# Chapter 47E.

# Residential Property Disclosure Act.

## § 47E-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-2(10). (1995, c. 476, s. 1; 1997-472, s. 5.)

## § 47E-2. Exemptions.

(a) The following transfers are exempt from the provisions of this Chapter:

(1) Transfers pursuant to court order, including transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
(2) Transfers to a beneficiary from the grantor or his successor in interest in a deed of trust, or to a mortgagee from the mortgagor or his successor in interest in a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if the indebtedness is in default; transfers by a trustee under a deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust, who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust.
(3) Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
(4) Transfers from one or more co-owners solely to one or more other co-owners.
(5) Transfers made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors.
(6) Transfers between spouses resulting from a decree of divorce or a distribution pursuant to Chapter 50 of the General Statutes or comparable provision of another state.
(7) Transfers made by virtue of the record owner's failure to pay any federal, State, or local taxes.
(8) Transfers to or from the State or any political subdivision of the State.

(b) The following transfers are exempt from the provisions of G.S. 47E-4 but not from the requirements of G.S. 47E-4.1:

(1) Transfers involving the first sale of a dwelling never inhabited.
(2) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.
(3) Transfers between parties when both parties agree not to complete a residential property disclosure statement or an owners' association and mandatory covenants disclosure statement. (1995, c. 476, s. 1; 2011-362, s. 3(a); 2014-120, s. 49(a).)

## § 47E-3. Definitions.

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

(1) "Owner" means each person having a recorded present or future interest in real estate that is identified in a real estate contract subject to this Chapter; but shall not mean or include the trustee in a deed of trust, or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property, or the owner of any easement or license encumbering the real property.

(2) "Purchaser" means each person or entity named as "buyer" or "purchaser" in a real estate contract subject to this Chapter.

(3) "Real estate contract" means a contract for the transfer of ownership of real property by the means described in G.S. 47E-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. (1995, c. 476, s. 1.)

**§ 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:

(1) Disclose those items which are required to be disclosed relative to the characteristics and condition of the property and of which the owner has actual knowledge; or

(2) State that the owner makes no representations as to the characteristics and condition of the real property or any improvements to the real property except as otherwise provided in the real estate contract.

(b) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of this section. The disclosure statement shall specify that 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, and shall include at least the following characteristics and conditions of the property:

(1) The water supply and sanitary sewage disposal system;

(2) The roof, chimneys, floors, foundation, basement, and other structural components and any modifications of these structural components;

(3) The plumbing, electrical, heating, cooling, and other mechanical systems;

(4) Present infestation of wood-destroying insects or organisms or past infestation the damage for which has not been repaired;

(5) The zoning laws, restrictive covenants, building codes, and other land-use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from any governmental agency affecting this real property; and

(6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material (whether buried or covered), and other environmental contamination.

The disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics or conditions, or the owner is making no representations as to any characteristic or condition.

(b1) With regard to transfers described in G.S. 47E-1, the owner of the real property shall furnish to a purchaser an owners' association and mandatory covenants disclosure statement.

(1) The North Carolina Real Estate Commission shall develop and require the use of a standard disclosure statement to comply with the requirements of

this subsection. The disclosure statement shall specify that 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. The standard disclosure statement shall require disclosure of whether or not the property to be conveyed is subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the property, including, but not limited to, obligations to pay regular assessments or dues and special assessments. The statement required by this subsection shall include information on all of the following:

a. The name, address, telephone number, or e-mail address for the president or manager of the association to which the lot is subject.
b. The amount of any regular assessments or dues to which the lot is subject.
c. Whether there are any services that are paid for by regular assessments or dues to which the lot is subject.
d. Whether, as of the date the disclosure is signed, there are any assessments, dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject.
e. Whether, as of the date the disclosure is signed, there are any unsatisfied judgments against or pending lawsuits involving the lot, the planned community or the association to which the lot is subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the lot to be sold.
f. Any fees charged by an association or management company to which the lot is subject in connection with the conveyance or transfer of the lot to a new owner.

(2) The owners' association and mandatory covenants disclosure statement shall provide the owner with the option to indicate whether the owner has actual knowledge of the specified characteristics, or conditions or the owner is making no representations as to any characteristic or condition contained in the statement.

(b2) Repealed by Session Laws 2014-120, s. 49(a), effective January 1, 2015, and applicable to contracts executed on or after that date.

(c) The rights of the parties to a real estate contract as to conditions of the property of which the owner had no actual knowledge are not affected by this Article unless the residential disclosure statement or the owners' association and mandatory covenants disclosure statement, as applicable, states that the owner makes no representations as to those conditions. If the statement states that an owner makes no representations as to the conditions of the property, then the owner has no duty to disclose those conditions, whether or not the owner should have known of them. (1995, c. 476, s. 1.; 1997-472, s. 1; 2011-362, s. 3(b); 2012-143, s. 5; 2014-120, s. 49(a).)

