

Informational Bulletin 22-01
Relating to Seller Disclosure of Short-Term Rentals

Effective March 28, 2022, City Ordinance 22-6 (Bill 2), Relating to Short-Term Rentals, sellers are obligated to disclose whether or not the subject residential real property for sale may be used legally as a short-term rental. Notice of Ordinance 22-6 was published on the City's website on April 7, 2022. See www.honolulu.gov/dppstr

Key Elements of New City Ordinance 22-6:

- **City Seller Short-term rental disclosure requirement.** Sellers of residential real property in the City and County of Honolulu are now required to disclose on a form prescribed by DPP stating (i) whether or not the operation of a short-term rental is a legal use for the residential real property being sold and (ii) the reasons for such determination. [Sec. 41-___.2(b)]
- **Short-Term Rentals.** “Short-term rentals” mean “a bed and breakfast home” or “transient vacation unit” as defined in Section 21-10.1, ROH. [Sec. 41-___.1, Definitions].
 - **Bed and Breakfast Home.** Currently, “Bed and breakfast home” means a use in which overnight accommodations are advertised, solicited, offered, or provided, or a combination of any of the foregoing, to guests for compensation, for periods of less than 30 days, in the same detached dwelling as that occupied by an owner, lessee, operator, or proprietor of the detached dwelling. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services, or labor of guests. [Section 21-10.1, ROH].
 - **Transient Vacation Unit.** Currently, “Transient vacation unit” means a dwelling unit or lodging unit that is advertised, solicited, offered, or provided, or a combination of any of the foregoing, for compensation to transient occupants for less than 30 days, other than a bed and breakfast home. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services, or labor of transient occupants. [Section 21-10.1, ROH].
- **HRS, 508D, Mandatory Seller Disclosures in Real Estate Transactions.** These new City seller disclosure requirements are in addition to the seller disclosure requirements under HRS, Chapter 508D. [Sec. 41-___.2(a)].
- **City Short-Term Disclosure Statement.** The City's prescribed Short-Term Rental Disclosure Statement may be found at www.honolulu.gov/dppstr
- **Evidence of legal use as short-term rental.** If the subject residential real property is disclosed as a legal short-term rental on the date of the seller's disclosure statement, the seller must also provide the buyer:
 - The applicable government permit number (NUC number or short-term rental registration number), and
 - Tax clearance certificates evidencing payment of general excise taxes and transient accommodation taxes owed to date. [Sec. 41-___.2(c)].

- **Time Period for Disclosure.** *Prior to the execution of a real estate purchase contract by buyer*, seller shall deliver to buyer the documentary evidence verifying the legal short-term rental. [Sec. 41-___.2(d)].
- **Submission to DPP.** If seller discloses a residential real property as a legal short-term rental, seller must submit with seven (7) days after closing of the sale of the property a document identifying the subject property by street address and TMK, with copies of documentary evidence substantiating the legal short-term rental. [Sec. 41-___.2(e)]. Email completed forms and information to STR@honolulu.gov
- **Violations.** Violations would be subject to civil and criminal penalties. [Sec. 41-___.3].

Q&A, Guidelines and Considerations in the Implementation of City Ordinance 22-6:

Disclaimer: The following guidelines and considerations are intended solely for informational purposes only to the members of the HONOLULU BOARD OF REALTORS®, providing some plain level of interpretation and understanding of City Ordinance 22-6 (Bill 2), and is not intended to provide and should not be interpreted to provide any legal advice, opinion, or consultation in any respect or manner concerning any particular sale of residential real property, the facts and circumstances of which will differ with each transaction. HBR will continue to seek further clarification on the application and implementation of City Ordinance 22-6 and will report back to its membership as more information is obtained from the City. HBR urges its members to consult with their own legal counsel in these matters when necessary.

