

Burgos, Alexander N

Subject: FW: [External] RE: 21 NCAC 58A .0114

From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Monday, June 12, 2023 3:38 PM

To: Sarah Dixon <sdixon@NCREC.GOV>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Melissa A. Vuotto <Melissa@NCREC.GOV>

Subject: RE: [External] RE: 21 NCAC 58A .0114

Good afternoon.

Thank you for speaking with me earlier today.

While I do not believe Paragraph (c) should be in 21 NCAC 58A .0114 as it is a tangential duty of the broker and unrelated to the contents of the owner's Disclosure Statement, that concern is beyond the scope of RRC review.

As we discussed, the only nexus between the broker's duty and the Disclosure Statement is if the broker is obligated to read the statement and in effect "rat out" his or her client. This duty the Commission has added in the most recent revision to the rule. However, it appears to me that the addition of this duty produces an effect that could not have reasonably been expected based upon the proposed (published) rule. Accordingly, I believe it is a substantial change and its adoption rules afoul of G.S. 150B-21.2(g). As written, I will recommend that the RRC object to the rule pursuant to G.S. 150B-21.9(a)(4).

However, if the Commission were to strike the third sentence of Paragraph (c), I would recommend the RRC's approval.

That having been stated, consider: "A broker representing either an owner or a purchaser of any real property subject to Chapter 47E of the North Carolina General Statutes shall disclose to the purchaser any material facts the broker knows or reasonably should know about the property. A broker's duty to disclose is separate from that of the owner's, and the owner's Disclosure Statement does not obviate the broker's duty to disclose. A material fact is a fact that a reasonable person would recognize as relevant to a purchaser in deciding to purchase the property the suppression of which would reasonably result in a different decision."

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee

Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

Bill.Peaslee@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] RE: 21 NCAC 58A .0114
Attachments: 21 NCAC 58A .0114.docx

PFrom: Melissa A. Vuotto <Melissa@NCREC.GOV>
Sent: Monday, June 12, 2023 1:55 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Sarah Dixon <sdixon@NCREC.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: 21 NCAC 58A .0114

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good afternoon Bill,

Attached please find 21 NCAC 58A .0114 with revised language to Paragraph (c). Please let me know if anything further is needed.

Thank you,



Melissa Vuotto
Paralegal Supervisor
Regulatory Affairs Division
North Carolina Real Estate Commission

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

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

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete ~~the following~~ a Residential Property and Owners' Association Disclosure Statement (hereinafter "Disclosure Statement") and furnish a copy of the complete statement to a buyer-purchaser in accordance with the requirements of G.S. 47E-4. ~~The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:~~ Disclosure Statement is a form prescribed by the Commission and available on the Commission's website at <https://www.ncrec.gov/Forms/Consumer/rec422.pdf>. The Disclosure Statement shall include the [requirements] items set forth in [G.S. 47 E and the: G.S. 47E-4(b1)(1) and the following information pertaining to the property:

- (1) property address;
- (2) owner's name(s), signature(s), and date of Disclosure Statement completion;
- ~~(3) — instructions for Disclosure Statement completion;~~
- ~~(4) (3) year the dwelling was constructed;~~
- ~~(5) [condition of the property's:~~
 - ~~(i) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems; and~~
 - ~~(ii) fixtures and appliances that may be included in the conveyance.]~~
- ~~(6)(4) any historic designation or registration [of the property, if applicable;] status which places a restriction on the property;~~
- ~~(7)(5) noise, odor, smoke, or other [issue] nuisance from commercial, industrial, or military sources [that affect] impacting the property;~~
- ~~(8) — flood hazard status of the property;]~~
- ~~(9) — condition of the drainage, grading, or soil stability affecting the property;]~~
- ~~(10)(6) existence of any private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;~~
- ~~(11) — buyer's acknowledgement of examination of the Disclosure Statement prior to signing the Disclosure Statement; and]~~
- ~~(12) — buyer's signature and date of Disclosure Statement receipt;]~~
- ~~(7) type of heating, cooling, water heater fuel sources along with the year each system was manufactured;~~
- ~~(8) type of fuel source, and, if the fuel source is stored in a tank, whether the tank is above or below ground and leased or owned by the seller;~~
- ~~(9) type of water supply source and sewage disposal system, and if serviced by a septic system, identify the number of bedrooms allowed pursuant to permit;~~
- ~~(10) any violations impacting the property, such as local ordinances, restrictive covenants, building codes, or other land-use restrictions;~~

