

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 899

Short Title: Residential Prop. Disclosure Act.

(Public)

Sponsors: Representatives Howard; and Watson.

Referred to: Commerce.

April 8, 1997

A BILL TO BE ENTITLED

AN ACT TO MODIFY THE REQUIREMENTS FOR DISCLOSURES UPON THE SALE OF RESIDENTIAL PROPERTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47E-4 reads as rewritten:

"§ 47E-4. Required disclosures.

(a) With regard to transfers described in G.S. 47E-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-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:~~

1
2 _____
3 Owner Date Owner Date

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

6
7 _____
8 Purchaser Date Purchaser Date"

9 (e) ~~The rights of the parties to a real estate contract as to conditions of the property~~
10 ~~of which the owner had no actual knowledge are not affected by this Article unless the~~
11 ~~residential disclosure statement states that the owner makes no representations as to those~~
12 ~~conditions. If the statement states that an owner makes no representations as to the~~
13 ~~conditions of the property, then the owner has no duty to disclose those conditions,~~
14 ~~whether or not the owner should have known of them. may require disclosure of the~~
15 ~~characteristics and conditions of the property about which the owner has actual~~
16 ~~knowledge including:~~

- 17 (1) The water supply and sanitary sewage disposal system;
- 18 (2) The roof, chimneys, floors, foundation, basement, and other structural
19 components and any modifications of these structural components;
- 20 (3) The plumbing, electrical, heating, cooling, and other mechanical
21 systems;
- 22 (4) Present infestation of wood-destroying insects or organisms or past
23 infestation the damage for which has not been repaired;
- 24 (5) The zoning laws, restrictive covenants, building codes, and other land-
25 use restrictions affecting the real property, any encroachment of the real
26 property from or to adjacent real property, and notice from any
27 governmental agency affecting this real property; and
- 28 (6) Presence of lead-based paint, asbestos, radon gas, methane gas,
29 underground storage tank, hazardous material or toxic material (whether
30 buried or covered), and other environmental contamination.

31 The North Carolina Real Estate Commission may develop and require the use of a
32 standard disclosure statement to comply with the requirements of this section."

33 Section 2. G.S. 47E-5 reads as rewritten:

34 "**§ 47E-5. Time for disclosure; cancellation of contract.**

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

41 (b) If the disclosure statement required by this Chapter is not delivered to ~~such~~ the
42 purchaser ~~after~~ prior to or at the time the purchaser makes an offer, the purchaser may
43 ~~terminate~~ cancel any resulting real estate contract or ~~withdraw the offer no later than three~~

1 ~~days after the purchaser receives the disclosure statement.~~ contract. The purchaser's right to
2 cancel shall expire if not exercised prior to any of the following events:

- 3 (1) The end of the third calendar day following his receipt of the disclosure
4 statement;
5 (2) The end of the third calendar day following the date the contract was
6 made;
7 (3) Settlement or occupancy by the purchaser in the case of a sale or
8 exchange; or
9 (4) Settlement in the case of a purchase pursuant to a lease with option to
10 purchase.

11 Any right of the purchaser to cancel the contract provided by this subsection is waived
12 conclusively if not exercised in the manner required by this subsection.

13 In order to ~~terminate-cancel~~ a real estate contract when permitted by this section, the
14 purchaser shall, within the time required above, give written notice to the owner or the
15 owner's agent either by hand delivery or by depositing into the United States mail,
16 postage prepaid, and properly addressed to the owner or the owner's agent. If the
17 purchaser ~~terminates-cancels~~ a real estate contract ~~or withdraws an offer~~ in compliance with
18 this subsection, the ~~termination or withdrawal of offer-cancellation~~ shall be without penalty
19 to the purchaser, and he shall be entitled to a refund of any deposit shall be promptly
20 returned to the purchaser. Any rights of the purchaser to terminate the contract provided by this
21 subsection are waived conclusively if not exercised prior to the earlier of settlement or
22 occupancy by the purchaser in the case of a sale or exchange, or prior to settlement in the case of
23 a purchase pursuant to a lease with option to purchase. he may have paid. Any rights of the
24 purchaser to cancel or terminate the contract for reasons other than those set forth in this
25 subsection are not affected by this subsection."

26 Section 3. G.S. 47E-6 reads as rewritten:

27 **"§ 47E-6. Owner liability for disclosure of information provided by others.**

28 ~~If the owner chooses to provide a disclosure of property condition pursuant to G.S. 47E-4,~~
29 ~~the~~ The owner may discharge the duty to disclose imposed by this Chapter by providing a
30 written report attached to the residential property disclosure statement by a public agency
31 or by an engineer, land surveyor, geologist, pest control operator, contractor, home
32 inspector or other expert, dealing with matters within the scope of the public agency's
33 functions or the expert's license or expertise. The owner shall not be liable for any error,
34 inaccuracy, or omission of any information delivered pursuant to this section if the error,
35 inaccuracy, or omission was made in reasonable reliance upon the information provided
36 by the public agency or expert and the owner was not grossly negligent in obtaining the
37 information or transmitting it."

38 Section 4. G.S. 47E-8 reads as rewritten:

39 **"§ 47E-8. Agent's duty.**

40 A real estate broker or salesman acting as ~~the-an~~ agent of the owner of-in a residential
41 real property-estate transaction has the duty to inform ~~the owner~~ each of his clients of the
42 ~~owner's-client's~~ rights and obligations under this Chapter. Provided the owner's real estate
43 broker or salesman has performed this duty, the broker or salesman shall not be

1 responsible for the owner's willful refusal to provide a prospective purchaser with a
2 residential property disclosure statement. Nothing in this Chapter shall be construed to
3 conflict with, or alter, the broker or salesman's duties under Chapter 93A of the General
4 Statutes."

5 Section 5. This act becomes effective December 1, 1997.