

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1032

Short Title: Residential Prop. Disclosure.

(Public)

Sponsors: Representative Hensley.

Referred to: Judiciary III.

April 19, 1993

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. The General Statutes are amended by adding a new Chapter to
5 read:

6 **"CHAPTER 47E.**
7 **"RESIDENTIAL PROPERTY DISCLOSURE ACT.**

8 **"§ 47E-1. Applicability.**

9 The provisions of this Chapter apply only to transfers by sale, exchange, installment
10 land sales contract, or lease with option to purchase, of residential real property
11 consisting of not less than one nor more than four dwelling units, whether or not the
12 transaction is with the assistance of a licensed real estate broker or salesperson.

13 **"§ 47E-2. Exemptions.**

14 The following transfers are specifically excluded from the provisions of this
15 Chapter:

- 16 (1) Transfers pursuant to court order, including transfers ordered by a
17 court in administration of an estate, transfers pursuant to a writ of
18 execution, transfers by foreclosure sale, transfers by a trustee in
19 bankruptcy, transfers by eminent domain, and transfers resulting from
20 a decree for specific performance.
21 (2) Transfers to a beneficiary of a deed of trust or mortgage by a trustor,
22 mortgagor, or successor in interest who is in default; transfers by a
23 trustee under a deed of trust or a mortgagee under a mortgage pursuant
24 to a foreclosure sale, or transfers by a beneficiary under a deed of trust

1 who has acquired the real property at a sale conducted pursuant to a
2 foreclosure sale under a deed of trust.

3 (3) Transfers by a fiduciary in the course of the administration of a
4 decedent's estate, guardianship, conservatorship, or trust.

5 (4) Transfers from one or more co-owners solely to one or more other co-
6 owners.

7 (5) Transfers made solely to a spouse or a person or persons in the lineal
8 line of consanguinity of one or more transferors.

9 (6) Transfers between spouses resulting from a decree of divorce or a
10 distribution pursuant to Chapter 50 of the General Statutes.

11 (7) Transfers made by virtue of the record owner's failure to pay any
12 federal, state, or local taxes.

13 (8) Transfers to or from the State or any political subdivision of the State.

14 (9) Transfers involving the first sale of a dwelling never inhabited.

15 "**§ 47E-3. Required disclosures.**

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

18 (1) A residential property disclaimer statement stating that the owner
19 makes no representations or warranties as to the condition of the real
20 property or any improvements to the real property, and that the
21 purchaser will be receiving the real property 'as is', that is, with all
22 defects which may exist, if any, except as otherwise provided in the
23 real estate purchase contract; or

24 (2) A residential property disclosure statement disclosing those items
25 which are required to be disclosed relative to the physical condition of
26 the property. Such disclosure form shall include defects of which the
27 owner has actual knowledge regarding: (i) the water and sewer
28 systems, including the source of household water, water treatment
29 system, or sprinkler system; (ii) insulation; (iii) structural systems,
30 including the roof, walls, floors, foundation, and any basement; (iv)
31 plumbing, electrical, heating, and air conditioning systems; (v) wood-
32 destroying insect infestation; (vi) land use matters; (vii) hazardous or
33 regulated materials, including asbestos, lead-based paint, radon, and
34 underground storage tanks; and (viii) other material defects known to
35 the owner. The disclosure form shall contain a notice to the
36 prospective purchasers and owners that they may wish to obtain
37 professional advice about, or inspections of, the property. The
38 disclosure form shall also contain a notice to purchasers that the
39 information contained in the disclosure consists of the representations
40 of the owner and not the representations of the broker or salesperson, if
41 any. The owner shall not be required to undertake or provide any
42 independent investigation or inspection of the property in order to
43 make the disclosures required by this Chapter.

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

'RESIDENTIAL PROPERTY DISCLAIMER STATEMENT'

'NOTICE TO SELLER AND PURCHASER'

The North Carolina Residential Property Disclosure Act requires the owner of certain residential real property, whenever the property is to be sold or leased with an option to purchase, to furnish to the purchaser either (a) a RESIDENTIAL PROPERTY DISCLAIMER STATEMENT stating that the owner makes no representations or warranties as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE STATEMENT disclosing defects in the condition of the property actually known by the owner. Certain transfers of residential property are excluded from this requirement by G.S. 47E-2.

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

Property Address/
Legal Description:

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

The owner(s) acknowledge having carefully 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 carefully examined it before signing below.

Purchaser Date Purchaser Date'

(c) A residential property disclosure statement shall reads as follows:

'RESIDENTIAL PROPERTY DISCLOSURE STATEMENT'

'NOTICE TO SELLER AND PURCHASER'

1 The North Carolina Residential Property Disclosure Act requires the owner of
2 certain residential real property, whenever the property is to be sold or leased with an
3 option to purchase, to furnish to the purchaser either (a) a _____ RESIDENTIAL
4 PROPERTY DISCLAIMER STATEMENT stating that the owner makes no
5 representations or warranties as to the condition of the property, except as otherwise
6 provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE
7 STATEMENT disclosing defects in the condition of the property actually known by the
8 owner. Certain transfers of residential property are excluded from this requirement by
9 G.S. 47E-2.

10
11 NOTE TO OWNER(S): Sign this statement only if you elect to sell the property and
12 disclose items relative to the physical conditions of the property; otherwise, complete
13 and sign the RESIDENTIAL PROPERTY DISCLAIMER STATEMENT.

