exist among any number of people, regardless of relationship. Each person has an undivided interest in the property that he is free to convey or pass on to his heirs or assigns. Tenants in common need not hold equal undivided interests (i.e. one tenant may hold a 2/3 undivided interest and the other may hold a 1/3 undivided interest). If married persons acquire a tenancy in common interest, they may hold their undivided interests as tenants by the entirety between themselves (i.e. a married couple may hold a 1/2 undivided interest in property as tenants by the entirety, or joint tenants, between themselves, which interest is held in common with other holders of the undivided interest). Property under this tenancy may be attached.

### **JOINT TENANCY:**

This tenancy may exist among two or more persons, regardless of relationship. Each has an equal undivided interest in the property with right of survivorship. A joint tenant may not "will" his interest or "partition" the property held by joint tenancy. Property under this tenancy may be attached. Divorce does not affect tenancy.

### **TENANCY BY THE ENTIRETY:**

This tenancy may exist only between husband and wife. One tenant by the entirety may not terminate the tenancy by a separate transfer of his interest in the property (though he may convey his interest to the other tenant) nor may he "partition" the property. The death of one vests title solely in the other and therefore, it is impossible to pass title by "will". The property may not be attached as to the obligations of only one tenant by the entirety. Upon divorce, tenancy by the entirety becomes tenancy in common.



## Homeowner's Property Tax Exemption

The Hawaii home exemption law was enacted to provide some tax relief and encourage home ownership. The basic home exemption is deducted from the assessed value of the property and the homeowner is taxed on the balance. Refer to County website below or call for more information.

**QUALIFICATION:** You are entitled to the home exemption if:

- 1) You own and occupy the property as your principal home.
- 2) Your ownership is recorded at the Bureau of Conveyances preceding the tax year for which you claim the exemption. Completion dates vary by County.
- 3) You file a claim for home exemption with the Real Property Assessment Division preceding the tax year for which you claim the exemption. Completion dates vary by County.

### OTHER EXEMPTIONS AVAILABLE ARE:

- 1) Totally Disabled Veterans
- 2) Blind, Deaf or Totally Disabled
- 3) Hansen's Disease

**MINIMUM TAX:** Parcels of real property including those that qualify for a home exemption are subject to a minimum tax.

### FOR ADDITIONAL INFORMATION:

County of Maui:

<http://www.co.maui.hi.us/>

Go to: Departments > Finance > Real Property Tax Division > Real Property Tax Forms & Instructions > Home Exemption Application  
(808) 270-7297

Dept of Finance, Real Property Tax Division

Service Center, Suite A-16, 70 E. Kaahumanu Avenue, Kahului, HI 96732



## **FIRPTA: Foreign Investor Tax Act**

The Foreign Investment in Real Property Tax Act (section 1445 of the IRC code) of 1980 ("FIRPTA") provided that foreign investment in U.S. real estate would be subject to U.S. capital gains tax on dispositions of U.S. real property interests [defined as (a) any interest in U.S. real property of (b) any interest in a U.S. corporation in which 50% of its assets constitute U.S. real property interests.

### **GENERAL RULE:**

Under the law, the Buyer or transferee of any U.S. real property interest is required to (a) withhold and deduct a tax equal to 15% of the amount realized by the Seller or transferor upon the disposition of the property regardless of the amount of cash otherwise present in the transaction and (b) file Forms 8288 and 8288-A to report and transmit the amount withheld to the IRS, unless one of five exemptions applies.

However, the transferee's compliance with the withholding requirement does not relieve the transferor from its FIRPTA tax liability. The tax is designed only to approximate the transferor's tax on net gain and is still required to file a federal income tax return with the IRS for the year in which the sale occurs and either (a) obtain a refund of any amount over withheld or (b) make additional payments required in excess of the amount of tax previously withheld.

