



# Shoreline Property Disclosures in Rhode Island

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In 2023 the Rhode Island legislature enacted the shoreline access law (SAL), which establishes lateral public trust rights “up to ten feet (10’) landward of the recognizable high tide line . . . .”<sup>1</sup> Changes to public access through the SAL, coupled with the effects of sea level rise and erosion,<sup>2</sup> have affected the coastal real estate market.<sup>3</sup> This report seeks to clarify the law regarding shoreline real estate sales disclosures and analyze gaps in the short-term rental registration process. Section one of this report will provide an overview of Rhode Island real estate sales disclosure laws with a specific focus on the recent 2024 shoreline disclosure amendments. Although sellers and real estate agents are required to make certain disclosures to buyers regarding public access, the same does not hold true between owners and short-term renters.<sup>4</sup> Therefore, section two of this report will analyze current short-term rental registration requirements and areas in which the law lacks clarity as to the public’s rights to the coast. Finally, section three of this report will conclude with a discussion of more robust shoreline disclosure laws in both Texas and Hawai’i, which could be used as a model in Rhode Island.

## 1 Rhode Island’s General Real Estate Sales Disclosure Laws

Rhode Island has a disclosure mandate for all real estate sales transactions.<sup>5</sup> Importantly, these disclosures apply to all types of property sales, regardless of whether the buyer plans on renting out

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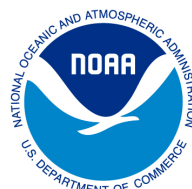
<sup>1</sup> 46 R.I. GEN. LAWS §§ 46-23-26(b), (c) (describing that the recognizable high tide line is the wet line on a sandy beach).

<sup>2</sup> COASTAL RESOURCES MANAGEMENT COUNCIL, *The Rhode Island Coastal Property Guide*, [http://www.crmc.ri.gov/samp\\_beach/cpg\\_erosionrise.html](http://www.crmc.ri.gov/samp_beach/cpg_erosionrise.html) (last visited November 6, 2024) (stating that coastal “erosion is the process by which wave action, wind, and storm surges remove sediment from beaches, dunes, bluffs, and headlands,” one cause being sea level rise).

<sup>3</sup> See Nancy Lavin, *CRMC Affirms Public Access Along Barrington Seawall Despite Lack of Documentation*, R.I. CURRENT (Dec. 15, 2023, 1:13 PM), <https://rhodeislandcurrent.com/2023/12/15/crmc-affirms-public-access-along-barrington-seawall-despite-lack-of-documentation/> (describing a couple in Barrington, Rhode Island who bought a home under the impression that the public could not access the seawall located on the property, however the seawall’s permit from 1981 required a public access point); see also *State v. Ibbison*, 448 A. 2d 728, 729 (R.I. 1982) (describing a dispute between a homeowner and a member of the public as to the public’s privileges to the shore).

<sup>4</sup> Compare 5 R.I. GEN. LAWS § 5-20.8-2(a-d) with 42 R.I. GEN. LAWS § 42-63.1-14(b).

<sup>5</sup> 5 R.I. GEN. LAWS § 5-20.8-2(a-d).



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the property or living in it, and there are no current disclosure requirements that apply only to buyers who intend to rent their property.<sup>6</sup>

Generally, a Rhode Island real estate disclosure form is prepared by the seller, signed by the buyer, states certain requirements, and gives notice to the buyer of all deficient conditions that the seller has actual knowledge of.<sup>7</sup> This disclosure form is not a warranty that all deficient conditions have been accounted for, rather it puts the buyer on notice.<sup>8</sup> While there are certain exceptions, Rhode Island law fully advises buyers to not rely solely upon the representation the seller made in the disclosure similar to the common law principle of caveat emptor.<sup>9</sup> Caveat emptor translates to “let the buyer beware,” meaning that the burden is on the buyer to exercise due diligence when researching the property and potential defects or value losses.<sup>10</sup> Regardless, the buyer is provided some protections as the seller is required to disclose deficient conditions including “any land restrictions, defect, malfunction, breakage, or unsound condition existing on, in, across, or under the real estate of which the seller has knowledge.”<sup>11</sup>

