

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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HOUSE BILL 1032  
Committee Substitute Favorable 5/12/93

Short Title: Residential Prop. Disclosure.

(Public)

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Sponsors:

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Referred to:

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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, option, 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 salesman.

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 from the grantor or his successor in interest  
22 in a deed of trust, or to a mortgagee from the mortgagor or his  
23 successor in interest in a mortgage, if the indebtedness is in default;

1 transfers by a trustee under a deed of trust or a mortgagee under a  
2 mortgage pursuant to a foreclosure sale, or transfers by a beneficiary  
3 under a deed of trust who has acquired the real property at a sale  
4 conducted pursuant to a foreclosure sale under a deed of trust.

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

7 (4) Transfers from one or more co-owners solely to one or more other co-  
8 owners.

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

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

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

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

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

17 **§ 47E-3. Required disclosures.**

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

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

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

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

43 **'RESIDENTIAL PROPERTY DISCLAIMER STATEMENT**

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

3  
4  
5 Purchaser                      Date                      Purchaser                      Date'

6 (d) A residential property disclosure statement may utilize any format, including  
7 boxes for checking, that substantially discloses the information required by this section  
8 or that the condition of any item listed is unknown.

9 **"§ 47E-4. Time for disclosure; cancellation of contract.**

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

16 (b) If the disclosure or disclaimer required by this Chapter is delivered to the  
17 purchaser after he makes an offer, the purchaser may terminate any resulting real estate  
18 contract no later than three days after the purchaser receives the disclosure or disclaimer  
19 form.

20 In order to terminate a real estate contract when permitted by this section, the  
21 purchaser shall, within the time required above, give written notice to the owner or the  
22 owner's agent either by hand delivery or by depositing into the United States mail,  
23 postage prepaid, and properly addressed to the owner or the owner's agent. If the  
24 purchaser terminates a real estate contract in compliance with this section, the  
25 termination shall be without penalty to the purchaser, and any deposit shall be promptly  
26 returned to the purchaser. Any rights of the purchaser to terminate the contract  
27 provided by this section are waived conclusively if not exercised prior to settlement or  
28 occupancy by the purchaser, in the case of a sale or exchange, or prior to occupancy, in  
29 the case of a lease with option to purchase.

30 **"§ 47E-5. Owner liability for disclosure of information provided by others.**

31 If the owner chooses to provide a disclosure of property condition pursuant to G.S.  
32 47E-3(a)(2) above, the owner may discharge his duty to disclose by providing a written  
33 report by a public agency or by an engineer, land surveyor, geologist, pest control  
34 operator, contractor, home inspector or other expert, dealing with matters within the  
35 scope of the public agency's functions or the expert's license or expertise. The owner  
36 shall not be liable for any error, inaccuracy, or omission of any information delivered  
37 pursuant to this subsection if the error, inaccuracy, or omission was made in reasonable  
38 reliance upon the information provided by the public agency or expert and the owner  
39 was not grossly negligent in obtaining the information or transmitting it.

40 **"§ 47E-6. Change in circumstances.**

41 If, subsequent to the owner's delivery of a disclosure statement to a purchaser, the  
42 owner discovers a material inaccuracy in the disclosure statement, or the disclosure  
43 statement is rendered inaccurate in a material way by the occurrence of some event or

1 circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected  
2 disclosure statement to the purchaser.

3 **"§ 47E-7. Agent's duty.**

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

11 **"§ 47E-8. Effective date.**

12 An owner of real estate shall be required to make disclosures pursuant to this  
13 Chapter on and after January 1, 1994. Prior to January 1, 1994, the parties may, by  
14 written agreement in the real estate purchase contract, in an addendum to the real estate  
15 contract, or in a separate agreement, agree that the provisions of this Chapter shall  
16 apply, in which event the owner of residential real property shall provide a purchaser  
17 with a residential property disclaimer statement or a residential property disclosure  
18 statement.

19 **"§ 47E-9. Authorization to prepare forms; fees.**

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

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