### **EXEMPTIONS FROM WITHHOLDING:**

- 1. Transferor furnishes Non-Foreign Status Certification.** No withholding is necessary if the seller or transferor furnished to the transferee a certification stating that the transferor is not a foreign person and stating their U.S. taxpayer identification number. The transferee must keep such certification for at least 5 years.
- 2. Purchase Price for Residence.** No withholding is necessary if an individual transferor who is owner occupant acquires the property and the price does not exceed \$300,000.
- 3. Transferee Receives IRS Withholding Certificate.** The withholding may be reduced or eliminated pursuant to qualifying statement issued by the IRS. The IRS in cases may issue this certificate where (a) the transferor is exempt from U.S. tax, (b) an agreement for the payment of tax is entered into with the IRS, or (c) reduced withholding is appropriate. The IRS must act upon a completed application for a withholding certificate not later than the 90<sup>th</sup> day after its receipt.
- 4. Notice of Non-recognition Treatment.** No tax is necessary if transferee (a) receives the appropriate notice from transferor that the transferor is not required to recognize gain or loss with respect to the transfer in compliance with the requirements of Treasury Regulations 91.1445-2(d)(2) and (b) provides a copy of the notice to IRS within 20 days of the property transfer. **Have a Tax Attorney review the notice** to ensure compliance with requirements of the exemption before closing.
- 5. U.S. Corporation not USRPI.** Sale of stock in a U.S. corporation may be exempt from withholding under certain circumstances. **Consult with your attorney** on matters related to the sale of stock.



## **HARPTA: Hawaii Real Property Tax Act**

**USE OF HAWAII FORMS ON TAX WITHHOLDING:** In order to promote a greater level of compliance by nonresidents of Hawaii (whether U.S. persons or foreigners) in reporting income from sales of real property located in Hawaii, the Hawaii legislature enacted (and recently amended Section 235-68, Hawaii Revised Statutes (“HRS”), requiring every Buyer of Hawaii real estate to deduct, withhold and pay to the Hawaii Department of Taxation 7.25% of the amount realized by the Seller or transferor of Hawaii real estate. This withholding requirement, as amended, is effective on August 1, 1991. This 7.25% withholding tax is designed to enforce Hawaii state income taxes on the sale or disposition of Hawaii real estate in the same manner as the enforcement provisions of The Foreign Investment in Real Property Tax Act of 1980 (“FIRPTA”). Similar to FIRPTA enforcement provisions, the state tax-withholding requirement would not increase the amount of income tax paid by nonresidents since the amount withheld will be claimed as a payment on the Hawaii nonresident income tax return.

**GENERAL RULE:** Under the Hawaii withholding requirement, the Buyer or transferee of any Hawaii real estate is required to (1) withhold and deduct a tax equal to 7.25% of the amount realized by the Seller or transferor upon the disposition of the property and (2) file Forms N-288 and N-288A to report and transmit the amount withheld to the Hawaii Department of Taxation within 20 days of escrow closing, unless one of four exemptions apply.

### **EXEMPTIONS FROM WITHHOLDING:**

**1. Transferor furnishes Hawaii Resident Certification.** No withholding is necessary if the Seller or transferor furnishes to the transferee a property completed Form N-289 stating (a) the transferor’s taxpayer identification number and (b) that the transferor is a Hawaii resident. However, this exemption will not apply if the transferee has **actual** knowledge that the information on the Form N-289 is false. (Note that the recent amendments to the definition of Hawaii resident for purposes of the withholding required by HRS 9235-68 would include foreign corporations and partnerships which are registered with the Hawaii Department of Commerce and Consumer Affairs to do business in the State of Hawaii.)

**2. Transferor’s Affidavit of Principle Residence.** No withholding is necessary if the transferee receives an affidavit by the transferor stating (a) the transferor’s taxpayer identification number, (b) that the transferor used the property as a principle residence for the year preceding the date of the transfer and (c) the sales price for the property does **not exceed** \$300,000.

**3. Transferee Receives Hawaii Withholding Certificate.** (a) The withholding under HRS 9235-68 may be reduced or eliminated pursuant to a “withholding certificate” issued by the Hawaii Department of Taxation. A withholding certificate may be issued by the Hawaii Department of Taxation upon receipt of Form N-288B establishing that either (1) the transferor will not realize any gain with respect to the transfer or (2) the transferor will have insufficient proceeds to pay the withholding required by HRS 9235-68 after payment of all costs, including selling expenses and the amount of any mortgages or liens secured by the property. (b) The withholding may also be reduced or eliminated pursuant to a “written agreement” with the Hawaii Department of Taxation. Persons who engage in more than one real property transaction in a calendar year or to whom meeting the withholding requirements are not practicable are eligible to enter into these written agreements.

**4. Notice of Non-recognition Treatment.** No withholding is necessary if transferee receives from transferor a properly completed Form N-289 stating (1) that transferor is not required to recognize gain or loss with respect to the transfer and (2) briefly describing the transfer and summarizing the law and facts supporting transferor’s claim. Non-Hawaii residents doing 1031 exchanges of real estate may consider this option to avoid withholding.





## **Agency: Definition of Client & Customer**

### **CUSTOMER:**

Seller's Agents can help you as a Customer write your offer on a standard Purchase Contract, can present your offer to the Seller, and can report back any acceptance or counter offer. In short, they can transmit your offer to purchase even though they are agents of the Seller.