One type of land restriction that is specifically enumerated in the statute are easements.<sup>12</sup> An easement is “an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.”<sup>13</sup> Often created in the form of a public right-of-way,<sup>14</sup> easements are one common legal instrument to ensure public access to the shoreline across properties.<sup>15</sup>

Additional information that is required in the disclosure form includes details of the property’s deed, plat restrictions, and zoning.<sup>16</sup> Specifically for zoning, the disclosure form must state that “[b]uyers of real estate in the State of Rhode Island are legally obligated to comply with all local real estate ordinances.”<sup>17</sup> As will be discussed below, some local zoning ordinances in the state of Rhode Island include language regarding public access to the shore.<sup>18</sup> Further, the recorded plat map of a piece of land and the deed may include a depiction of and language defining a right-of-way.<sup>19</sup> Thus, while Rhode Island has general disclosure laws that apply to all real estate sales transactions, which include some disclosure requirements relevant to the purchase of coastal properties,<sup>20</sup> shoreline property buyers may benefit from the newly added shoreline-specific disclosure laws.

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<sup>6</sup> *See id.*

<sup>7</sup> *Id.* § 5-20.8-2(a).

<sup>8</sup> *Id.* § 5-20.8-2(b)(1).

<sup>9</sup> *Id.* § 5-20.8-2(b)(2)(iv).

<sup>10</sup> *Caveat Emptor*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>11</sup> 5 R.I. GEN. LAWS § 5-20.8-1(5).

<sup>12</sup> *Id.* § 5-20.8-2(b)(2)(iv).

<sup>13</sup> *Easements*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>14</sup> *See* COASTAL RESOURCES MANAGEMENT COUNCIL, A CITIZEN’S GUIDE TO ASSISTING IN THE RIGHT-OF-WAY DESIGNATION PROCESS 1 (2014), [http://www.crmc.ri.gov/publicaccess/CitizensGuide\\_ROW\\_Process.pdf](http://www.crmc.ri.gov/publicaccess/CitizensGuide_ROW_Process.pdf) [hereinafter CRMC RIGHT-OF-WAY GUIDE] (defining a public right-of-way as a section of land “over which the public has the right to pass on foot or, if appropriate, by vehicle, in order to access the tidal waters of Rhode Island.”).

<sup>15</sup> *Id.* at 3.

<sup>16</sup> 5 R.I. GEN. LAWS §§ 5-20.8-2(b)(2)(v-vii).

<sup>17</sup> *Id.* § 5-20.8-2(b)(2)(vii).

<sup>18</sup> *See e.g.* WARWICK, R.I., CODE ORDINANCES § 24-6(m) (2024); MIDDLETOWN, R.I., CODE ORDINANCES § 94.45 (2004).

<sup>19</sup> *See* CRMC RIGHT-OF-WAY GUIDE, *supra* note 14, at 3; *see also* 5 R.I. GEN. LAWS §§ 5-20.8-2(b)(2)(v), (vii).

<sup>20</sup> 5 R.I. GEN. LAWS §§ 5-20.8-2(b)(2)(iv-vii).

## 1.1 Rhode Island's New Shoreline Property Disclosures

Recently, the Rhode Island legislature amended the disclosure statute to better encompass shoreline properties.<sup>21</sup> The amendment defines shoreline property as, “any real estate that abuts the shore as governed by § 46-23-26,”<sup>22</sup> and provides shoreline access language that sellers must include in their disclosure forms.<sup>23</sup> The provided language first includes a statement on the SAL and adds that the seller of real estate is required to disclose shoreline access and public rights-of-way to the buyer.<sup>24</sup> Second, the statute requires that the disclosure form state that “[t]he buyer is advised to contact the coastal resources management council [CRMC]” to determine whether any public rights-of-way exist that the seller or the real estate agent may not know about.<sup>25</sup> To assist buyers, CRMC has mapping tools displaying shoreline public rights-of-way which allow prospective homeowners to make a more informed decisions about purchases involving coastal property that could be impacted by public access.<sup>26</sup> Finally, the amendment requires that the disclosure form include a statement that the seller is required to provide the buyer with a copy of any permits in their possession that were issued by CRMC,<sup>27</sup> as such permits often have a public access requirement.<sup>28</sup> Therefore, the new shoreline disclosure language is not only important in creating clarity for what a seller might need to include in their disclosure form but also educates buyers on how their prospective property might be affected by public access.<sup>29</sup>