1 (11) whether any portion of the property is designated as within a Special Flood Hazard Area pursuant
2 to Title 44, Chapter 1, Subchapter B, Part 65 of the Code of Federal Regulations, has a flood
3 elevation certificate, is insured for flood damage, has experienced damage from natural events
4 causing water seepage, or has had a claim filed for flood damage or received federal financial
5 assistance for flood damage; and

6 (12) if there is any problem, malfunction, or defect with the property's:

7 (A) roof, fireplaces, or chimneys;

8 (B) foundation, basement, crawl space, or slab;

9 (C) windows, doors, patio, deck;

10 (D) garage or other structural component of the property;

11 (E) electrical, heating, cooling, or elevator systems;

12 (F) plumbing, water supply, sewer, or septic systems;

13 (G) fixtures or appliances to be conveyed with the purchase;

14 (H) drainage, grading or soil stability; and

15 (I) condition caused by wood destroying insects or organisms.

16 (b) A broker shall furnish a current Disclosure Statement published on the Commission's website to the property
17 owner(s) for completion.

18 (c) ~~A broker shall discover and disclose any material facts about the property that the broker knows or reasonably~~
19 ~~should know and~~ A broker's duty to disclose material facts is separate from that of the owner(s). A broker shall not
20 solely rely on the owner's Disclosure Statement representations. A broker shall review the completed Disclosure
21 Statement. A broker shall disclose material facts the broker knows or reasonably should know about the property. A
22 material fact is a fact that a reasonable person would recognize as relevant to a purchaser in deciding to purchase the
23 property the suppression of which would reasonably result in a different decision.

24
25 [N.C. REAL ESTATE COMMISSION SEAL]

26
27 STATE OF NORTH CAROLINA

28 RESIDENTIAL PROPERTY AND OWNERS' Association DISCLOSURE STATEMENT

29
30 Instructions to Property Owners

31
32 1. ~~The Residential Property Disclosure Act (G.S. 47E) ("Disclosure Act") requires owners of residential real~~
33 ~~estate (single family homes, individual condominiums, townhouses, and the like, and buildings with up to~~
34 ~~four dwelling units) to furnish buyers a Residential Property and Owners' Association Disclosure Statement~~
35 ~~("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must~~
36 ~~be furnished in connection with the sale, exchange, option, and sale under a lease with option to purchase~~
37 ~~where the tenant does not occupy or intend to occupy the dwelling. A disclosure statement is not required for~~
38 ~~some transactions, including the first sale of a dwelling which has never been inhabited and transactions of~~
39 ~~residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to~~
40 ~~occupy the dwelling. For a complete list of exemptions, see G.S. 47E 2.~~

41
42 2. You must respond to each of the questions on the following pages of this form by filling in the requested
43 information or by placing a check () in the appropriate box. In responding to questions, you are only
44 obligated to disclose information about which you have actual knowledge.

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- 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.~~
 - c. ~~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.~~

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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: _____
 Owner's Name(s): _____
 Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____, ____
 Owner Signature: _____ Date _____, ____

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.

Buyer Signature: _____ Date _____, ____

Buyer Signature: _____ Date _____, _____

1
2 Property Address/Description: _____
3 _____
4

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

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| | | | |
|--|--|------------|-----------|
| | | No | |
| | | Repre- | |
| | | — Yes No — | sentation |

1. ~~In what year was the dwelling constructed?~~ _____ — — —
~~Explain if necessary:~~ _____

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?~~ — — —

3. ~~The dwelling's exterior walls are made of what type of material? — Brick Veneer — Wood — Stone — Vinyl — Synthetic Stucco — Composition/Hardboard — Concrete — Fiber Cement — Aluminum — Asbestos — Other _____ (Check all that apply)~~ — — —

4. ~~In what year was the dwelling's roof covering installed? _____ (Approximate if no records are available.) Explain if necessary:~~ — — —

5. ~~Is there any leakage or other problem with the dwelling's roof?~~ — — —

6. ~~Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab?~~ — — —

7. ~~Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?~~ — — —

8. ~~Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)?~~ — — —

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, materialmens' 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):

2 _____

3 _____

4 _____

5 _____

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.

9
 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.