1. **When does City Ordinance 22-6 go into effect?** City Ordinance 22-6 was posted on the City’s website on April 7, 2022, showing that the new ordinance became effective upon its approval, which was when the Mayor signed the new measure on March 28, 2022. www.honolulu.gov/dppstr
2. **Does City Ordinance 22-6 apply to every residential real estate transaction in the City and County of Honolulu?** Yes, until further clarification is provided by City or DPP. Ordinance 22-6, Findings and Purpose section states, in part, that “the purpose of this ordinance is to require an owner of residential real property to disclose to a potential buyer, prior to the sale of the property, certain information relating to the property’s eligibility for use as a short-term rental.” Section 41-___.2(b) provides, in part, that seller shall disclose “***whether or not the operation of a short-term rental is a legal use for the residential real property being sold***, and the reasons therefor.” It appears that Ordinance 22-6 would apply to every residential real property being sold.
3. **Check Box 1, Short-Term Rental Disclosure Statement, if seller wishes to disclose that short-term rental is a legal use of the residential real property being sold.** Include with the disclosure statement evidence substantiating that short-term rental is a legal use of the residential real property.

4. **Check Box 2, Short-Term Rental Disclosure Statement, if seller wishes to disclose that operation of short-term rentals is not a legal use of the residential real property being sold.** Sellers and buyers may also refer to the City’s Short-Term Rentals website www.honolulu.gov/dppstr for a list of Approved STRs. Note that the City’s list is not completely up to date and is subject to change.

5. **When does seller submit the Short-Term Rental Disclosure Statement to buyer?** Ordinance 22-6 requires the seller to submit the seller’s Short-Term Rental Disclosure Statement to buyer “prior to the execution of a real estate purchase contract by the buyer” along with documents and information that substantiate the legal use of the property as a short-term rental, if applicable. Given that most purchase contract offers are tendered by the buyer to the seller in the sale of a residential real property, the first opportunity for seller to submit a Short-Term Rental Disclosure Statement appears to be when seller accepts such purchase contract offer or responds with a counteroffer.

NEW – 5a. In order to offer the seller’s Short-Term Rental Disclosure Statement and supporting documents and information to buyer before buyer executes and submits a purchase contract offer to seller, should seller submit such disclosures through the MLS system when commencing the listing of a residential real property? Yes, sellers through its listing broker may upload the disclosure statement, including and supporting information and documents, into the MLS as a means to satisfy the timing requirements under Ordinance 22-6.

NEW – 5b. If seller has not already done so, should seller submit a Short-Term Rental Disclosure Statement to buyer while the residential real property transaction is currently in escrow? Even though buyer and seller have already executed a purchase contract that is in escrow pending closing, seller in good faith may submit to buyer a Short-Term Rental Disclosure Statement along with any supporting documentation as required under Ordinance 22-6. Presumably, the Short-Term Rental Disclosure Statement will be consistent with prior communications that may have occurred between the seller and buyer during the course of the transaction.

6. **Can seller use the HAR Seller’s Real Property Disclosure Statement form to comply with Ordinance 22-6?** No. Sellers must use the Short-Term Rental Disclosure Statement form “prescribed” by DPP.

7. **Is the term for a legal short-term rental under thirty (30) days pursuant to Ordinance 19-18 (Bill 89) or under ninety (90) days as provided under Bill 41 (2021), CD2, if approved by the Mayor without changes?** Assuming the Mayor approves Bill 41 (2021), CD2, this new law relating to short term rentals under 90 days will take effect 180 days after its approval. Bill 41 (2021), CD2, Section 17. As such, the less than 30-day rule under Ordinance 19-18 would appear to apply until the new less than 90-day rule takes effect. This transition in the rules should also be disclosed to the buyer.

- 8. If approved by the Mayor, will there be administrative rules covering the implementation of the new Ordinance?** Yes. During the 180-day period before the new ordinance takes effect, DPP will be required to promulgate administrative rules under Chapter 91, HRS for the implementation, administration, and enforcement of Bill 41 (021, CD2. The public will have more input into this rule-making process. The final administrative rules developed through this process may have an impact on the application of Ordinance 22-6.
- 9. Will real estate agents (listing agent or buyer’s representative) involved in a residential real property transaction be required to take proactive steps to ascertain whether the listed property operates as a legal or illegal short-term rental?** Agent’s due diligence work performed for a client, whether seller or buyer, should include verifying whether or not the subject property is operated or may be operated as a legal STR and whether Ordinance 22-6 applies.
- 10. If sellers or agents have questions about the Ordinance or are unsure whether a property is or is not legal for short term rental, who should they contact?** Parties should contact the Department of Planning and Permitting at 808-768-8000 or go to their website for more information at www.honolulu.gov/dppstr.