## 1.2 Legal Landscape of Property Disclosures in Rhode Island

Currently in Rhode Island, there is no private cause of action within the disclosure statute for damages for a failure to disclose a deficient condition or to include the shoreline specific language in the disclosure form.<sup>30</sup> In a series of Rhode Island Supreme Court cases, *Stebbins I* and *Stebbins II*, the court grappled with the remedies a buyer is entitled to under the disclosure statute and what constitutes a deficient condition.<sup>31</sup> There, a buyer-couple brought suit against their real estate agent and the seller due to their failure to disclose severe coastal erosion on a piece of waterfront property.<sup>32</sup> The buyer-couple alleged violations of the disclosure statute, arguing that the erosion constituted a deficient condition which the seller and agent were required to disclose.<sup>33</sup> The *Stebbins I* court noted that the severity of the erosion may have “[risen] to the level of being a defect for the purposes of the disclosure statute.”<sup>34</sup> Thereafter, the *Stebbins II* court clarified the buyer’s recourse, finding that the buyer-couple’s only remedy under the disclosure statute was a civil penalty, as the legislature “faile[d] to include a civil-action enforcement provision” and did not include a private

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<sup>21</sup> See *id.* §5 -20.8-2(e).

<sup>22</sup> *Id.* § 5-20.8-1(9).

<sup>23</sup> *Id.* § 5-20.8-2(e).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Coastal Resources Management Council, *Designated Rights-Of-Way to the Shore*, <https://crmcgis.maps.arcgis.com/apps/instant/attachmentviewer/index.html?appid=7f8f263ce81c4e269c4b87a35371f86f> (last visited Nov. 6, 2024).

<sup>27</sup> 5 R.I. GEN. LAWS § 5-20.8-2(e).

<sup>28</sup> See 650 R.I. CODE R. § 20-00-1.3.6 (2024) (providing that public access may be stipulated as a permit condition and that certain applications require a public access plan).

<sup>29</sup> 5 R.I. GEN. LAWS § 5-20.8-2(e).

<sup>30</sup> See *Stebbins v. Wells (Stebbins II)*, 818 A.2d 711, 715-16 (R.I. 2003) (holding that there was no private right of action under the real estate sales disclosure statute).

<sup>31</sup> See *id.*; see also *Stebbins v. Wells (Stebbins I)*, 766 A.2d 369, 370 (R.I. 2001).

<sup>32</sup> *Stebbins I*, 766 A.2d at 370.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 373-74.

right of action to sue for damages.<sup>35</sup> However, the *Stebbins II* court did not leave buyers empty handed. The court reiterated that a buyer could still bring a negligence, negligent omission, or breach of fiduciary duty claim against a party for failure to disclose.<sup>36</sup>

The *Stebbins II* court also explained the role that both a seller's agent and buyer's agent play in disclosing material defects under the disclosure statute.<sup>37</sup> Ultimately, the court determined that an agent is just as responsible as a seller, because the disclosure statute:

create[s] a duty on the part of real estate agents to disclose to potential buyers of real property any material defects. . . when such disclosable defects are within the agent's personal knowledge, and the agent knows or should know that the buyer is acting under a misapprehension concerning facts which would be important to the buyer and could probably affect its decision.<sup>38</sup>

Although under the statute neither the seller nor the agent can be held liable for any omission that was not within their personal knowledge at the time of sale,<sup>39</sup> a real estate agent and seller must exercise ordinary care to the buyer.<sup>40</sup> Based on the *Stebbins* decisions, both have a duty to disclose a deficient condition that they are aware of.<sup>41</sup>

