

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

H

1

HOUSE BILL 281

Short Title: Residential Prop. Disclosure.

(Public)

Sponsors: Representatives Thompson and Howard (By request) (Co-sponsors); Adams, Beall, Boyd-McIntyre, Buchanan, Easterling, Holmes, Linney, Nichols, Redwine, Sexton, and Sherrill.

Referred to: Business and Labor, if favorable, Judiciary I.

February 23, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE THE RESIDENTIAL PROPERTY DISCLOSURE ACT.
3 The General Assembly of North Carolina enacts:

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

6 **"CHAPTER 47E.**

7 **"ARTICLE 1.**

8 **"RESIDENTIAL PROPERTY DISCLOSURE ACT.**

9 **"§ 47E-1-1. Applicability.**

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

13 (1) Sale or exchange,

14 (2) Installment land sales contract,

15 (3) Option, or

16 (4) Lease with option to purchase, except as provided in G.S. 47E-1-2(10).

17 **"§ 47E-1-2. Exemptions.**

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

- 1 (1) Transfers pursuant to court order, including transfers ordered by a court
2 in administration of an estate, transfers pursuant to a writ of execution,
3 transfers by foreclosure sale, transfers by a trustee in bankruptcy,
4 transfers by eminent domain, and transfers resulting from a decree for
5 specific performance.
- 6 (2) Transfers to a beneficiary from the grantor or his successor in interest in
7 a deed of trust, or to a mortgagee from the mortgagor or his successor in
8 interest in a mortgage, if the indebtedness is in default; transfers by a
9 trustee under a deed of trust or a mortgagee under a mortgage, if the
10 indebtedness is in default; transfers by a trustee under a deed of trust or
11 a mortgagee under a mortgage pursuant to a foreclosure sale, or
12 transfers by a beneficiary under a deed of trust, who has acquired the
13 real property at a sale conducted pursuant to a foreclosure sale under a
14 deed of trust.
- 15 (3) Transfers by a fiduciary in the course of the administration of a
16 decedent's estate, guardianship, conservatorship, or trust.
- 17 (4) Transfers from one or more co-owners solely to one or more other co-
18 owners.
- 19 (5) Transfers made solely to a spouse or a person or persons in the lineal
20 line of consanguinity of one or more transferors.
- 21 (6) Transfers between spouses resulting from a decree of divorce or a
22 distribution pursuant to Chapter 50 of the General Statutes or
23 comparable provision of another state.
- 24 (7) Transfers made by virtue of the record owner's failure to pay any
25 federal, State, or local taxes.
- 26 (8) Transfers to or from the State or any political subdivision of the State.
- 27 (9) Transfers involving the first sale of a dwelling never inhabited.
- 28 (10) Lease with option to buy contracts where the lessee occupies or intends
29 to occupy the dwelling.

30 **"§ 47E-1-3. Definitions.**

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

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

1 **"§ 47E-1-4. Required disclosures.**

2 (a) With regard to transfers described in G.S. 47E-1-1, the owner of the real
3 property shall furnish to a purchaser one of the following:

4 (1) A residential property disclaimer statement stating that the owner makes
5 no representations as to the condition of the real property or any
6 improvements to the real property, and that the purchaser will be
7 receiving the real property 'as is', that is, with all defects which may
8 exist, if any, except as otherwise provided in the real estate purchase
9 contract; or

10 (2) A residential property disclosure statement disclosing those items which
11 are required to be disclosed relative to the condition of the property and
12 of which the owner has actual knowledge. Such disclosure form shall
13 contain the language and be in the form set forth in subsection (b) of
14 this section.

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

16 **'RESIDENTIAL PROPERTY DISCLAIMER STATEMENT**

17
18 **NOTICE TO SELLER AND PURCHASER**

19
20 The North Carolina Residential Property Disclosure Act requires the owner of
21 residential real property consisting of 1-4 units, whenever the property is to be sold,
22 exchanged, optioned, or purchased pursuant to a lease with option to purchase, to furnish
23 to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER
24 STATEMENT stating that the owner makes no representations as to the condition of the
25 property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL
26 PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the property.
27 Certain transfers of residential property are excluded from this requirement by G.S. 47E-
28 1-2.

29
30 NOTE TO OWNER(S): Sign this statement only if you elect to sell the property without
31 representations as to its condition, except as otherwise provided in the purchase contract;
32 otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE
33 STATEMENT.

34
35 Property Address/

36 Legal Description:

37
38 The undersigned owner(s) of the real property described above make no
39 representations as to the condition of the real property or any improvements on the real
40 property, and the purchaser will be receiving the real property 'AS IS', that is, with all
41 defects which may exist, if any, except as otherwise provided in the real estate purchase
42 contract.

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 disclaimer statement and further acknowledge that they have examined it before signing below:

Purchaser Date Purchaser Date'

(c) 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 an option to purchase, to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner makes no representations as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing certain conditions of the real property. Certain transfers of residential property are excluded from this requirement by G.S. 47E-1-2.

