

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 281
Committee Substitute Favorable 5/25/95

Short Title: Residential Prop. Disclosure.

(Public)

Sponsors:

Referred to:

February 23, 1995

A BILL TO BE ENTITLED
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 (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 (11) Transfers between parties when both parties agree not to complete a
31 residential property disclosure statement.

32 **"§ 47E-1-3. Definitions.**

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

- 34 (1) 'Owner' means each person having a recorded present or future interest
35 in real estate that is identified in a real estate contract subject to this
36 Chapter; but shall not mean or include the trustee in a deed of trust, or
37 the owner or holder of a mortgage, deed of trust, mechanic's or
38 materialman's lien, or other lien or security interest in the real property,
39 or the owner of any easement or license encumbering the real property.
- 40 (2) 'Purchaser' means each person or entity named as 'buyer' or 'purchaser'
41 in a real estate contract subject to this Chapter.
- 42 (3) 'Real estate contract' means a contract for the transfer of ownership of
43 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 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. The disclosure statement shall contain the language and be in the form set forth in subsection (b) of this section; 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 purchase 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.

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, 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:

1 real estate contract or withdraw the offer no later than three days after the purchaser
2 receives the disclosure statement.

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

15 **"§ 47E-1-6. Owner liability for disclosure of information provided by others.**

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

26 **"§ 47E-1-7. Change in circumstances.**

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

36 **"§ 47E-1-8. Agent's duty.**

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

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

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

7 **"§ 47E-1-10. Authorization to prepare forms; fees.**

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

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