## 2 Rhode Island's Short-Term Rental Registration Laws

Although Rhode Island's disclosure statute requires shoreline property sellers and agents to disclose access and public rights-of-way to buyers, it only applies to the sale of property.<sup>42</sup> The statute does not apply to the owner-renter relationship.<sup>43</sup> The percentage of short-term rentals on the coast is unclear; however, in 2022 Rhode Island had over 20 million visitors.<sup>44</sup> To house these visitors it is estimated that there are 3,000 to 4,000 short-term rentals in Rhode Island.<sup>45</sup> In Rhode Island, owners of short-term rentals who list their property "for rent on the website of any third-party hosting platform" are required to register with the Department of Business Regulation (DOBR).<sup>46</sup> The statute defines a short-term rental as a "person, firm, or corporation's utilization, for transient lodging accommodations, not to exceed thirty (30) nights at a time."<sup>47</sup> Although not specified in the statute, third party hosting platforms include websites such as AirBnB, Vrbo, and Expedia, as well as

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<sup>35</sup> See *Stebbins II*, 818 A.2d at 716; see also 5 R.I. GEN. LAWS § 5-20.8-5(b).

<sup>36</sup> *Stebbins II*, 818 A.2d at 716-17; see also 5 R.I. GEN. LAWS § 5-20.8-1(1) (defining an agent as any individual acting on behalf of the buyer or seller like a real estate agent or broker).

<sup>37</sup> *Stebbins II*, 818 A.2d at 719.

<sup>38</sup> *Id.* at 718-19.

<sup>39</sup> 5 R.I. GEN. LAWS § 5-20.8-9.

<sup>40</sup> *Id.*

<sup>41</sup> See *Stebbins II*, A.2d at 716.

<sup>42</sup> See 5 R.I. GEN. LAWS §§ 5-20.8-2, 5-20.8-3.

<sup>43</sup> See *id.*

<sup>44</sup> Christopher Allen, R.I. Welcomed Record Number of Visitors in 2022, PROVIDENCE BUS. NEWS (Nov. 22, 2023), <https://pbn.com/report-r-i-welcomed-record-number-of-visitors-in-2022/#:~:text=While%20spending%20actually%20increased%20statewide,and%20maintaining%20record%20breaking%20growth.>

<sup>45</sup> Cal Dymowski, *New Association Seeks to Protect Short-Term Rentals*, WJAR (May 9, 2023, 6:27 PM), [https://turnto10.com/news/local/short-term-rental-rhode-island-industry-association-homeowner-airbnb-vrbo-tax-income-warwick-protection-pawtuxet-village-cove-hearing-economic-business-may-9-2023.](https://turnto10.com/news/local/short-term-rental-rhode-island-industry-association-homeowner-airbnb-vrbo-tax-income-warwick-protection-pawtuxet-village-cove-hearing-economic-business-may-9-2023)

<sup>46</sup> 42 R.I. GEN. LAWS § 42-63.1-14(b).

<sup>47</sup> *Id.*

real estate brokerage websites.<sup>48</sup> The registration process requires property owners to provide the state information such as their contact information, the address and type of rental property, and the intended use of the space.<sup>49</sup> Further, Rhode Island lists potential fines if a short-term rental property owner fails to register with DOBR.<sup>50</sup>

Airbnb is a common hosting platform used by short-term rental property owners in Rhode Island.<sup>51</sup> Airbnb has its own set of internal policies that may correlate with the SAL and shoreline property disclosure laws.<sup>52</sup> Although Airbnb does not give legal advice to short-term rental owners, they are advised to follow their jurisdiction's local ordinances.<sup>53</sup> Some local ordinances in Rhode Island which renters are expected to be familiar with when renting include language regarding public access to the shore.<sup>54</sup> For example, a Warwick, Rhode Island ordinance states, “[n]o person or persons shall block, barricade or in any way impede the public use of or access to designated public rights-of-ways to the waters of the city.”<sup>55</sup> The Warwick ordinance also provides, “[a]ny person violating this section shall be subject to punishment . . . .”<sup>56</sup> Further, a Middletown, Rhode Island ordinance states that “[i]t shall be unlawful for any person to block, obstruct or in any way impede the public use of or access to designated public rights-of-way to the water as defined by the Rhode Island Coastal Resources Management Council or the Town of Middletown.”<sup>57</sup> The use of the words “any person” within these ordinances defines how property owners are not the only people who could be subjected to fines for failing to follow public access laws.<sup>58</sup> Short-term renters unaware of the local ordinances could also face fines. Therefore, short-term renters carry the burden of having to be knowledgeable about local ordinances involving public access when renting from third-party platforms.<sup>59</sup>

