

ADOPTED



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 38*

AMENDMENT NO. A6
(to be filled in by
Principal Clerk)

S38-ARI-171 [v.5]

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Comm. Sub. [YES]
Amends Title [NO]
Third Edition

Date _____, 2014

Representative Hager

1 moves to amend the bill on page 21, lines 33 and 34,
2 by inserting between those lines:

3
4 **"CHANGES TO THE RESIDENTIAL PROPERTY DISCLOSURE ACT**
5 **SECTION 32.(a)** Chapter 47E of the General Statutes reads as rewritten:
6 **"Chapter 47E.**
7 **Residential Property Disclosure Act.**

8 ...
9

10 **§ 47E-2. Exemptions.**

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

- 12 (1) Transfers pursuant to court order, including transfers ordered by a court in
13 administration of an estate, transfers pursuant to a writ of execution,
14 transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers
15 by eminent domain, and transfers resulting from a decree for specific
16 performance.
- 17 (2) Transfers to a beneficiary from the grantor or his successor in interest in a
18 deed of trust, or to a mortgagee from the mortgagor or his successor in
19 interest in a mortgage, if the indebtedness is in default; transfers by a trustee
20 under a deed of trust or a mortgagee under a mortgage, if the indebtedness is
21 in default; transfers by a trustee under a deed of trust or a mortgagee under a
22 mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a
23 deed of trust, who has acquired the real property at a sale conducted pursuant
24 to a foreclosure sale under a deed of trust.
- 25 (3) Transfers by a fiduciary in the course of the administration of a decedent's
26 estate, guardianship, conservatorship, or trust.
- 27 (4) Transfers from one or more co-owners solely to one or more other
28 co-owners.
- 29 (5) Transfers made solely to a spouse or a person or persons in the lineal line of
30 consanguinity of one or more transferors.



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- 1 (6) Transfers between spouses resulting from a decree of divorce or a
- 2 distribution pursuant to Chapter 50 of the General Statutes or comparable
- 3 provision of another state.
- 4 (7) Transfers made by virtue of the record owner's failure to pay any federal,
- 5 State, or local taxes.
- 6 (8) Transfers to or from the State or any political subdivision of the State.
- 7 (b) The following transfers are exempt from the provisions of 47E-4, but not from the
- 8 requirements of 47E-4.1:
- 9 ~~(9)~~(1) Transfers involving the first sale of a dwelling never inhabited.
- 10 ~~(10)~~(2) Lease with option to purchase contracts where the lessee occupies or intends
- 11 to occupy the dwelling.
- 12 ~~(11)~~(3) Transfers between parties when both parties agree not to complete a
- 13 residential property disclosure statement or an owners' association and
- 14 mandatory covenants disclosure statement.
- 15 ...

§ 47E-4. Required disclosures.

~~(b2) With regard to transfers described in G.S. 47E-1, the owner of the real property shall include in any real estate contract, an oil and gas rights mandatory disclosure as provided in this subsection:~~

- ~~(1) Transfers of residential property set forth in G.S. 47E-2 are excluded from this requirement, except that the exemptions provided under subdivisions (9) and (11) of G.S. 47E-2 specifically are not excluded from this requirement.~~
- ~~(2) The disclosure shall be conspicuous, shall be in boldface type, and shall be as follows:~~

~~OIL AND GAS RIGHTS DISCLOSURE~~

~~Oil and gas rights can be severed from the title to real property by conveyance (deed) of the oil and gas rights from the owner or by reservation of the oil and gas rights by the owner. If oil and gas rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface oil or gas resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of oil and gas rights, Seller makes the following disclosures:~~

		Yes	No	No Representation
35				
36	=====			
37	Buyer Initials	1. Oil and gas rights were severed from	==	==
		the property by a previous owner.		
38			Yes	No
39	=====	2. Seller has severed the oil and gas	==	==
40	Buyer Initials	rights from the property.		
41			Yes	No
42	=====	3. Seller intends to sever the oil and	==	==

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1 ~~Buyer Initials~~ ~~gas rights from the property prior to~~
2 ~~transfer of title to Buyer.~~

3 (c) The rights of the parties to a real estate contract as to conditions of the property of
4 which the owner had no actual knowledge are not affected by this Article unless the residential
5 disclosure statement or the owners' association and mandatory covenants disclosure statement,
6 as applicable, states that the owner makes no representations as to those conditions. If the
7 statement states that an owner makes no representations as to the conditions of the property,
8 then the owner has no duty to disclose those conditions, whether or not the owner should have
9 known of them.
10

11 **"§ 47E-4.1 Required mineral and oil and gas rights disclosures.**

12 (a) With regard to transfers described in G.S. 47E-1 and 47E-2(b), the owner of the real
13 property shall furnish to a purchaser a mineral and oil and gas rights mandatory disclosure
14 statement. The disclosure shall be conspicuous, shall be in boldface type, and shall be as
15 follows:

16 MINERAL AND OIL AND GAS RIGHTS DISCLOSURE

17 Mineral rights and/or oil and gas rights can be severed from the title to real
18 property by conveyance (deed) of the mineral rights and/or oil and gas rights
19 from the owner or by reservation of the mineral rights and/or oil and gas
20 rights by the owner. If mineral rights and/or oil and gas rights are or will be
21 severed from the property, the owner of those rights may have the perpetual
22 right to drill, mine, explore, and remove any of the subsurface mineral
23 and/or oil or gas resources on or from the property either directly from the
24 surface of the property or from a nearby location. With regard to the
25 severance of mineral rights and/or oil and gas rights, Seller makes the
26 following disclosures:

		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
28				
29	<u> </u>	<u>—</u>	<u>—</u>	<u>—</u>
30	<u>Buyer Initials</u>			
31		<u>Yes</u>	<u>No</u>	
32	<u> </u>	<u>—</u>	<u>—</u>	
33	<u>Buyer Initials</u>			
34		<u>Yes</u>	<u>No</u>	
35	<u> </u>	<u>—</u>	<u>—</u>	
36	<u>Buyer Initials</u>			
37		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
38	<u> </u>	<u>—</u>	<u>—</u>	<u>—</u>
39	<u>Buyer Initials</u>			
40		<u>Yes</u>	<u>No</u>	
41	<u> </u>	<u>—</u>	<u>—</u>	
42				

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1	<u>Buyer Initials</u>	<u>rights from the property.</u>		
2			<u>Yes</u>	<u>No</u>
3	<u> </u>	<u>6. Seller intends to sever the oil and</u>	<u>—</u>	<u>—</u>
4	<u>Buyer Initials</u>	<u>gas rights from the property prior to</u>		
5		<u>transfer of title to Buyer.</u>		

6 (b) The North Carolina Real Estate Commission shall develop and require the use of a
7 mineral and oil and gas rights mandatory disclosure statement to comply with the requirements of this
8 section. The disclosure statement shall specify that the transfers identified in 47E-2(a) are exempt
9 from this requirement but the transfers identified in 47E-2(b) are not. The disclosure statement shall
10 provide the owner with the option to indicate whether the owner has actual knowledge of the
11 specified characteristics or conditions. The owner may make no representations only as to a previous
12 severance of mineral rights and previous severance of oil and gas rights.

13 (c) The rights of the parties to a real estate contract as to the severance of minerals or the
14 severance of oil and gas rights by the previous owner of the property and of which the owner had no
15 actual knowledge are not affected by this Article unless the mineral and oil and gas rights mandatory
16 disclosure statement states that the owner makes no representations as to the severance of mineral
17 rights or the severance of oil and gas rights by the previous owner of the property. If the statement
18 states that an owner makes no representations as to the severance of mineral rights or the severance of
19 oil and gas rights by the previous owner of the property, then the owner has no duty to disclose the
20 severance of mineral rights or the severance of oil and gas rights, as applicable, by a previous owner
21 of the property, whether or not the owner should have known of any such severance.

22
23 **§ 47E-5. Time for disclosure; cancellation of contract.**

24 (a) The owner of real property subject to this Chapter shall deliver to the purchaser the
25 disclosure statements required by this Chapter no later than the time the purchaser makes an
26 offer to purchase, exchange, or option the property, or exercises the option to purchase the
27 property pursuant to a lease with an option to purchase. The residential property disclosure
28 ~~statement~~ statement, the mineral and oil and gas rights mandatory disclosure statement, or the
29 owners' association and mandatory covenants disclosure statement may be included in the real
30 estate contract, in an addendum, or in a separate document.

31 ...
32

33 **§ 47E-6. Owner liability for disclosure of information provided by others.**

34 ~~The~~ With the exception of the disclosures required by 47E-4.1, the owner may discharge
35 the duty to disclose imposed by this Chapter by providing a written report attached to the
36 residential property disclosure statement and the owners' association and mandatory covenants
37 disclosure statement by a public agency or by an attorney, engineer, land surveyor, geologist,
38 pest control operator, contractor, home inspector or other expert, dealing with matters within
39 the scope of the public agency's functions or the expert's license or expertise. The owner shall
40 not be liable for any error, inaccuracy, or omission of any information delivered pursuant to
41 this section if the error, inaccuracy, or omission was made in reasonable reliance upon the

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1 information provided by the public agency or expert and the owner was not grossly negligent in
2 obtaining the information or transmitting it.

3

4 **§ 47E-7. Change in circumstances.**

5 If, subsequent to the owner's delivery of a residential property disclosure ~~statement and~~
6 statement, the mineral and oil and gas rights mandatory disclosure statement, or the owners'
7 association and mandatory covenants disclosure statement to a purchaser, the owner discovers a
8 material inaccuracy in a disclosure statement, or a disclosure statement is rendered inaccurate
9 in a material way by the occurrence of some event or circumstance, the owner shall promptly
10 correct the inaccuracy by delivering a corrected disclosure statement or statements to the
11 purchaser. Failure to deliver a corrected disclosure statement or to make the repairs made
12 necessary by the event or circumstance shall result in such remedies for the buyer as are
13 provided for by law in the event the sale agreement requires the property to be in substantially
14 the same condition at closing as on the date of the offer to purchase, reasonable wear and tear
15 excepted.

16

17 **§ 47E-8. Agent's duty.**

18 A real estate broker ~~or salesman~~ acting as an agent in a residential real estate transaction has
19 the duty to inform each of the clients of the real estate broker ~~or salesman~~ of the client's rights
20 and obligations under this Chapter. Provided the owner's real estate broker ~~or salesman~~ has
21 performed this duty, the broker or salesman shall not be responsible for the owner's willful
22 refusal to provide a prospective purchaser with a residential property disclosure ~~statement~~
23 statement, the mineral and oil and gas rights mandatory disclosure statement, or an owners'
24 association and mandatory covenants disclosure statement. Nothing in this Chapter shall be
25 construed to conflict with, or alter, the ~~broker or salesman's~~ broker's duties under Chapter 93A
26 of the General Statutes.

27

..."

28 **SECTION 32.(b)** This section is effective when it becomes law, and applies to
29 contracts executed on or after that date.";

30

31 and renumbering the remaining sections accordingly.

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SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____

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and vote information, is available in the
House Principal Clerk's Office**