

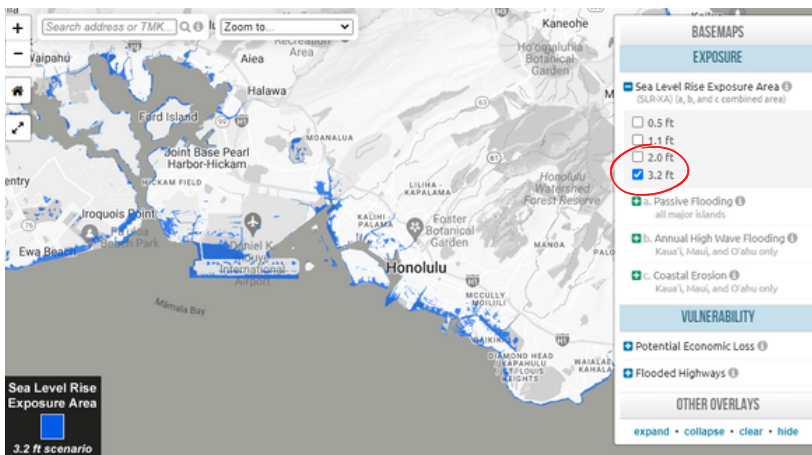
NEW SEA LEVEL RISE DISCLOSURE REQUIREMENTS

FAQS

On July 2, 2021, Governor David Ige signed Act 179 into law. Under that new law, a residential property's location in a special flood hazard area or sea level rise exposure area is a "material fact" that must be disclosed to the buyer.

The new law went into effect on May 1, 2022. This paper answers commonly-asked questions about the new law's flooding and sea level rise exposure disclosures and their likely impact on broker practice.

WHAT MUST BE DISCLOSED?



First, determine whether the property is residential:

- Act 179 only applies to residential real property. A property is residential if: (a) it has one to four dwelling units or (b) it is a condominium or cooperative apartment that's primarily used as a residence. If the seller's property fits either definition, then it is residential.

If the seller's property is residential determine whether the seller's property lies within a "special flood hazard area."

- Refer to the National Flood Insurance Program's emergency flood insurance maps (see [Flood Map Service Center](#), Federal Emergency Management Agency).
- If the seller's property lies with a special flood hazard area, as defined by those maps, then the seller must disclose that their property is in a special flood hazard area.

If the seller's property is residential, also determine if the property lies within a "sea level rise exposure area."

- The Hawai'i Climate Change Mitigation and Adaptation Commission defines what constitutes a sea level rise exposure area. Go to their [Sea Level Rise Viewer](#), enter the seller's property's tax map key or street address, and then select an exposure area of 3.2 feet. If the seller's property appears within the blue-shaded area on the map, then the seller must disclose that their property is in a sea level rises exposure area.

WHO MUST DISCLOSE IT?

Disclosing that a property lies within a flooding or sea level rise exposure area is the seller's obligation. Sellers must act with good faith and due care in researching the flooding and sea-level rise exposure maps. If they determine that their property is in a flooding or sea level rise exposure area, they must include that information in their disclosure statement to the buyer.

A seller's agent may help their client determine whether their property is in a flood or sea level rise exposure area. The agent may direct their client to the exposure maps or otherwise guide them in determining whether their property lies within an exposure area, but the ultimate obligation to disclose rests with the seller.

There may be instances in which a seller cannot determine whether their property is within an exposure area—despite their good faith and due care. An exposure map's line could be ambiguous. If a seller acting in good faith and with due care cannot determine whether their property lies within an exposure area because an exposure map's line is ambiguous, then the law excuses the seller from including the flooding or sea level rise exposure in their disclosure statement.

WHEN MUST IT BE DISCLOSED?

Like all mandatory disclosures, the seller must disclose their property's location in a flooding or sea level rise exposure area by no later than the tenth day after they accepted the buyer's offer to purchase the property.