Brokers know that their Sellers are often interested in the Buyer's background and qualifications. This is especially true when you are asking the Seller to help finance the purchase or to wait until you qualify for a loan. Be prepared to discuss your financial qualifications with the Broker just as if you were talking directly to the Seller.

Without necessarily becoming your Agent, Brokers offer many services that you may find helpful as you decide about the right property and the right terms or the purchase offer. Even though the Seller employs and pays the Broker, the Broker traditionally works closely with prospective Buyers to provide help and decision-making information, such as:

- The type of neighborhood,
- Location of available properties & describe their attributes and amenities,
- Respond honestly and accurately to questions concerning the property,
- Disclose material facts the Broker knows,
- Comparable values,
- Financing opportunities and procedures,
- Property's condition and title,
- Closing procedures,
- Estimated monthly expenses,
- Closing costs

### **CLIENT:**

If you wish, you can retain the services of a Broker to help you buy real property – just as you would hire an accountant or attorney. You become a Client in the purchase and your Broker represents you exclusively. You gain all the benefits of your Broker's experience and expertise. Your Broker will write offers, negotiate on your behalf, and share with you as much insight as possible in the negotiations.

The Broker, in a Client relationship, owes fiduciary duties of loyalty and faithfulness along with the items listed above which includes providing help and decision-making information.



## **Company Agency Policy**

### **SINGLE AGENT:**

Maui Real Estate Advisors, LLC and its Sales Associates shall act as Single Agents when representing either the Seller or the Buyer. In an open-house situation, the Seller is the Client and the Buyer is sometimes the Customer and sometimes the Client (when only the listing Sales Associate is involved), for example, when the Buyer has already entered into an "Exclusive Buyer Agency" with the Listing Broker before seeing the property.

In most cases, however, Buyers are Clients. Sellers are Clients ONLY if the company is the "Listing Broker", not when the Company represents a Buyer on cooperative brokerage transactions with another firm.

### **CONSENSUAL DUAL AGENCY:**

When listing a Seller's property, disclosure is made that the Company's policy is one of Consensual Dual Agency with Seller's Consent. This occurs when a Buyer-Client, represented by one Sales Associate in the Company, decides to purchase a Seller-Client's property represented by another Agent in the Company. In the case of dual agency, Maui Real Estate Advisors, LLC and its Sales Associates will limit their fiduciary duties (loyalty and full disclosure) by neither disclosing to the Buyer the lowest price or flexibility in terms that the Seller will accept, nor disclosing to the Seller the highest price or flexibility in terms that a party considers confidential. The Sales Associates will agree to keep the confidential information of one Client from the other Client.

In the case of Dual Agency, the Sales Associate has the duty to make a full, fair and timely disclosure of all material facts and information within his/her knowledge readily available to the other Sales Associate which might in any way affect either the Seller's or the Buyer's rights and interests or otherwise influence either party's actions or decisions in connection with the completed transaction.



## **Seller's Real Property Disclosure**

NOTE: It is our Company policy to disclose any homicide, felony, or suicide to the best of our knowledge that occurred on the real property no matter how many years have past since the incident occurred. Also, any other information regarding property condition or history known to the Listing Agent (and not disclosed by the Seller) shall be disclosed by the Listing Agent (and not disclosed by the Seller) shall be disclosed by the Listing Agent, in writing, and prepared separately from the Seller's Real Property Disclosure Statement.

**DEFINITIONS:** A *Material Fact*, as stated in the law, is "any fact, defect, or condition, past or present, which materially affects the value of the residential real property being offered" for sale. The definition of *Residential Real Property*, for this purpose, shall be any "fee simple or leasehold real property from one to four dwelling units; or a residential condominium or cooperative apartment."

**EXEMPTIONS:** None for the standard homeowner or investor. Banks who acquire title via foreclosure are exempt.

**EXCLUSIONS:** An occupant is/was afflicted with AIDS or AIDS related complex should not be disclosed. However, a death from this cause should be disclosed without relating the cause. Or, if the property was the site of an act or occurrence that had no effect on the physical structure of the physical environment of the property or the improvements. An example could be a random arrest made on the front lawn of the home.

**RECEIPT OF DISCLOSURE:** The Buyer shall indicate receipt on the contract, or in any addendum attached to the contract or in a separate document. The Seller's agent shall keep these receipts taken for disclosure on file for a period of three years from the date the receipt was taken.

**STATUTE OF LIMITATIONS:** Any action brought under this chapter shall commence within two years from the date the Buyer received the disclosure statement; provided that if no disclosure statement was delivered to the Buyer, then the action shall commence within two years of the recorded sale of the residential real property.



## **Lead-Based Paint Disclosure**

Federal law, passed in 1996, has made it mandatory that the presence of lead-based paint be made known to prospective purchasers of real property. This law applies to both sales and leases of most public and private housing built prior to 1978.

**FEDERAL REQUIREMENTS:** The law requires that the Seller provide the Buyer with the (1) opportunity to inspect the property (with or without the aid of a professional inspection), and the Seller (2) must disclose any known information regarding the existence of lead-based paint (but the rule does not obligate the owner to conduct any testing or perform any hazard reduction); the law requires that the Seller (3) provide available reports (if any lead hazard evaluations or reports exist); and the Seller will provide a federal approved lead information pamphlet (this disclosure must occur before the Buyer is obligated under the contract); then (4) the signed acknowledgement of receipt of the pamphlet and understanding of the law must be retained by the Seller for 3 years.

**EXEMPTIONS TO THE LAW:** This Federal Law does not apply to the following categories of housing—

- Sales or rentals of “0” bedroom dwellings (studios)
- Rentals of individual rooms in housing
- Sales/rentals of housing for the elderly/handicapped
- Rentals in certified lead-free housing
- Short-term rentals (vacation/hotels, motels, etc.)
- Mortgage servicing and financing
- Foreclosure sales

**INSPECTION OPPORTUNITY:** The law provides the Buyer with an opportunity to finance and conduct an inspection to determine risk assessment for the property, at the Buyer’s expense. The parties to the transaction can negotiate the timing and terms of such inspection(s) on the sales contract. Along with the right to inspect, the Buyer will be provided (as stated above) with an EPA/HUD/CPSC pamphlet that explains the dangers associated with lead poisoning.



## **Mold and Mildew**

**MOLD AND MILDEW:** Tropical climates with warm temperatures, high humidity and frequent precipitation are conducive to the propagation of mold, mildew, fungus and other types of bacterial growths. Though a home, building, deck, surface or other improvement on a property can be cleaned to satisfactory appearance there is no guaranty that mold, mildew, fungus and other types of bacterial growths can be eliminated. A Purchaser should be aware that all properties have hidden, enclosed and unreachable areas where growths can occur and not be detected.

If the Purchaser, any member of their family, or persons who will inhabit subject property has respiratory, skin or other health ailments or conditions that can be effected by mold, mildew, fungus or other types of bacterial growths they should seek counsel before completing this purchase. Individuals who may be capable of providing counsel are professional home inspectors, medical health professionals, scientific research professionals, Certified Industrial Hygienist (CIH) or other environmental specialists and/or others who have requisite knowledge in matters of detection and lab analysis services.

Neither the Sellers, Brokers nor Agents associated with this contract have the requisite knowledge to provide counsel as to the presence, likelihood of conditions conducive to propagation of mold, mildew, fungus and other type of bacterial growths. Nor can the aforementioned individuals associated with this contract counsel the Purchasers as to the effect the aforementioned conditions can have related to their health, welfare and continued enjoyment of this property. The Purchaser cannot hold liable the Sellers, Brokers or Agents associated with this transaction related to the skill, ability and professional performance of those individuals the Purchaser hires for the purpose of inspection and analysis. The purchaser is solely responsible for the selection and hiring of these individuals.



## **Property Inspection**

**PROPERTY INSPECTION:** When purchasing a property, especially first time Buyers, there are so many details to take into consideration it's hard to know which detail is more or less important than another. The simple answer is they're all important. But one detail that this Company feels is extremely important is the property inspection. With our harsh tropical climate, humidity, heat, termites, mold, mildew, dry-rot and many, many more concerns which can affect the integrity of a structure, having a thorough inspection of all components of a property is very important. We recommend you hire at the minimum a home inspection service to go over the property with you to explain its current repairs, whether immediate in nature or future repairs, to adequately maintain or extend the life of the improvements. Whomever you choose should be licensed and bonded and provide references. You can additionally check these people out with the State of Hawaii Regulated Industries, Better Business Bureau, Chamber of Commerce and many other organizations and individuals who can assist you in evaluating their qualifications. **DON'T DO THE INSPECTION YOURSELF** unless you are fully qualified to ascertain what is seen and unseen when performing an inspection.