The current DOBR registration does not have any specific registration requirements for coastal properties and does not require coastal property owners to identify public access points.<sup>60</sup> The registration does not require that owners give short-term renters notice of public access rights-of-way on the registered property nor does it require that they give renters notice of the SAL and local laws related to public access that may impact the property.<sup>61</sup> But, short-term renters are impacted by these issues and are expected to be familiar with the ordinances in place.<sup>62</sup> Because of this, short-

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<sup>48</sup> Department of Business Regulation, *Short-Term Rentals Frequently Asked Questions*, <https://dbr.ri.gov/real-estate-and-commercial-licensing/short-term-rentals/short-term-rentals-FAQs>.

<sup>49</sup> 42 R.I. GEN. LAWS §42-63.1-14(d).

<sup>50</sup> *Id.* §42-63.1-14(i).

<sup>51</sup> *See generally id.* § 42-63.1-14.

<sup>52</sup> Airbnb, *Find Places to Stay in Rhode Island*, [https://www.airbnb.com/a/stays/Rhode-Island--United-States?mlamenities=true&c=.pi0.pk475441696\\_67801725564&localized\\_ghost=true&gad\\_source=1&gbraid=0AAAAADz55Lkkq1ikw5\\_6SjXglfsOkUy&gclid=Cj0KCQjw7O0BhDwARIsAC0sjWPH4JwvYMt-DoMe7qzAw5dTslDtsZma9jqA6qiNaiFANtkfCsr5sZUaAonKEALw\\_wcB](https://www.airbnb.com/a/stays/Rhode-Island--United-States?mlamenities=true&c=.pi0.pk475441696_67801725564&localized_ghost=true&gad_source=1&gbraid=0AAAAADz55Lkkq1ikw5_6SjXglfsOkUy&gclid=Cj0KCQjw7O0BhDwARIsAC0sjWPH4JwvYMt-DoMe7qzAw5dTslDtsZma9jqA6qiNaiFANtkfCsr5sZUaAonKEALw_wcB) (last visited November 6, 2024).

<sup>53</sup> Airbnb, *What Regulations Apply to My City?*, [hereinafter *Airbnb Regulations*], <https://www.airbnb.com/help/article/961> (last visited November 6, 2024).

<sup>54</sup> *See e.g.* WARWICK, R.I., CODE ORDINANCES § 2 4-6(m) (2024); MIDDLETOWN, RI., CODE OF ORDINANCES § 94.45 (2004).

<sup>55</sup> WARWICK, R.I., CODE ORDINANCES § 24-6(m)(1) (2024).

<sup>56</sup> *Id.* § 24-6(m)(3).

<sup>57</sup> MIDDLETOWN, RI., CODE OF ORDINANCES § 94.45(A) (2004).

<sup>58</sup> *See id.* § 94.45(A); *see also* WARWICK, R.I., CODE ORDINANCES § 24-6(m)(1) (2024).

<sup>59</sup> *See* Airbnb Regulations, *supra* note 53.

<sup>60</sup> 42 R.I. GEN. LAWS § 42-63.1-14.

<sup>61</sup> *Id.*

<sup>62</sup> *See* Airbnb Regulations, *supra* note 53.

term renters and the public could benefit from being provided information regarding public access to the coastline abutting the rented property. Rhode Island could consider utilizing the real estate sales disclosure statute as a framework for informing short-term renters of public access through the registration process.<sup>63</sup> Doing so may alleviate clashes between short-term renters and the public and minimize confusion regarding the SAL, local ordinances, and the public's access to the shore.<sup>64</sup>