12
 13
 14 No
 Representation
 15 — Yes No —

32. ~~Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit?~~ ~~— — —~~

~~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 _____

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

| | Yes | No | Repre- 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: _____ | - | - | - |
| _____ | | | |
| _____ | | | |

38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.)

| | Yes | No | Repre- sentation |
|--|----------------|---------------|---------------------------------|
| Management Fees | - | - | - |
| Exterior Building Maintenance of Property to be Conveyed | | | |
| Master Insurance | | | |
| Exterior Yard/Landscaping Maintenance of Lot to be Conveyed | - | - | - |
| Common Areas Maintenance | - | - | - |
| Trash Removal | - | - | - |
| Recreational Amenity Maintenance (specify amenities covered) _____ | - | - | - |
| _____ | | | |
| Pest Treatment/Extermination | - | - | - |
| Street Lights | - | - | - |

| | | | |
|---------------------------------------|---|---|---|
| Water | - | - | - |
| Sewer | - | - | - |
| Storm Water Management/Drainage/Ponds | - | - | - |
| Internet Service | - | - | - |
| Cable | - | - | - |
| Private Road Maintenance | - | - | - |
| Parking Area Maintenance | - | - | - |
| Gate and/or Security | - | - | - |
| Other: (specify) | - | - | - |
| _____ | | | |
| _____ | | | |

1
2 Buyer Initials and Date _____ Owner Initials and Date _____
3 Buyer Initials and Date _____ Owner Initials and Date _____
4

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

7 ~~(c) The form described in Paragraph (a) of this Rule as amended effective July 1, 2021, applies to all properties placed~~
8 ~~on the market on or after July 1, 2021. The form described in Paragraph (a) of this Rule as amended effective July 1,~~
9 ~~2018, applies to all properties placed on the market prior to July 1, 2021. If a corrected disclosure statement required~~
10 ~~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~~
11 ~~described in Paragraph (a) of this Rule as amended effective July 1, 2021, shall be used.~~

12
13 *History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6;*
14 *Eff. October 1, 1998;*
15 *Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January*
16 *1, 2008; July 1, 2006; September 1, 2002; July 1, 2000;*
17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*
18 *Amended Eff. July 1, 2023; July 1, 2021; July 1, 2018.*
19

Burgos, Alexander N

Subject: FW: [External] RE: 21 NCAC 58A .0114

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Thank you for your email.

In Paragraph (c), the Commission is stating that the broker has a separate duty to disclose and that the broker cannot reply shall not rely upon the owner's disclosure, but the Commission fails, again, to describe what specifically the broker is to do. Other than the duties imposed by statute, what specifically is the Commission requiring of the broker?

I'll give the Commission until COB Monday. Thereafter I will recommend objection for the ambiguity in Paragraph (c).

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison

Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Melissa A. Vuotto <Melissa@NCREC.GOV>
Sent: Friday, June 9, 2023 2:05 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
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Attached please find the revised rule, 21 NCAC 58A .0114, for your review.

Thank you,



Melissa Vuotto
Paralegal Supervisor
North Carolina Real Estate Commission

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

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~~(4) (3) year the dwelling was constructed;~~

~~(5) [condition of the property's:~~

~~(i) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems; and~~

~~(ii) fixtures and appliances that may be included in the conveyance.]~~

~~(6) (4) any historic designation or registration [of the property, if applicable;] status which places a restriction on the property;~~

~~(7) (5) noise, odor, smoke, or other [issue] nuisance from commercial, industrial, or military sources [that affect] impacting the property;~~

~~[(8) — flood hazard status of the property;]~~

~~[(9) — condition of the drainage, grading, or soil stability affecting the property;]~~

~~(10) (6) existence of any private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;~~

~~[(11) — buyer's acknowledgement of examination of the Disclosure Statement prior to signing the Disclosure Statement; and]~~

~~[(12) — buyer's signature and date of Disclosure Statement receipt;]~~

~~(7) type of heating, cooling, water heater fuel sources along with the year each system was manufactured;~~

~~(8) type of fuel source, and, if the fuel source is stored in a tank, whether the tank is above or below ground and leased or owned by the seller;~~

~~(9) type of water supply source and sewage disposal system, and if serviced by a septic system, identify the number of bedrooms allowed pursuant to permit;~~

~~(10) any violations impacting the property, such as local ordinances, restrictive covenants, building codes, or other land-use restrictions;~~

1 (11) whether any portion of the property is designated as within a Special Flood Hazard Area pursuant
2 to Title 44, Chapter 1, Subchapter B, Part 65 of the Code of Federal Regulations, has a flood
3 elevation certificate, is insured for flood damage, has experienced damage from natural events
4 causing water seepage, or has had a claim filed for flood damage or received federal financial
5 assistance for flood damage; and

6 (12) if there is any problem, malfunction, or defect with the property's:

7 (A) roof, fireplaces, or chimneys;

8 (B) foundation, basement, crawl space, or slab;

9 (C) windows, doors, patio, deck;

10 (D) garage or other structural component of the property;

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17 owner(s) for completion.