We strongly recommend against performing a home inspection yourself. Should you choose not to hire a professional inspection service, then we strongly recommend you hire a professional inspection service, then we strongly recommend you hire, as appropriate, a licensed professional contractor, roofer, pool service, engineer(s), entomologist, etc. or other qualified individuals or companies to assist you in evaluating this property. This addendum serves notice that you have been adequately counseled on the importance of having a professional property inspection. If you still choose not to have a professional inspection you are doing so against our better judgment and counsel. **DO NOT PURCHASE A HOME WITHOUT A PROFESSIONAL INSPECTION.** The cost of not performing an inspection can far exceed the cost to have one done. The results of the inspection can change the amount you may be willing to pay for a property when you take into consideration the cost for needed repairs. The results of a professional inspection ultimately might influence your decision to cancel this contract and seek a property more in line with what you feel is in better condition or of better value.



## **Arbitration Law**

### **An update to the Arbitration Law went into effect on July 2002:**

On July 1, 2002, significant revisions to Hawaii's arbitration law (Chapter 658A of the Hawaii Revised Statutes) went into effect. As is often the case with a new law, there is certain amount of uncertainty regarding the impact of the new statute. In this instance, some legal commentators feel that the new arbitration statute will cause arbitrations to take on many of the characteristics of litigation. As you know, litigation is a public process that is administered by a judge and is subject to strict rules of procedure and evidence. Litigation can involve substantial amounts of time and the parties may appeal money and the result or award. Under the new arbitration statute, parties cannot assume that arbitration will be cheaper, quicker or less contentious than litigation. **Therefore, parties who are considering entering into any agreement compelling arbitration must consult their attorney and consider the provisions of the new arbitration law to determine whether arbitration is appropriate for their situation.**

For their part, REALTORS® and REALTOR-ASSOCIATES® should not advise their clients whether they should arbitrate any dispute. **Rather, REALTORS®, REALTOR-ASSOCIATES® or REALTOR-SALESPERSONS should advise their clients to consult with an attorney regarding the new arbitration statute and whether arbitration is appropriate in their particular case.**



## Understanding Termites

Your home is probably the largest single investment that you will make and it is important that you learn how to protect it from termite infestation. An infestation by "dry wood" termites can usually be controlled by "spot treatment" or "tenting". But, damage caused by "ground" termite can be more severe and expensive to correct.

**DRY WOOD TERMITES:** All termites feed on wood or other material containing cellulose. They are soil insects with a primary reproductive queen. They start new colonies by swarming out of their present colony to find a mate. This brief period is the only time in their lives when they are attracted to light. Swarming takes place usually from April to June and maybe in October on hot, still, humid evenings.

The most common termite is the West Indian Dry Wood Termite, *Cryptotermes Brevis*. This termite gains entry to homes either by being carried into the home in infested items (such as furniture or books) or by flying. This is how it often gains access to high-rise condominiums. This species lives right inside the wood it eats and obtains water from the wood. The droppings from this termite are very hard, somewhat oblong, and vary in color from light to dark brown. These droppings accumulate in the wood and then a small hole is created just large enough to push the droppings out. They perform this house cleaning periodically which is why the droppings may only be seen on an intermittent basis.

The Dry Wood Termite is controlled by treating isolated spots or by tent fumigation. For approximately 20 years tenting has been done with the gas, Vikane, also known as sulfuryl fluoride. This gas is designed to penetrate even large pieces of wood, leaving no residue; so theoretically, the termites could reinfest the next day. Because they reproduce slowly and have small colonies, it takes several years before "dry wood" termites can do damage of any significance.

**GROUND TERMITES:** The termite of extreme concern to the homeowner is the Formosan Subterranean Termite, *Coptotermes formosanus* whose colonies range in size up to two million termites or more. The queen may live for 20 years and lay up to 2000 eggs a day. Satellite colonies may develop, each with its own queen. Unlike the dry wood termites which lives right in the wood, the ground termite nests in the ground and forages over three quarters of an acre in search of food. Once it has found a good source it will persistently attack from several directions. A colony will consume, on average, two pounds of wood each day. If cut off from one avenue of entry to the property, they will search for others. Typically, this termite lives in the ground because it requires a humid environment. Therefore, it stays inside walls or within a piece of wood. This characteristically conceals it until significant damage has been done.

