SESSION 1993

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HOUSE BILL 1032 Committee Substitute Favorable 5/12/93

Short Title: Residential Prop. Disclosure.

(Public)

Sponsors:

Referred to:

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	'' <u>CHAPTER 47E.</u>
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	" <u>§ 47E-2. Exemptions.</u>
14	The following transfers are specifically excluded from the provisions of this
15	<u>Chapter:</u>
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) <u>Transfers to a beneficiary from the grantor or his successor in interest</u>
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		transform by a trusted under a dead of trust or a mortagene under a			
1	transfers by a trustee under a deed of trust or a mortgagee under				
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					
6		decedent's estate, guardianship, conservatorship, or trust.			
7	<u>(4)</u>	Transfers from one or more co-owners solely to one or more other co-			
8		owners.			
9	<u>(5)</u>	Transfers made solely to a spouse or a person or persons in the lineal			
10		line of consanguinity of one or more transferors.			
11	<u>(6)</u>	Transfers between spouses resulting from a decree of divorce or a			
12		distribution pursuant to Chapter 50 of the General Statutes.			
13	<u>(7)</u>	Transfers made by virtue of the record owner's failure to pay any			
14		federal, state, or local taxes.			
15	<u>(8)</u>	Transfers to or from the State or any political subdivision of the State.			
16	<u>(9)</u>	Transfers involving the first sale of a dwelling never inhabited.			
17	" <u>§ 47E-3. Req</u>	uired disclosures.			
18	<u>(a)</u> <u>With</u>	regard to transfers described in G.S. 47E-1, the owner of the residential			
19	real property sh	all furnish to a purchaser one of the following:			
20	<u>(1)</u>	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	<u>(2)</u>	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) <u>A res</u>	idential property disclaimer statement shall read as follows:			
43	. ,	SIDENTIAL PROPERTY DISCLAIMER STATEMENT			
44					
-					

1 2	NOTICE TO SE	LLER AND PURCHASER			
2 3	The North Caroline Decidential	Property Digelegure Act rec	wires the owner of		
3 4	The North Carolina Residential residential real property consisting of				
4 5	exchanged, optioned or leased with a				
	either (a) a RESIDENTIAL PROPER				
6 7					
8	owner makes no representations as to the condition of the property, except as otherwise provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSURE				
9	STATEMENT disclosing defects in the				
10	residential property are excluded from				
11	residential property are excluded from	this requirement by 0.5. 4712	<u></u>		
12	NOTE TO OWNER(S): Sign this state	ement only if you elect to sell	the property without		
12	representations as to its condition,				
14	-		-		
15	contract; otherwise, complete and sign the RESIDENTIAL PROPERTY DISCLOSURE STATEMENT.				
16					
17	Property Address/				
18	Legal Description:				
19					
20	The undersigned owner(s) of	the real property describe	d above make no		
21	representations as to the condition of				
22	property, and the purchaser will be re-				
23	defects which may exist, if any, excep				
24	contract.	-	*		
25					
26	The owner(s) acknowledge having c	arefully examined this stater	ment before signing		
27	below:				
28					
29					
30	<u>Owner</u> <u>Date</u>	Owner	Date		
31					
32	The purchaser(s) acknowledge receipt of a copy of this disclaimer statement and further				
33	acknowledge that they have carefully e	examined it before signing bel	<u>low:</u>		
34					
35					
36	<u>Purchaser</u> <u>Date</u>	Purchaser	Date'		
37	· · · ·	osure statement shall read subs	-		
38	*RESIDENTIAL PROPE	CRTY DISCLOSURE STAT	<u>EMENT</u>		
39	NOTICE TO SE				
40	NOTICE TO SE	CLLER AND PURCHASER			
41 42	The North Carolina Residential	Property Disclosure Act rec	mires the owner of		
42 43	residential real property consisting of		<u>-</u>		

44 exchanged, optioned, or leased with an option to purchase, to furnish to the purchaser