14
15 Property Address/
16 Legal Description:

17
18 The undersigned owner(s) of the real property described above disclose the
19 following defects of which they have actual knowledge, with regard to:

- 20 (1) The water and sewer systems, including the source of household water,
21 water treatment system, sprinkler system:
22
23 (2) Insulation:
24
25 (3) Structural systems, including the roof, walls, floors, foundation, and
26 any basement:
27
28 (4) Plumbing, electrical, heating, and air conditioning systems:
29
30 (5) Wood-destroying insect infestation:
31
32 (6) Land-use matters:
33
34 (7) Hazardous or regulated materials, including asbestos, lead-based paint,
35 radon, and underground storage tanks:
36
37 (8) Other material defects:
38

39 The prospective purchaser and owner may wish to obtain professional advice about, or
40 inspections of, the property. The disclosure made above consists of the representations
41 of the owner and not the representations of the broker or salesperson, if any.

42 The owner(s) acknowledge having carefully examined this statement before signing
43 below.
44

1 (1) The error, inaccuracy, or omission was not within the actual
2 knowledge of the owner or was based upon information provided by
3 public agencies or by other persons providing information as specified
4 in subsection (b) of this section that is required to be disclosed
5 pursuant to this Chapter, or the owner reasonably believed the
6 information to be correct; and

7 (2) The owner was not grossly negligent in obtaining the information from
8 a third party and transmitting it.

9 (b) The delivery by a public agency or other person, as described in subsection
10 (c) of this section, of any information required to be disclosed by this Chapter to a
11 prospective purchaser shall be deemed to comply with the requirements of this Chapter
12 and shall relieve the owner of any further duty under this Chapter with respect to that
13 item of information.

14 (c) The delivery by the owner of a report or opinion prepared by a licensed
15 engineer, land surveyor, geologist, wood-destroying insect control expert, contractor, or
16 other home inspection expert, dealing with matters within the scope of the professional's
17 license or expertise, shall satisfy the requirements of subsection (a) of this section if the
18 information is provided to the owner pursuant to a request for such information, whether
19 written or oral. In responding to such a request, an expert may indicate, in writing, an
20 understanding that the information provided shall be used in fulfilling the requirements
21 of this Chapter and, if so, shall indicate the required disclosures, or portions thereof, to
22 which the information being furnished is applicable. If such a statement is furnished,
23 the expert shall not be responsible for any items of information, or portions thereof,
24 other than those expressly set forth in the statement.

25 (d) A real estate licensee representing an owner of residential real property as the
26 listing broker has a duty to inform each owner represented by that licensee of the
27 owner's rights and obligations under this Chapter. A real estate licensee representing a
28 purchaser of residential real property or, if the purchaser is not represented by a
29 licensee, the real estate licensee representing an owner of residential real estate and
30 dealing with the purchaser has a duty to inform each such purchaser of the purchaser's
31 rights and obligations under this Chapter. Provided a real estate licensee performs those
32 duties, the licensee shall have no further duties to the parties to a residential real estate
33 transaction under this Chapter, and shall not be liable to any party to a residential real
34 estate transaction for a violation of this Chapter or for any failure to disclose any
35 information regarding the real property subject to this Chapter.

36 **"§ 47E-6. Change in circumstances.**

37 If information disclosed in accordance with this Chapter is subsequently rendered or
38 discovered to be inaccurate as a result of any act, occurrence, information received,
39 circumstance, or agreement subsequent to the delivery of the required disclosures, the
40 inaccuracy resulting from the disclosure of that information does not constitute a
41 violation of this Chapter. However, at or before settlement, the owner shall be required
42 to disclose any material change in the physical condition of the property or certify to the
43 purchaser at settlement that the condition of the property is substantially the same as it
44 was when the disclosure form was provided. If, at the time the disclosures regarding

1 changes are required to be made, an item of information required to be disclosed is
2 unknown or not available to the owner, the owner may state that the information is
3 unknown or may use an approximation of the information, provided the approximation
4 is clearly identified as such, is reasonable, is based upon the actual knowledge of the
5 owner, and is not used for the purpose of circumventing or evading the requirements of
6 this Chapter.

7 **"§ 47E-7. Actions under this Chapter.**

8 The purchaser's remedies for an owner's failure to comply with the provisions of this
9 Chapter shall be either:

- 10 (1) In the event of a negligent misrepresentation in any residential
11 property disclosure statement, an action for actual damages suffered as
12 a result of defects existing in the property as of the date of execution of
13 the real estate purchase contract which would have been disclosed by a
14 disclosure in compliance with this Chapter and of which the purchaser
15 was not aware at the time of settlement or occupancy by the purchaser,
16 in the case of a sale of the property, or occupancy, in the case of a
17 lease with the option to purchase. Any action brought under this
18 subsection shall be commenced within one year from the date the
19 purchaser received the disclosure statement or, if no disclosure
20 statement was delivered to the purchaser, within one year of the date of
21 the settlement, in the case of a sale, or of occupancy, in the case of a
22 lease or a lease with the option to purchase; or
- 23 (2) In the event of a negligent misrepresentation in any residential
24 property disclosure statement or the failure to provide a disclosure or
25 disclaimer as required by this Chapter, termination of the contract,
26 subject to the provisions of G.S. 47E-4(b).

27 Nothing in this section shall be construed to prevent a purchaser from pursuing any
28 remedies otherwise available against an owner in the event of an owner's knowing and
29 willful misrepresentation of the condition of the subject property.

30 **"§ 47E-8. Effective date.**

31 An owner of real estate shall be required to make disclosures pursuant to this
32 Chapter on and after January 1, 1994. Prior to January 1, 1994, the parties may, by
33 written agreement in the real estate purchase contract, in an addendum to the real estate
34 contract, or in a separate agreement, agree that the provisions of this Chapter shall
35 apply, in which event the owner of residential real property shall provide a purchaser
36 with a residential property disclaimer statement or a residential property disclosure
37 statement."

38 Sec. 2. This act becomes effective January 1, 1994.