### 3 Innovative Property Disclosure Laws in Texas and Hawai'i

While the Rhode Island shoreline disclosures can help clear confusion for both buyers and sellers of real property, other states have even more robust disclosure laws which Rhode Island could use as a model for future disclosures.<sup>65</sup> Texas and Hawai'i have different avenues to address their coastal issues; however, both states have robust shoreline disclosure requirements.<sup>66</sup> For example, Texas's shoreline property disclosures provide notice to buyers that due to changes in the coastline, their private property could end up as public property, which the state could reclaim.<sup>67</sup> Hawai'i's disclosure requirement requires that sellers provide additional information to buyers if the property is located in a sea level rise exposure area.<sup>68</sup> Both states' disclosure laws revolve around providing buyers with information about changes in the coastal environment and the impacts on real property with special attention paid to public access; information which buyers, sellers, and renters in Rhode Island could benefit from.<sup>69</sup>

#### 3.1 Texas's Shoreline Property Disclosure Laws

In Texas the shoreline property disclosure statute focuses on informing buyers of public beaches and the effects of coastal erosion, similar to Rhode Island's statute.<sup>70</sup> The statute also requires sellers to provide buyers with a notice concerning the legal and economic risks of purchasing coastal property near or on a beach.<sup>71</sup> Specifically, the form provides notice to buyers that structures "located on coastal real property near a gulf coast beach . . . may come to be located on the public beach because of coastal erosion and storm events."<sup>72</sup> The statute provides that the notice contain a statement that the owner could be sued or ordered by the state to remove a structure from a public beach because state law "prohibits any obstruction, barrier, restraint, or interference with" public access.<sup>73</sup> The buyer is then required to sign the notice to agree that they assume all of the risks of purchasing shoreline property.<sup>74</sup> Unlike Rhode Island's disclosure statute, Texas's shoreline property

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<sup>63</sup> *Id.*

<sup>64</sup> 46 R.I. GEN. LAWS § 46-23-26 (2024).

<sup>65</sup> Press Release, Rhode Island General Assembly, Assembly Approves Bill to Educate Buyers of Shoreline Property of the Public's Right to Access the Shoreline (June 6, 2024), [https://www.rilegislature.gov/pressrelease/\\_layouts/15/ril.pressrelease.inputform/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=374578](https://www.rilegislature.gov/pressrelease/_layouts/15/ril.pressrelease.inputform/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=374578); *see e.g.* TEX. NAT. RES. CODE ANN. § 61.025; HAW. REV. STAT. ANN. §§ 508D-15.

<sup>66</sup> *See* TEX. NAT. RES. CODE ANN. § 61.025; *See also* HAW. REV. STAT. ANN. §§ 508D-1, 15.

<sup>67</sup> *See* TEX. NAT. RES. CODE ANN. § 61.025.

<sup>68</sup> *See* STATE OF HAWAII, HAWAII CLIMATE COMMISSION, DISCLOSURE REQUIREMENT FOR RESIDENTIAL REAL ESTATE IN THE SEA LEVEL RISE EXPOSURE AREA 1 (2022); *see also* HAW. REV. STAT. ANN. § 508D-15(a)(5).

<sup>69</sup> *See* TEX. NAT. RES. CODE ANN. § 61.025 (describing that if the "property is close to a beach [on the] Gulf of Mexico. . . that the public has acquired a right of use or easement to or over the area of any public beach []"); *see also* HAW. REV. STAT. ANN. § 508D-15 (describing that notification is required for a property exposed to sea level rise).

<sup>70</sup> TEX. NAT. RES. CODE ANN. § 61.025(a).

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

disclosure law substantially informs the buyer of their economic burden and responsibility for structural loss, the risk of state removal of shoreline structures, and how coastal erosion and storm events may cause an owner's private property to become public property.<sup>75</sup>

Although Texas's shoreline property disclosures are much more robust than Rhode Island's, Rhode Island buyers could benefit from additional information regarding the economic risks of purchasing a shoreline property; especially how their property rights may be impacted by coastal erosion and sea level rise.

