

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 476
HOUSE BILL 281

AN ACT TO CREATE THE RESIDENTIAL PROPERTY DISCLOSURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1996, the General Statutes are amended by adding a new Chapter to read:

"Chapter 47E.

"ARTICLE 1.

"Residential Property Disclosure Act.

"§ 47E-1-1. Applicability.

This Chapter applies to the following transfers of residential real property consisting of not less than one nor more than four dwelling units, whether or not the transaction is with the assistance of a licensed real estate broker or salesman:

- (1) Sale or exchange,
- (2) Installment land sales contract,
- (3) Option, or
- (4) Lease with option to purchase, except as provided in G.S. 47E-1-2(10).

"§ 47E-1-2. Exemptions.

The following transfers are exempt from the provisions of this Chapter:

- (1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
- (2) Transfers to a beneficiary from the grantor or his successor in interest in a deed of trust, or to a mortgagee from the mortgagor or his successor in interest in a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust, who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust.
- (3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
- (4) Transfers from one or more co-owners solely to one or more other co-owners.

- (5) Transfers made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors.
- (6) Transfers between spouses resulting from a decree of divorce or a distribution pursuant to Chapter 50 of the General Statutes or comparable provision of another state.
- (7) Transfers made by virtue of the record owner's failure to pay any federal, State, or local taxes.
- (8) Transfers to or from the State or any political subdivision of the State.
- (9) Transfers involving the first sale of a dwelling never inhabited.
- (10) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.
- (11) Transfers between parties when both parties agree not to complete a residential property disclosure statement.

"§ 47E-1-3. Definitions.

When used in this Chapter, unless the context requires otherwise, the term:

- (1) 'Owner' means each person having a recorded present or future interest in real estate that is identified in a real estate contract subject to this Chapter; but shall not mean or include the trustee in a deed of trust, or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property, or the owner of any easement or license encumbering the real property.
- (2) 'Purchaser' means each person or entity named as 'buyer' or 'purchaser' in a real estate contract subject to this Chapter.
- (3) 'Real estate contract' means a contract for the transfer of ownership of real property by the means described in G.S. 47E-1-1.
- (4) 'Real property' means the lot or parcel, and the dwelling unit(s) thereon, described in a real estate contract subject to this Chapter.

"§ 47E-1-4. Required disclosures.

(a) With regard to transfers described in G.S. 47E-1-1, the owner of the real property shall furnish to a purchaser a residential property disclosure statement. The disclosure statement shall contain the language and be in the form set forth in subsection (b) of this section. The statement shall:

- (1) Disclose those items which are required to be disclosed relative to the condition of the property and of which the owner has actual knowledge; or
- (2) State that the owner makes no representations as to the condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) A residential property disclosure statement shall read as follows:

'RESIDENTIAL PROPERTY DISCLOSURE STATEMENT

Notice to Seller and Purchaser

The North Carolina Residential Property Disclosure Act requires the owner of residential real property consisting of 1-4 units, whenever the property is to be sold, exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish to the purchaser a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-1-2, including transfers of residential property made pursuant to a lease with an option to purchase where the lessee occupies or intends to occupy the dwelling.

Property Address/Description:

The undersigned owner(s) of the real property described above disclose the following present conditions of the real property of which the owner(s) has actual knowledge with regard to:

1. Any abnormality or malfunctioning of the water supply or sanitary sewage disposal system:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

2. Any damage to or abnormality of the roof, chimneys, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

3. Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

4. Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

5. The real property's violation of zoning laws, restrictive covenants or building codes; any encroachment of the real property from or to adjacent real property; or notice from any governmental agency affecting this real property:

☐Yes ☐None Known ☐No Representations

If Yes, please describe

6. Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered):

☐Yes ☐None Known ☐No Representations

If Yes, please describe

The purchaser and owner may wish to obtain professional advice about, or inspections of, the real property. The owner has a duty to disclose any material inaccuracy in this statement or any material change in the real property which is discovered between the date of this statement and the closing of the transaction. The owner(s) acknowledge having examined this statement before signing below:

Owner

Date

Owner

Date

The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further acknowledge that they have examined it before signing below:

Purchaser

Date

Purchaser

Date'

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them.

"§ 47E-1-5. Time for disclosure; cancellation of contract.

(a) The owner of real property subject to this Chapter shall deliver to the purchaser the written disclosures required by this Chapter no later than the time such purchaser makes an offer to purchase, exchange, or option the property, or exercises the option to purchase the property pursuant to a lease with an option to purchase. The residential property disclosure statement may be included in the real estate contract, in an addendum, or in a separate document.

(b) If the disclosure statement required by this Chapter is delivered to such purchaser after the purchaser makes an offer, the purchaser may terminate any resulting real estate contract or withdraw the offer no later than three days after the purchaser receives the disclosure statement.

In order to terminate a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser terminates a real estate contract or withdraws an offer in compliance with this subsection, the termination or withdrawal of offer shall be without penalty to the purchaser, and any deposit shall be promptly returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this subsection are waived conclusively if not exercised prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of a purchase pursuant to a lease with option to purchase. Any rights of the purchaser to terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection.

"§ 47E-1-6. Owner liability for disclosure of information provided by others.

If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-1-4, the owner may discharge the duty to disclose by providing a written report attached to the residential property disclosure statement by a public agency or by an

engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it.

"§ 47E-1-7. Change in circumstances.

If, subsequent to the owner's delivery of a residential property disclosure statement to a purchaser, the owner discovers a material inaccuracy in the disclosure statement, or the disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement to the purchaser. Failure to deliver the corrected disclosure statement or to make the repairs made necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted.

"§ 47E-1-8. Agent's duty.

A real estate broker or salesman acting as the agent of the owner of residential real property has the duty to inform the owner of the owner's rights and obligations under this Chapter. Provided the owner's real estate broker or salesman has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General Statutes.

"§ 47E-1-9. Rights and duties under Chapter 42, landlord and tenant, not affected during lease.

This Chapter shall not affect the landlord-tenant relationship between the parties to a lease with option to purchase contract during the term of the lease, and the rights and duties of landlords and tenants under Chapter 42 of the General Statutes shall remain in effect until transfer of ownership of the property to the purchaser.

"§ 47E-1-10. Authorization to prepare forms; fees.

The North Carolina Real Estate Commission may prepare, or cause to be prepared, forms for use pursuant to this Chapter. The Commission may charge a fee not to exceed twenty-five cents (25¢) per form plus the costs of postage."

Sec. 2. This act is effective upon ratification and applies to real estate contracts entered into on or after January 1, 1996.

In the General Assembly read three times and ratified this the 25th day of July, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives