

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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BILL DRAFT 2015-MNz-17 [v.2] (03/23)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Required Disclosure - First Sale.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT (I) TO REQUIRE DISCLOSURE IN FIRST SALES OF NEW DWELLINGS OF
3 WHETHER OR NOT THE PROPERTY TO BE CONVEYED IS SUBJECT TO
4 REGULATION BY ONE OR MORE OWNERS' ASSOCIATIONS AND BY GOVERNING
5 DOCUMENTS THAT IMPOSE MANDATORY COVENANTS, CONDITIONS, AND
6 RESTRICTIONS UPON THE PROPERTY, INCLUDING OBLIGATIONS TO PAY
7 REGULAR ASSESSMENTS OR DUES AND SPECIAL ASSESSMENTS AND (II) TO
8 MAKE TECHNICAL CORRECTIONS TO OTHER SECTIONS OF CHAPTER 47E OF
9 THE GENERAL STATUTES[, AS RECOMMENDED BY THE GENERAL STATUTES
10 COMMISSION].

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 47E-1 reads as rewritten:

13 **"§ 47E-1. Applicability.**

14 This Chapter applies to the following transfers of residential real property consisting of not
15 less than one nor more than four dwelling units, whether or not the transaction is with the
16 assistance of a licensed real estate broker or salesman: broker:

- 17 (1) Sale or exchange,
- 18 (2) Installment land sales contract,
- 19 (3) Option, or
- 20 (4) Lease with option to purchase, except as provided in G.S. 47E-2(10): G.S. 47E-
21 2(b)(2)."

22 [staff note: is the deletion of "salesman" correct? - Bly]

23
24 **SECTION 2.** G.S. 47E-2 reads as rewritten:

25 **"§ 47E-2. Exemptions.**

- 26 (a) The following transfers are exempt from the provisions of this Chapter:
 - 27 (1) Transfers pursuant to court order, including transfers ordered by a court in
28 administration of an estate, transfers pursuant to a writ of execution, transfers
29 by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent
30 domain, and transfers resulting from a decree for specific performance.
 - 31 (2) Transfers to a beneficiary from the grantor or ~~his~~ the grantor's successor in
32 interest in a deed of trust, or to a mortgagee from the mortgagor or ~~his~~ the
33 mortgagor's successor in interest in a mortgage, if the indebtedness is in default;
34 transfers by a trustee under a deed of trust or a mortgagee under a mortgage, if



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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~~; G.S. 47E-4.1; transfers described in subdivision (1) of this subsection are not exempt from G.S. 47E-4.2.]

- (1) Transfers involving the first sale of a dwelling never inhabited. [Transfers described in this subdivision are not exempt from G.S. 47E-4.2.]
- (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).)

[staff note: The brackets contain alternative language. The wording on lines 13-14 is the original; the wording on lines 15-16 is a suggested alternative. Brackets in this draft denote either the presence of alternatives or material in Chapter 47E that is useful for context but will not be included in an actual bill. - Bly]

SECTION 3. G.S. 47E-3 reads as rewritten:

"§ 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)~~ unit or units thereon, described in a real estate contract subject to this Chapter."

SECTION 4. 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:

- (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~~ statement as provided in this subsection:

- (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)~~ associations 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~~ Chapter 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."

SECTION 5. G.S. 47E-4.1(c) reads as rewritten:

[§ 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
_____	1. Mineral rights were severed from	_____	_____	_____
Buyer Initials	the property by a previous owner.			
_____	2. Seller has severed the mineral	Yes	No	
Buyer Initials	rights from the property.	_____	_____	
_____	3. Seller intends to sever the mineral	Yes	No	
Buyer Initials	rights from the property prior to	_____	_____	

1	transfer of title to Buyer.			
2		Yes	No	No Representation
3	_____ 4. Oil and gas rights were severed from	_____	_____	_____
4	Buyer Initials the property by a previous owner.			
5		Yes	No	
6	_____ 5. Seller has severed the oil and gas	_____	_____	
7	Buyer Initials rights from the property.			
8		Yes	No	
9	_____ 6. Seller intends to sever the oil and	_____	_____	
10	Buyer Initials gas rights from the property prior to			
11	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~~ Chapter 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."

SECTION 6. Chapter 47E of the General Statutes is amended by adding a new section to read:

"§ 47E-4.2. Required new dwelling owners association disclosures.

(a) With regard to transfers described in G.S. 47E-2(b)(1), the owner of the real property shall furnish to a purchaser a new dwelling owners association mandatory disclosure statement. The disclosure statement shall require disclosure of whether or not the property to be conveyed is subject to regulation by one or more owners' associations 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.

(b) The North Carolina Real Estate Commission shall develop and require the use of a new dwelling owners association 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)(1) are not.

SECTION 7. G.S. 47E-5 reads as rewritten:

"§ 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

1 mineral and oil and gas rights mandatory disclosure statement, the new dwelling owners
2 association disclosure statement, or the owners' association and mandatory covenants disclosure
3 statement may be included in the real estate contract, in an addendum, or in a separate document.]
4 ~~[The residential property disclosure statement, the mineral and oil and gas rights mandatory~~
5 ~~disclosure statement, or the owners' association and mandatory covenants disclosure statement~~
6 Disclosure statements required by this Chapter may be included in the real estate contract, in an
7 addendum, or in a separate document.]

8 *[staff note: We were asked to see about reducing repetitious listings, particularly with reference*
9 *to this and the following sections. The second alternatives would be our suggestions. - Bly]*

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

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

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

21 In order to cancel a real estate contract when permitted by this ~~section, subsection,~~ the
22 purchaser shall, within the time required above, give written notice to the owner or the owner's
23 agent either by hand delivery or by depositing into the United States mail, postage prepaid, and
24 properly addressed to the owner or the owner's agent. If the purchaser cancels a real estate contract
25 in compliance with this **subsection**, the cancellation shall be without penalty to the purchaser, and
26 the purchaser shall be entitled to a refund of any deposit the purchaser may have paid. Any rights
27 of the purchaser to cancel or terminate the contract for reasons other than those set forth in this
28 **subsection** are not affected by this **subsection**."

30 **SECTION 8.** G.S. 47E-6 reads as rewritten:

31 **"§ 47E-6. Owner liability for disclosure of information provided by others.**

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

44 **SECTION 9.** G.S. 47E-7 reads as rewritten:

45 **"§ 47E-7. Change in circumstances.**

46 [If, subsequent to the owner's delivery of a residential property disclosure statement, the
47 mineral and oil and gas rights mandatory disclosure statement, the new dwelling owners
48 association disclosure statement, or the owners' association and mandatory covenants disclosure
49 statement to a purchaser,] ~~[If, subsequent to the owner's delivery of a residential property~~
50 ~~disclosure statement, the mineral and oil and gas rights mandatory disclosure statement, or the~~
51 ~~owners' association and mandatory covenants disclosure statement—any of the disclosure~~

statements required by this Chapter 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."

SECTION 10. G.S. 47E-8 reads as rewritten:

"§ 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, the new dwelling owners association 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."

[staff note: Is deleting "salesman" correct?]

[§ 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.

§ 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.]

SECTION 11. This section becomes effective October 1, 2016, and applies to contracts executed on or after that date.