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

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

MINERAL AND OIL AND GAS RIGHTS DISCLOSURE

Mineral rights and/or oil and gas rights can be severed from the title to real property by conveyance (deed) of the mineral rights and/or oil and gas rights from the owner or by reservation of the mineral rights and/or oil and gas rights by the owner. If mineral rights and/or 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 mineral and/or 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 mineral rights and/or oil and gas rights, Seller makes the following disclosures:

| | | Yes | No | No Representation |
|---|---|---|---|---|
| _____ Buyer Initials | 1. Mineral rights were severed from the property by a previous owner. | ___ | ___ | ___ |
| | | Yes | No | |
| _____ Buyer Initials | 2. Seller has severed the mineral rights from the property. | ___ | ___ | |
| | | Yes | No | |
| _____ Buyer Initials | 3. Seller intends to sever the mineral rights from the property prior to transfer of title to Buyer. | ___ | ___ | |
| | | Yes | No | No Representation |
| _____ Buyer Initials | 4. Oil and gas rights were severed from the property by a previous owner. | ___ | ___ | ___ |
| | | Yes | No | |
| _____ Buyer Initials | 5. Seller has severed the oil and gas rights from the property. | ___ | ___ | |
| | | Yes | No | |
| _____ Buyer Initials | 6. Seller intends to sever the oil and gas rights from the property prior to transfer of title to Buyer. | ___ | ___ | |

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

(c) The rights of the parties to a real estate contract as to the severance of minerals or the severance of oil and gas rights by the previous owner of the property and of which the owner had no actual knowledge are not affected by this Article unless the mineral and oil and gas rights mandatory disclosure statement states that the owner makes no representations as to the severance of mineral rights or the severance of oil and gas rights by the previous owner of the property. If the statement states that an owner makes no representations as to the severance of mineral rights or the severance of oil and gas rights by the previous owner of the property, then the owner has no duty to disclose the severance of mineral rights or the severance of oil and gas rights, as applicable, by a previous owner of the property, whether or not the owner should have known of any such severance. (2014-120, s. 49(a).)

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

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

(b) If the disclosure statements required by this Chapter are not delivered to the purchaser prior to or at the time the purchaser makes an offer, the purchaser may cancel any resulting real estate contract. The purchaser's right to cancel shall expire if not exercised prior to the following, whichever occurs first:

(1) The end of the third calendar day following the purchaser's receipt of the disclosure statement;
(2) The end of the third calendar day following the date the contract was made;
(3) Settlement or occupancy by the purchaser in the case of a sale or exchange; or
(4) Settlement in the case of a purchase pursuant to a lease with option to purchase.

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

In order to cancel a real estate contract when permitted by this section, the purchaser shall, within the time required above, give written notice to the owner or the owner's agent either by hand delivery or by depositing into the United States mail, postage prepaid, and properly addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract in compliance with this subsection, the cancellation shall be without penalty to the purchaser, and the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any rights of the purchaser to cancel or terminate the contract for reasons other than those set forth in this subsection are not affected by this subsection. (1995, c. 476, s. 1; 1997-472, s. 2; 2011-362, s. 3(c); 2014-120, s. 49(a).)

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

With the exception of the disclosures required by G.S. 47E-4.1, the owner may discharge the duty to disclose imposed by this Chapter by providing a written report attached to the residential property disclosure statement and the owners' association and mandatory covenants disclosure statement by a public agency or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of the public agency's functions or the expert's license or expertise. The owner shall not be liable for any error, inaccuracy, or omission of any information delivered pursuant to this section if the error, inaccuracy, or omission was made in reasonable reliance upon the information provided by the public agency or expert and the owner was not grossly negligent in obtaining the information or transmitting it. (1995, c. 476, s. 1; 1997-472, s. 3; 2011-362, s. 3(d); 2014-120, s. 49(a).)

**§ 47E-7. Change in circumstances.**

If, subsequent to the owner's delivery of a residential property disclosure statement, the mineral and oil and gas rights mandatory disclosure statement, or the owners' association and mandatory covenants disclosure statement to a purchaser, the owner discovers a material inaccuracy in a disclosure statement, or a disclosure statement is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected disclosure statement or statements to the purchaser. Failure to deliver a corrected disclosure statement or to make the repairs made

necessary by the event or circumstance shall result in such remedies for the buyer as are provided for by law in the event the sale agreement requires the property to be in substantially the same condition at closing as on the date of the offer to purchase, reasonable wear and tear excepted. (1995, c. 476, s. 1; 2011-362, s. 3(e); 2014-120, s. 49(a).)

**§ 47E-8. Agent's duty.**

A real estate broker acting as an agent in a residential real estate transaction has the duty to inform each of the clients of the real estate broker of the client's rights and obligations under this Chapter. Provided the owner's real estate broker has performed this duty, the broker or salesman shall not be responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement, the mineral and oil and gas rights mandatory disclosure statement, or an owners' association and mandatory covenants disclosure statement. Nothing in this Chapter shall be construed to conflict with, or alter, the broker's duties under Chapter 93A of the General Statutes. (1995, c. 476, s. 1; 1997-472, s. 4; 2011-362, s. 3(f); 2014-120, s. 49(a).)

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

This Chapter shall not affect the landlord-tenant relationship between the parties to a lease with option to purchase contract during the term of the lease, and the rights and duties of landlords and tenants under Chapter 42 of the General Statutes shall remain in effect until transfer of ownership of the property to the purchaser. (1995, c. 476, s. 1.)

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

The North Carolina Real Estate Commission may prepare, or cause to be prepared, forms for use pursuant to this Chapter. The Commission may charge a fee not to exceed twenty-five cents (25¢) per form plus the costs of postage. (1995, c. 476, s. 1.)