

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: NC Real Estate Commission

RULE CITATION: 21 NCAC 58A .0114

DEADLINE FOR RECEIPT: June 7, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Lines 7, Paragraph (a): Consider using “purchaser” rather than “buyer”. “Purchaser” is a defined term pursuant to G.S. 47E-3(2). “Buyer” is not defined in either the Commission’s rules or Chapter 47E.

Line 11, Paragraph (a): “G.S. 47-E” does not exist.

Line 11, Paragraph (a): Which parts of Chapter 47E set forth the requirements which the Commission wishes to incorporate by reference? If the Commission is referring to G.S. 47E-4 and 4.1, these statutes set forth the “minimum characteristics and conditions of the property” to be addressed. The statutes do not clearly state that which the owner must disclose but rather leave to the Commission the authority to add interstitial language, pursuant to adoption under the Administrative Procedures Act (APA), specifying the required disclosures. By merely referencing Chapter 47E, the Commission creates an ambiguity rather than adopting specific requirements as it has done in the current rule.

Line 14, Paragraph (a)(3): If the Commission is providing instructions for the form to which the owners are required to abide, the instructions must be specific. The Commission cannot adopt a rule which merely requires adherence to instructions which have not been adopted pursuant to the APA unless said instructions are otherwise prescribed by rule or statute.

Line 16, Paragraph (a)(5): Is the owner free to provide any adjectives he or she may desire, or is the Commission limiting the choices?

Line 19, Paragraph (a)(6): What does the Commission mean by “historic designation or registration”? Designation by whom? Registration where?

Line 20, Paragraph (a)(7): “Other issue” is ambiguous. “Affect” is ambiguous.

William W. Peaslee
Commission Counsel

Date submitted to agency: May 23, 2023

Line 22, Paragraph (a)(8): Is the owner free to provide any adjectives he or she may desire, or is the Commission limiting the choices? Is the Commission asking specifically about federally designated flood hazard areas? The Commission needs to be clear and unambiguous regarding required disclosures.

Line 23, Paragraph (a)(9): Is the owner free to provide any adjectives he or she may desire, or is the Commission limiting the choices? What does the Commission mean by “affecting”? Does level grading “affect” the property?

Line 25, Paragraph (a)(11): This does not make sense. The owner is required to complete the Disclosure which includes the [purchaser’s] acknowledgement and then provide the completed Disclosure to the purchaser? By what rule or statute is the purchaser required to acknowledge examination or even examine the Disclosure?

Line 27, Paragraph (a)(12): By what rule or statute is the purchaser required to sign the Disclosure?

Line 30, Paragraph (c): It is unclear what the Commission is requiring a broker to do regarding the duty to “discover”. Is the broker now a guarantor? Has the Commission outlined or defined due diligence regarding the duty to discover?

Line 30, Paragraph (c): As the term does not appear to be defined in either statute or rule, what are “material facts”?

Line 30-31, Paragraph (c): Whereas G.S. 93A-6 (a)(1) makes any willful or negligent omission of a material fact the basis for revocation or suspension of a broker’s license, why is this paragraph necessary pursuant to G.S. 150B-21.9(a)(3)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee
Commission Counsel

Date submitted to agency: May 23, 2023

1 21 NCAC 58A .0114 is amended as published in 37:18 NCR 1903 as follows:

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3 **21 NCAC 58A .0114 RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE**
4 **STATEMENT**

5 (a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes
6 shall complete ~~the following a~~ Residential Property and Owners' Association Disclosure Statement (hereinafter
7 “Disclosure Statement”) and furnish a copy of the complete statement to a buyer in accordance with the requirements
8 of G.S. 47E-4. ~~The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:~~
9 Disclosure Statement is a form prescribed by the Commission and available on the Commission’s website at
10 <https://www.ncrec.gov/Forms/Consumer/rec422.pdf>. The Disclosure Statement shall include the requirements set
11 forth in G.S. 47-E and the:

- 12 (1) property address;
13 (2) owner’s name(s), signature(s), and date of Disclosure Statement completion;
14 (3) instructions for Disclosure Statement completion;
15 (4) year the dwelling was constructed;
16 (5) condition of the property’s:
17 (i) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems; and
18 (ii) fixtures and appliances that may be included in the conveyance.
19 (6) historic designation or registration of the property, if applicable;
20 (7) noise, odor, smoke, or other issue from commercial, industrial, or military sources that affect the
21 property;
22 (8) flood hazard status of the property;
23 (9) condition of the drainage, grading, or soil stability affecting the property;
24 (10) private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;
25 (11) buyer’s acknowledgement of examination of the Disclosure Statement prior to signing the
26 Disclosure Statement; and
27 (12) buyer’s signature and date of Disclosure Statement receipt.