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1 2 3 4 5 6 7 8 9 10 11 12	 owner makes no representations as to the condition of the property, except as otherw provided in the purchase contract, or (b) a RESIDENTIAL PROPERTY DISCLOSU STATEMENT disclosing defects in the condition of the property. Certain transfers 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 a disclose items relative to the condition of the property; otherwise, complete and sign RESIDENTIAL PROPERTY DISCLAIMER STATEMENT. Property Address/ 						
13							
14		• · · · ·	eal property describe	ed above disclose the			
15	-	ets with regard to:					
16	<u>(1)</u>	The water and sewer syste	-	<u>ce of household water,</u>			
17		water treatment system, sp	orinkler system:				
18		T 1 . •					
19	<u>(2)</u>	Insulation:					
20	(2)			G			
21	<u>(3)</u>	Structural systems, includ	ling the root, walls, I	loors, toundation, and			
22		any basement:					
23			a • • • •				
24	<u>(4)</u>	Plumbing, electrical, heating	ng, and air conditionii	<u>ig systems:</u>			
25		XX7 1 1 4 · · · 4 ·					
26	<u>(5)</u>	Wood-destroying insect in	itestation:				
27	(f)	T and the second the second					
28	<u>(6)</u>	Land-use matters:					
29	(7)	II. and a summer lated as					
30	<u>(7)</u>		_	estos, lead-based paint,			
31		radon, and underground st	orage tanks:				
32							
33	<u>(8)</u>	Other material defects:					
34	The construct		wigh to state on C	aiomal admine at a d			
35	The prospective purchaser and owner may wish to obtain professional advice about, or						
36	inspections of, the property. The owner has a duty to disclose any material inaccuracy in this statement or any material shares in the property which is discovered between the						
37	this statement or any material change in the property which is discovered between the						
38	date of this statement and the closing of the transaction.						
39 40	The owner(s) acknowledge having carefully examined this statement before signing						
40 41	below:						
41 42							
42 43	Owner	Date	Owner	Date			
43 44		Dail		Daic			
-1-1							

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The purchaser(s) acknowledge receipt of a copy of this disclosure statement and further 1 2 acknowledge that they have carefully examined it before signing below: 3 4 5 Purchaser Purchaser Date' 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 the purchaser the written disclosures or disclaimer required by this Chapter no later than 11 12 the time the purchaser makes an offer to purchase, exchange, option, or lease with option to purchase the property. The residential property disclaimer statement or 13 residential property disclosure statement may be included in the real estate purchase 14 15 contract, in an addendum, or in a separate document. If the disclosure or disclaimer required by this Chapter is delivered to the 16 (b)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 owner's agent either by hand delivery or by depositing into the United States mail, 22 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 termination shall be without penalty to the purchaser, and any deposit shall be promptly 25 returned to the purchaser. Any rights of the purchaser to terminate the contract 26 27 provided by this section are waived conclusively if not exercised prior to settlement or occupancy by the purchaser, in the case of a sale or exchange, or prior to occupancy, in 28 29 the case of a lease with option to purchase. "§ 47E-5. Owner liability for disclosure of information provided by others. 30 If the owner chooses to provide a disclosure of property condition pursuant to G.S. 31 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 operator, contractor, home inspector or other expert, dealing with matters within the 34 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 pursuant to this subsection if the error, inaccuracy, or omission was made in reasonable 37 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. "§ 47E-6. Change in circumstances. 40 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

- circumstance, the owner shall promptly correct the inaccuracy by delivering a corrected 1
- 2 disclosure statement to the purchaser.
- 3 "§ 47E-7. Agent's duty.
- A real estate broker or salesman acting as the agent of the owner of residential real 4
- 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.

"§ 47E-8. Effective date. 11

- 12 An owner of real estate shall be required to make disclosures pursuant to this
- Chapter on and after January 1, 1994. Prior to January 1, 1994, the parties may, by 13
- 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
- apply, in which event the owner of residential real property shall provide a purchaser 16 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
- fee for the forms, not to exceed one dollar (\$1.00) per page and not to exceed three 22
- 23 dollars (\$3.00) per form regardless of the number of pages per form."
- 24 Sec. 2. This act becomes effective January 1, 1994.