NOTE TO OWNER(S): Sign this statement only if you elect to sell the property and disclose items relative to the condition of the property; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLAIMER STATEMENT.

Property Address/
Legal 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;
- (2) Any damage to or abnormality of the roof, floors, foundation, basement, or load-bearing walls, or any leak in the roof or basement;
- (3) Any abnormality or malfunctioning of the plumbing, electrical, heating, or cooling systems;

- 1 (4) Present infestation of wood-destroying insects or organisms, or past
- 2 infestation the damage for which has not been repaired;
- 3 (5) The real property's violation of zoning laws, restrictive covenants or
- 4 building codes; any encroachment of the real property from or to
- 5 adjacent real property; or notice from any governmental agency
- 6 affecting this real property;
- 7 (6) Presence of lead-based paint, asbestos, radon gas, methane gas,
- 8 underground storage tank, hazardous material or toxic material (whether
- 9 buried or uncovered).

10 The purchaser and owner may wish to obtain professional advice about, or inspections of,

11 the real property. The owner has a duty to disclose any material inaccuracy in this

12 statement or any material change in the real property which is discovered between the

13 date of this statement and the closing of the transaction. The owner(s) acknowledge

14 having examined this statement before signing below:

15

16

17 Owner Date Owner Date

18

19 The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further

20 acknowledge that they have examined it before signing below:

21

22

23 Purchaser Date Purchaser Date'

24

25 (d) A residential property disclosure statement must utilize the language and form

26 set forth in subsection (c) above, but also may include or have attached any other

27 information or disclosure of the real property condition that the owner(s) desires.

28 **"§ 47E-1-5. Time for disclosure; cancellation of contract.**

29 (a) The owner of real property subject to this Chapter shall deliver to the purchaser

30 the written disclosures or disclaimer required by this Chapter no later than the time such

31 purchaser makes an offer to purchase, exchange, or option the property, or exercises the

32 option to purchase the property pursuant to a lease with an option to purchase. The

33 residential property disclaimer statement or residential property disclosure statement may

34 be included in the real estate contract, in an addendum, or in a separate document.

35 (b) If the disclosure or disclaimer required by this Chapter is delivered to such

36 purchaser after the purchaser makes an offer, the purchaser may terminate any resulting

37 real estate contract or withdraw the offer no later than three days after the purchaser

38 receives the disclosure or disclaimer form.

39 In order to terminate a real estate contract when permitted by this section, the

40 purchaser shall, within the time required above, give written notice to the owner or the

41 owner's agent either by hand delivery or by depositing into the United States mail,

42 postage prepaid, and properly addressed to the owner or the owner's agent. If the

43 purchaser terminates a real estate contract or withdraws an offer in compliance with this

1 section, the termination or withdrawal of offer shall be without penalty to the purchaser,
2 and any deposit shall be promptly returned to the purchaser. Any rights of the purchaser
3 to terminate the contract provided by this section are waived conclusively if not exercised
4 prior to the earlier of settlement or occupancy by the purchaser in the case of a sale or
5 exchange, or prior to settlement in the case of a purchase pursuant to a lease with option
6 to purchase.

7 **"§ 47E-1-6. Owner liability for disclosure of information provided by others.**

8 If the owner chooses to provide a disclosure of property condition pursuant to G.S.
9 47E-1-4(a)(2) above, the owner may discharge the duty to disclose by providing a written
10 report attached to the residential property disclosure statement by a public agency or by
11 an engineer, land surveyor, geologist, pest control operator, contractor, home inspector or
12 other expert, dealing with matters within the scope of the public agency's functions or the
13 expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or
14 omission of any information delivered pursuant to this subsection if the error, inaccuracy,
15 or omission was made in reasonable reliance upon the information provided by the public
16 agency or expert and the owner was not grossly negligent in obtaining the information or
17 transmitting it.

18 **"§ 47E-1-7. Change in circumstances.**

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

28 **"§ 47E-1-8. Agent's duty.**

29 A real estate broker or salesman acting as the agent of the owner of residential real
30 property has the duty to inform the owner of the owner's rights and obligations under this
31 Chapter. Provided the owner's real estate broker or salesman has performed this duty, the
32 broker or salesman shall not be responsible for the owner's willful refusal to provide a
33 prospective purchaser with a disclaimer or disclosure statement. Nothing in this Chapter
34 shall be construed to conflict with, or alter, the broker or salesman's duties under Chapter
35 93A of the General Statutes.

36 **"§ 47E-1-9. Rights and duties under Chapter 42, landlord and tenant, not affected**
37 **during lease.**

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

42 **"§ 47E-1-10. Authorization to prepare forms; fees.**

1 The North Carolina Real Estate Commission may prepare, or cause to be prepared,
2 forms for use pursuant to this Chapter and may charge a reasonable fee for the forms, not
3 to exceed one dollar (\$1.00) per page and not to exceed three dollars (\$3.00) per form
4 regardless of the number of pages per form."

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