## 3.2 Hawai'i Shoreline Property Disclosure Laws

Hawai'i has shoreline disclosure laws with similar effects to Rhode Island's and Texas's laws, but Hawai'i's statute includes an additional sea level rise component.<sup>76</sup> To begin, Hawai'i's statute provides multiple instances when the seller is required to provide the buyer with additional factual information about the property.<sup>77</sup> These include situations where the property is within the boundaries of a Federal Emergency Management Agency (FEMA) special flood hazard area<sup>78</sup> as well as within an anticipated inundation area designated on the Department of Defense Emergency Management's tsunami inundation maps.<sup>79</sup> However, the statute was amended in 2021 to require the seller to provide additional information to the buyer if the property lies within "[t]he sea level rise exposure areas as designated by the Hawai'i Climate Change Mitigation and Adaptation Commission."<sup>80</sup> This information can be found on the Sea Level Rise Exposure Area Map (SLRA-XA) which depicts the sea level rise exposure area under a 3.2 ft scenario.<sup>81</sup> In addition, Hawai'i's statute states that a seller of shoreline property is required to disclose information regarding both permitted and unpermitted erosion control structures on the parcel.<sup>82</sup> However, in regards to all required disclosures, Hawai'i's statute provides that when there is ambiguity regarding whether residential real property lies within any of these areas, the ambiguity shall be construed in favor of the seller, if a good faith effort has been made to determine if the property is subject to the requirements.<sup>83</sup>

Hawai'i's shoreline property disclosure laws have a twofold effect. First, the disclosure requirements highlight for the buyer that it is likely that rising sea levels will affect the real estate they are buying and will "affect property value over time."<sup>84</sup> Second, because there is an "estimated [] 6,500 structures [that] will be chronically flooded, [and] 28 miles of coastline will become impassable,"<sup>85</sup> the disclosures also help highlight how access to public beaches will be impacted in the future.

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<sup>75</sup> See *id.*

<sup>76</sup> Stefanie Sekich, *Hawai'i's New Law Requires Real Estate Disclosures for Sea Level Rise*, SURFRIDER FOUND. (July 12, 2021), <https://www.surfrider.org/news/hawaiis-new-law-requires-real-estate-disclosures-for-sea-level-rise>.

<sup>77</sup> See HAW. REV. STAT. ANN. § 508D-15(a)(1-5).

<sup>78</sup> *Id.* § 508D-15(a)(1).

<sup>79</sup> *Id.* § 508D-15(a)(4).

<sup>80</sup> *Id.* §§ 508D-15(a)(4-5).

<sup>81</sup> PACIOOS, *Sea Level Rise: State of Hawai'i Sea Level Rise Viewer* (last updated Oct. 8, 2024), <https://www.pacioos.hawaii.edu/shoreline/slr-hawaii/>.

<sup>82</sup> HAW. REV. STAT. ANN. § 508D-15(b).

<sup>83</sup> HAW. REV. STAT. ANN. § 508D-15(c).

<sup>84</sup> Lindsey Jacques, *Climate Change and Real Estate in California: Can Climate-Related Risk be a Required Disclosure for Residential Real Estate*, 14 SAN DIEGO J. CLIMATE & ENERGY L. 259, 268 (2023).

<sup>85</sup> Lauren Blickley, *SB474 is a Victory of Hawai'i Beaches*, SURFRIDER FOUNDATION (July 9, 2021), <https://hawaii.surfrider.org/blog/sb474>.

Similar to Texas's disclosure laws, Hawai'i's laws likely put the buyer on notice that when they buy property that may be threatened by coastal erosion, they "willingly assume the risks."<sup>86</sup> As Rhode Island's shoreline disclosure statute does not directly account for future sea level rise nor does it provide any type of user-friendly mapping, Hawai'i's statute may serve as another possible framework Rhode Island could utilize in the future.

## 4 Conclusion

The impact of the new Rhode Island shoreline property disclosures on buyers and short-term renters remains to be seen. Although Rhode Island's laws seek to put buyers on notice of the unique challenges of the coastal environment, more robust disclosure requirements, such as those in Hawai'i and Texas, could ultimately benefit Rhode Island property buyers and the public. Regardless, there remains a gap in information sharing between owners of shoreline property and short-term renters. These gaps could be addressed through amendments to the disclosure statute or to the short-term rental registration statute. Regardless, shoreline disclosure requirements seek not only to highlight coastal property risk but the future risk to public shoreline access due to sea level rise and coastal erosion.

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<sup>86</sup> *Id.*