These termites have a very high moisture requirement; therefore they will search for wet areas. This is why down spouts should drain away from the foundation, sprinkler systems should not be placed close to the house, and water should not be allowed to accumulate adjacent to or under house. This termite enters a house in numerous ways: through hollow tile walls, around plumbing which penetrates a concrete slab, or through cold joints or cracks in a slab. They will build a characteristic "mud tube" to gain access to the house and for this reason the edge of the foundation should not be obscured with plants and siding should not extend to the soil. Cold joints around the outside of the house should not be covered with doorframes or siding. Fence posts should be metal poles; any wood kept at least four inches above the soil and should not be attached directly to the side of a house. Soil-to-wood contact of any kind should be avoided whether it is fences, siding or just scrap wood which is stacked on the ground. This insidious pest will also attack non-wood items such as electrical and telephone cables, plastics, metals, etc. It has caused electrical short circuits, fires, blacked out large areas by chewing through electrical and telephone cables and lines, and chewed holes in PVC water mains.

The ground termite cannot be controlled in the same way as the dry wood termite. It is excluded with physical or chemical barrier. Injecting a liquid insecticide under the slab of the house or other areas does traditional treatment. A newer system of setting baits in the ground to attract termites is now also available. The poison bait is designed to eliminate them in their nest. Consulting a Licensed Pest Control Company is highly recommended for every Buyer.





## **What to Expect from a Termite Inspection**

1. A non-destructive inspection will be performed on the house by a licensed pest control company. Walls will not be opened; floors or wall-to-wall carpet will not be pulled up. The inspection is limited to those areas that are visually accessible. No claim is made for wall voids, behind and under kitchen and bathroom cabinets, under floor coverings and any and all areas not visually accessible. The roof will not be inspected.
2. The current Termite Inspection Report as mandated by State law (Hawaii Revised Statutes Chapter 460-J-19) requires that the report be done on a form called a PC-9. The inspector is to identify any old termite damage and identify conducive conditions as well as any live, visible infestations. However, the report is limited to what extent there is live, visible termite infestation in the improvements located on the property and limited to what extent there exists visible prior or present termite damage. The word "damage" is subjective, and as used here, reflects only the opinion of the inspector.
3. The Buyer and Buyer's agent should attend the inspection. The Buyer should ask questions and learn from the inspector. Depending upon the inspector and the size of the improvements, the termite inspection can take anywhere from ½ hour to several hours.
4. No warranty is either expressed or implied with the inspection. The inspection is limited to the date and time of the inspection. Minutes after an inspection, termites could enter the improvements. The report does not warrant against future infestations or conditions nor does it warrant against any type of infestation other than termites.
5. If the inspection report indicates there is **VISIBLE** damage to the improvements caused by termite infestation, Seller must disclose this under paragraph C-44a, Later Discovered Information. The Seller Disclosure Law of Hawaii allows the Buyer to review this new information and have up to 15 days to decide whether to terminate the Purchase Contract if the Buyer does not approve the Termite Inspection Report regardless of whether or not Seller agrees to repair said damage.

### **SUGGESTIONS FOR THE PREVENTION OF TERMITE INFESTATIONS:**

1. Keep the perimeter of the house as dry as possible. Use gutters and down spouts to divert water away from the house. Cap off or redirect sprinklers, which may be wetting the soil adjacent to the house.
2. Avoid all soil-to-wood contact including fences/decks, & do not store wood in the yard or adjacent to the home.
3. Maintain at least four inches between any siding and the grade of the soil.
4. Plants should not be grown under the eave of the house or within eighteen inches of the house.
5. Homes should be treated for prevention of ground termites every three years and inspected every three months.
6. It is highly advisable to seek proper advice on architectural design (with termites in mind), construction techniques, preventive termite measures and landscaping design. We cannot over-emphasize how important it is to treat for prevention of ground termites. They are very pernicious and capable of extensive damage before being detected. It is much easier to keep them out than destroy them once they have invaded a home. Termite prevention is a multi-industry task. Seek proper advice!



## **Buying a Condominium, Co-op or PUD**

**CONDOMINIUM RESERVES:** In 1991, the legislature passed a law requiring all condominium associations to (1) adopt and follow budgets and (2) 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.

Reserves are money, which a condominium board collects regularly from owners and saves to pay the large, future expenses, which result from the deterioration of the condominium project over time. For example, the costs of repairing or replacing the roof and elevators.

Buyers are encouraged to read the condominium reserve study and financial documents before deciding to purchase the unit. These documents will be provided during the escrow process, according to the Purchase Contract, and a period of time is stipulated on the contract for this review. If the Buyer it is presumed that the documents are "accepted as received" and the option to terminate the contract on takes no action this basis will be waived.