28 (b) A broker shall furnish a current Disclosure Statement published on the Commission’s website to the property
29 owner(s) for completion.

30 (c) A broker shall discover and disclose any material facts about the property that the broker knows or reasonably
31 should know and shall not solely rely on the owner’s Disclosure Statement representations.

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34 ~~[N.C. REAL ESTATE COMMISSION SEAL]~~

35
36 STATE OF NORTH CAROLINA
37 ~~RESIDENTIAL PROPERTY AND OWNERS' Association~~ DISCLOSURE STATEMENT

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39 Instructions to Property Owners
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1. ~~The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real estate (single family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish buyers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E 2.~~

2. ~~You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check (✓) in the appropriate box. In responding to questions, you are only obligated to disclose information about which you have actual knowledge.~~

a. ~~If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an attorney, engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.~~

b. ~~If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.~~

e. ~~If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the property, even if you have actual knowledge of them or should have known of them.~~

d. ~~If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer a corrected Disclosure Statement or correct the problem.~~

3. ~~If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material facts about your property which he or she knows or reasonably should know, regardless of your responses on the Statement.~~

4. ~~You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting contract (See "Note to Buyers" below). You should give the buyer a copy of the Disclosure Statement containing your signature and keep a copy signed by the buyer for your records.~~

Note to Buyers

If the owner does not give you a Residential Property and Owners' Association Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract without penalty to you as the buyer. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Disclosure Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

5. ~~In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.~~

Property Address: _____

<p>Owner's Name(s): _____</p> <p>Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.</p> <p>Owner Signature: _____ Date _____, _____</p> <p>Owner Signature: _____ Date _____, _____</p> <p>Buyers acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owners or owners' agents; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owners and not the owners' agents or subagents. Buyers are strongly encouraged to obtain their own inspections from a licensed home inspector or other professional. As used herein, words in the plural include the singular, as appropriate.</p> <p>Buyer Signature: _____ Date _____, _____</p> <p>Buyer Signature: _____ Date _____, _____</p>

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Property Address/Description: _____

The following questions address the characteristics and condition of the property identified above about which the owner has actual knowledge. Where the question refers to "dwelling," it is intended to refer to the dwelling unit, or units if more than one, to be conveyed with the property. The term "dwelling unit" refers to any structure intended for human habitation.

- | | Yes | No | Repre-
sentation |
|---|--------------------------|--------------------------|--------------------------|
| 1. In what year was the dwelling constructed? _____
Explain if necessary: _____ | | | <input type="checkbox"/> |
| 2. Is there any problem, malfunction or defect with the dwelling's foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications to them? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. The dwelling's exterior walls are made of what type of material? <input type="checkbox"/> Brick Veneer <input type="checkbox"/> Wood <input type="checkbox"/> Stone <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Concrete <input type="checkbox"/> Fiber Cement <input type="checkbox"/> Aluminum <input type="checkbox"/> Asbestos <input type="checkbox"/> Other _____
(Check all that apply) | | | <input type="checkbox"/> |
| 4. In what year was the dwelling's roof covering installed? _____
(Approximate if no records are available.) Explain if necessary:
_____ | | | <input type="checkbox"/> |
| 5. Is there any leakage or other problem with the dwelling's roof? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

9. ~~Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning?~~
10. What is the dwelling's heat source? Furnace Heat Pump Baseboard
 Other _____ (Check all that apply)
 Age of system: _____
11. What is the dwelling's cooling source? Central Forced Air Wall/Window Unit(s)
 Other _____ (Check all that apply)
 Age of system: _____
12. What is the dwelling's fuel sources? Electricity Natural Gas Propane Oil
 Other _____ (Check all that apply)
 If the fuel source is stored in a tank, identify whether the tank is above ground or below ground, and whether the tank is leased by seller or owned by seller.
 (Check all that apply)
13. What is the dwelling's water supply source? City/County Community System
 Private Well Shared Well Other _____
 (Check all that apply)
14. The dwelling's water pipes are made of what type of material? Copper Galvanized
 Plastic Polybutylene Other _____
 (Check all that apply)
15. ~~Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity or water pressure)?~~
16. What is the dwelling's sewage disposal system? Septic Tank Septic Tank with Pump
 Community System Connected to City/County System City/County System available
 Straight pipe (wastewater does not go into a septic or other sewer system [note: use of this type of system violates State law])
 Other _____
 (Check all that apply)
17. If the dwelling is serviced by a septic system, do you know how many bedrooms are allowed by the septic system permit? If your answer is "Yes," how many bedrooms are allowed?
 _____ No records available.
18. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system?
19. Is there any problem, malfunction or defect with the dwelling's central vacuum, pool, hot tub, spa, attic fan, exhaust fan, ceiling fans, sump pump, irrigation system, TV cable wiring or satellite dish, garage door openers, gas logs, or other systems?
20. Is there any problem, malfunction or defect with any appliances that may be included in the conveyance (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc.)?
21. ~~Is there any problem with present infestation of the dwelling, or damage from past infestation of wood destroying insects or organisms which has not been repaired?~~
22. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property?
23. ~~Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property?~~

24. ~~Is the property to be conveyed in violation of any local zoning ordinances, restrictive covenants, or other land use restrictions, or building codes (including the failure to obtain proper permits for room additions or other changes/improvements)?~~
25. ~~Are there any hazardous or toxic substances, materials, or products (such as asbestos, formaldehyde, radon gas, methane gas, lead-based paint) which exceed government safety standards, any debris (whether buried or covered) or underground storage tanks, or any environmentally hazardous conditions (such as contaminated soil or water, or other environmental contamination) located on or which otherwise affect the property?~~
26. ~~Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property?~~
27. ~~Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?~~
28. ~~Is the property subject to any lawsuits, foreclosures, bankruptcy, leases or rental agreements, judgments, tax liens, proposed assessments, mechanics' liens, materialmen's liens, or notices from any governmental agency that could affect title to the property?~~
29. ~~Is the property subject to a flood hazard or is the property located in a federally designated flood hazard area?~~
30. ~~Does the property abut or adjoin any private road(s) or street(s)?~~
31. ~~If there is a private road or street adjoining the property, is there in existence any owners' association or maintenance agreements dealing with the maintenance of the road or street?~~

1 If you answered "yes" to any of the questions listed above (1-31) please explain (attach additional sheets if necessary):

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6 In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public
 7 agency, or by an attorney, engineer, land surveyor, geologist, pest control operator, contractor, home inspector, or other
 8 expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

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 10 The following questions pertain to the property identified above, including the lot to be conveyed and any dwelling
 11 unit(s), sheds, detached garages, or other buildings located thereon.

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sentation |
|--|--------------------------|--------------------------|--------------------------|
| 32. Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

~~If you answered "yes" to the question above, please explain (attach additional sheets if necessary):~~

33. ~~Is the property subject to regulation by one or more owners' association(s) including, but not limited to, obligations to pay regular assessments or dues and special assessments? If your answer is "yes," please provide the information requested below as to each owners' association to which the property is subject [insert N/A into any blank that does not apply]:~~

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are _____

(specify name) _____ whose regular assessments ("dues") are \$ _____ per _____. The name, address and telephone number of the president of the owners' association or the association manager are _____

1 * If you answered "Yes" to question 33 above, you must complete the remainder of this Disclosure Statement. If you
 2 answered "No" or "No Representation" to question 33 above, you do not need to answer the remaining questions on
 3 this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.
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 7 No
 Repr-
 — Yes No sentation

34. Are any fees charged by the association or by the association's management company in connection with the conveyance or transfer of the lot or property to a new owner? If your answer is "yes," please state the amount of the fees:

35. As of the date this Disclosure Statement is signed, are there any dues, fees or special assessment which have been duly approved as required by the applicable declaration or by laws, and that are payable to an association to which the lot is subject? If your answer is "yes," please state the nature and amount of the dues, fees or special assessments to which the property is subject:

36. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:

37. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits involving the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed? If your answer is "yes," please state the nature of each pending lawsuit and the amount of each unsatisfied judgment:

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 9 38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of
 10 the association's regular assessments ("dues")? (Check all that apply.)
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	Yes	No	No Repre- sentation
Management Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed			
Master Insurance			
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm Water Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Buyer Initials and Date _____ Owner Initials and Date _____
 Buyer Initials and Date _____ Owner Initials and Date _____

(b) ~~The form described in Paragraph (a) of this Rule may be reproduced, but the text of the form shall not be altered or amended in any way.~~

(c) ~~The form described in Paragraph (a) of this Rule as amended effective July 1, 2021, applies to all properties placed on the market on or after July 1, 2021. The form described in Paragraph (a) of this Rule as amended effective July 1, 2018, applies to all properties placed on the market prior to July 1, 2021. If a corrected disclosure statement required by G.S. 47E-7 is prepared on or after July 1, 2021, for a property placed on the market prior to July 1, 2021, the form described in Paragraph (a) of this Rule as amended effective July 1, 2021, shall be used.~~

History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6; Eff. October 1, 1998; Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January 1, 2008; July 1, 2006; September 1, 2002; July 1, 2000; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018; Amended Eff. July 1, 2023; July 1, 2021; July 1, 2018.