**MAINTENANCE FEES:** The Buyer should be aware of what items and costs are included in the maintenance fee, such as central air conditioning, electrical, water, hot water and other similar charges. Generally, buildings with a larger number of amenities have larger maintenance fees. With regard to Bank-Owned Properties (REO's), Buyer should be aware of Act 48 and its application towards delinquent fees. Buyer may be responsible for up to 12 months or \$7,200 of delinquent fees, whichever is less.

**COMMON ELEMENTS:** Common elements of the building usually consist of such items as laundry rooms, swimming pools, grounds, decks, recreation areas, meeting rooms, laundry chutes, lobby areas, hallways, storage areas, saunas, etc. They are comprised of those areas not inside apartments and are intended for use by the apartment owners in accordance with the purpose for which they were intended. The purchaser of the apartment will be also purchasing a proportionate percentage interest in these elements and will also pay a proportionate amount of maintenance fee for their upkeep. Limited common elements, which have restrictions on use and can be rented for income or used on a limited basis. Examples of such limited common elements could be a convenience store, shop, kiosk, parking lot, etc.

**CONDOMINIUM DOCUMENTS:** On the Purchase Contract, the Buyer's obligation to buy is contingent upon the Seller providing information about the Homeowner Organization Documents for review and approval. The usual documents under review include: Declaration and Amendments, Current House Rules, Current and/or Proposed Budget, Minutes of the last Annual Meeting, By-laws and Amendments, current Financial Statement, Board of Directors Meetings, Articles of Incorporation, Inventory of Furniture, Copy of any and all litigation complaints filed by or against the A.O.A.O that are currently unresolved, the Reserve Study or Summary and Property Information Form RR-105C.

**PARKING STALLS:** The declaration for the condominium will designate the parking stall, which is appurtenant to the respective apartment. The parking stall is a limited common element and the costs and expenses such as maintenance, repair, replacement, additions and improvements shall be charges to the owner of the apartment to which the limited common element is appurtenant in an equitable manner as set forth in the declaration. When selecting an apartment to purchase, it is important to see the parking stall. Verify the location, size, and other features such as covered, uncovered, tandem, compact, in order to know what you are buying.

**Your agent will be happy to assist you in understanding these important issues and documents or will help you obtain further explanation from the condominium management company if necessary.**



## Buying a Single Family Home

The Purchase Contract contains some issues, which pertain primarily to the purchase of a single-family residence. The most important of these are the following:

**SURVEY:** A survey confirms the accuracy of the description of the property, the accuracy of the land area, and the existence or absence of encroachments onto the property or onto a neighboring property. The Company policy is to require the following paragraph be included in the terms of the Purchase Contract.

**K-2 Survey.** Within ( ) days after the Acceptance Date, Seller shall, at Seller's sole cost and expense,

have a land surveyor licensed in the State of Hawaii: (a) survey the Property even if the boundary points are visible and;(b) if improvements exist along the Property line, provide Buyer with a map (with surveyor's stamp) and accompanying report to show the perimeters of the Property and the location of any improvements in the vicinity of the perimeter Property lines. The survey and map may not address whether improvements on the Property are in compliance with State and/or County requirements, subdivision covenants, conditions, and restrictions, and/or condominium property regime requirements.

**K-3 Boundary Encroachment.** If encroachment(s) onto an adjoining property or onto the Property by an adjoining property is revealed or discovered, Buyer may elect to accept (in writing) such existing encroachment(s) at its current location, within ( ) days of discovery, or Buyer shall instruct Seller to, and Seller shall use Seller's reasonable efforts to: (a) remove such encroachment(s) if acceptable to Buyer at Seller's and/or the adjoining owner(s)' sole cost and expense; or (b) obtain encroachment agreement(s) at Seller's and/or the adjoining owner(s)' sole cost and expense, with the affected adjoining owner(s) which is acceptable to Buyer, and if neither (a) nor (b) occurs within ( ) days prior to closing, Buyer may accept the encroachment(s) or elect to terminate this Purchase Contract pursuant to Paragraph O-3. If in remedying the revealed encroachment(s), the encroachment(s) is partially or totally removed, then

Seller shall be responsible for the correction of the survey (if Paragraph K-2 was checked) to reflect any changes in the revealed encroachment(s) no later than ( ) days prior to closing. Under Chapter 669 Hawaii Revised Statutes, certain tolerances for discrepancies involving improvements built along the boundary line of the Property for specific zonings are established, and such improvements may be considered de minimis.

**M-1 Contingency on Documentation Approval.** Buyer's obligation to purchase the Property is contingent upon Seller providing the following documentation to Buyer for review and approval. (Applicable Documents Only)

***Approved Minutes of Last (3) Board of Directors Meeting, Current and/or Proposed Budget, Current House Rules, Articles of Incorporation/Association and Amendments, if any, Declaration and Amendments, if any, Design Standards and/or Guidelines, Bylaws and Amendments, if any, Insurance Summary, Copy of any and all pending litigation complaints filed by or against the Owners Association and/or its directors that are currently unresolved, if any, Lenders Disclosures, if obtainable, Minutes of Last Annual Meeting, Planned Community Documents, Covenants, Conditions & Restrictions (CC&R's), Project Information Form RR105c, if obtainable, Current Financial Statement, Reserve Study or Summary, if obtainable, Subdivision and/or Title Documents, Other, be specific. (ADDITIONAL LANGUAGE IN CLAUSE M-1 NOT INCLUDED)***

**Note: Buyers are given this information to assist them in selecting a property to purchase. Sellers are advised to read this information so that the questions that Buyers ask can be easily answered.**



## **Important Terms of the Purchase Contract**

The Purchase Contract contains fourteen pages of terms which are either standard or offer optional choices (those with check boxes). All Buyers should review the paragraphs listed below. If you have any questions, please feel free to ask your Agent to explain in greater detail:

### **CLOSING**

**F-2** For purposes of this Purchase Contract, closing shall be the date when all appropriate conveyance documents are recorded. Buyer and Seller agree to promptly execute appropriate or customary documents when requested by Escrow.

### **MEDIATION AND ARBITRATION**

**O-4 Mediation.** If any dispute or claim arises out of this Purchase Contract during this transaction or at any time after closing between Buyer and Seller, or between Buyer and/or Seller and a Brokerage Firm and all its licensees assisting in this transaction, and the parties to such dispute or claim are unable to resolve the dispute, Buyer and Seller agree in good faith to attempt to settle such dispute or claim by non-binding mediation. This paragraph shall not apply to any complaint of unethical conduct against a Brokerage Firm and all its licensees who are obligated to comply with the Code of Ethics of the National Association of REALTORS®. Such complaints must be brought before the Local Board of REALTORS® of which the Brokerage Firm and all its licensees are members.

**O-5 Arbitration.** If any dispute or claim arises out of this Purchase Contract during this transaction or at any time after closing, between Buyer and Seller, or between Buyer and/or Seller and a Brokerage Firm and all its licensees assisting in this transaction and if such dispute cannot be resolved through mediation, then the parties are encouraged to consider arbitration. It is recommended that the parties seek legal counsel to make this determination.

**I-6(c) Asbestos Disclosure.** Buyer is aware that asbestos materials are hazardous to one's health, particularly if asbestos fibers are released into the air and inhaled. In the past (before 1979, but possibly since) asbestos was a commonly used insulation material in heating facilities and in certain types of floor and ceiling materials, shingles, plaster products, cement and other building materials. Buyer is aware that Buyer should make appropriate inquiry into the possible existence of asbestos on the Property. Structures having "popcorn" or "cottage cheese" type ceilings may contain asbestos fibers or asbestos-containing material. Such ceilings should not be disturbed since it could release asbestos fibers in the air. Any disturbance should be done only by licensed abatement contractors.

**J-5 No Continuing Warranty.** Buyer understands that no continuing warranty after closing regarding the interior or exterior of the Property is expressed or implied.

**J-6 Home Warranty Programs.** Buyer understands that Buyer may obtain from a third party for a fee, home warranties covering appliances, electrical and plumbing equipment and other items

included with the Property. If such a home warranty is available, it may be obtained at Buyer's expense from any provider of Buyer's choice.



## Buyer's Acknowledgement of Receipt of Buyer's Information Packet

I, \_\_\_\_\_, hereby acknowledge that I have received, read and understand the information contained in this packet. The complete packet includes the following:

- Letter to the Buyer
- It Pays to Work with A Realtor®
- Tenancy in Hawaii
- Homeowner's Property Tax Exemption
- FIRPTA: Foreign Investor Tax Act
- HARPTA: Hawaii Real Property Tax Act
- Agency: Definition of Client & Customer
- Company Agency Policy
- Seller's Real Property Disclosure
- Lead-Based Paint Disclosure
- Mold and Mildew
- Property Inspection
- Arbitration Law
- Understanding Termites
- What to Expect from a Termite Inspection
- Buyer a Condominium, Co-op or PUD
- Buying a Single Family Home
- Important Terms of the Purchase Contract

Buyer's Signature

Date

Buyer's Signature

Date