18 (c) ~~A broker shall discover and disclose any material facts about the property that the broker knows or reasonably~~
19 ~~should know and~~ A broker's duty to disclose is separate from that of the owner(s) and a broker shall not solely rely
20 on the owner's Disclosure Statement representations.

21
22
23 [N.C. REAL ESTATE COMMISSION SEAL]

24
25 STATE OF NORTH CAROLINA
26 RESIDENTIAL PROPERTY AND OWNERS' Association DISCLOSURE STATEMENT

27
28 Instructions to Property Owners
29

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

39
40 2. ~~You must respond to each of the questions on the following pages of this form by filling in the requested~~
41 ~~information or by placing a check () in the appropriate box. In responding to questions, you are only~~
42 ~~obligated to disclose information about which you have actual knowledge.~~

43
44 a. ~~If you check "Yes" for any question, you must explain your answer and either describe any problem or attach~~
45 ~~a report from an attorney, engineer, contractor, pest control operator or other expert or public agency~~

1 describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information
2 contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
3

4 b. If you check "No," you are stating that you have no actual knowledge of any problem. If you check "No" and
5 you know there is a problem, you may be liable for making an intentional misstatement.
6

7 c. If you check "No Representation," you are choosing not to disclose the conditions or characteristics of the
8 property, even if you have actual knowledge of them or should have known of them.
9

10 d. If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement
11 incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the buyer a corrected
12 Disclosure Statement or correct the problem.
13

14 3. If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for
15 completing and delivering the Disclosure Statement to the buyers; and the broker must disclose any material
16 facts about your property which he or she knows or reasonably should know, regardless of your responses on
17 the Statement.
18

19 4. You must give the completed Disclosure Statement to the buyer no later than the time the buyer makes an
20 offer to purchase your property. If you do not, the buyer can, under certain conditions, cancel any resulting
21 contract (See "Note to Buyers" below). You should give the buyer a copy of the Disclosure Statement
22 containing your signature and keep a copy signed by the buyer for your records.
23
24
25

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.

26
27 5. In the space below, type or print in ink the address of the property (sufficient to identify it) and your name.
28 Then sign and date.
29

Property Address: _____
Owner's Name(s): _____
Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____, ____
Owner Signature: _____ Date _____, ____

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.

Buyer Signature: _____ Date _____, ____
Buyer Signature: _____ Date _____, ____

30
31 Property Address/Description: _____

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2
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10

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.

No
Repre-
_____ Yes No sentation

1. In what year was the dwelling constructed? _____
Explain if necessary: _____
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? - - -
3. The dwelling's exterior walls are made of what type of material? Brick Veneer Wood Stone Vinyl Synthetic Stucco Composition/Hardboard Concrete Fiber Cement Aluminum Asbestos Other _____
(Check all that apply) -
4. In what year was the dwelling's roof covering installed? _____
(Approximate if no records are available.) Explain if necessary: _____
5. Is there any leakage or other problem with the dwelling's roof? - - -
6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? - - -
7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? - - -
8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)? - - -
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):
2 _____
3 _____
4 _____
5 _____

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.
9

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.
12

13 No
14 Repre-
15 - Yes No - sentation

32. Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit? - - -

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 _____

16 * If you answered "Yes" to question 33 above, you must complete the remainder of this Disclosure Statement. If you
17 answered "No" or "No Representation" to question 33 above, you do not need to answer the remaining questions on
18 this Disclosure Statement. Skip to the bottom of the last page and initial and date the page.
19

| | | | |
|--------------------------|---|---|---|
| Cable | - | - | - |
| Private Road Maintenance | - | - | - |
| Parking Area Maintenance | - | - | - |
| Gate and/or Security | - | - | - |
| Other: (specify) | - | - | - |

1
2 Buyer Initials and Date _____ Owner Initials and Date _____
3 Buyer Initials and Date _____ Owner Initials and Date _____
4

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

7 ~~(c) The form described in Paragraph (a) of this Rule as amended effective July 1, 2021, applies to all properties placed~~
8 ~~on the market on or after July 1, 2021. The form described in Paragraph (a) of this Rule as amended effective July 1,~~
9 ~~2018, applies to all properties placed on the market prior to July 1, 2021. If a corrected disclosure statement required~~
10 ~~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~~
11 ~~described in Paragraph (a) of this Rule as amended effective July 1, 2021, shall be used.~~

12
13 *History Note: Authority G.S. 47E-4(b); 47E-4(b1); 93A-3(c); 93A-6;*
14 *Eff. October 1, 1998;*
15 *Amended Eff. July 1, 2014; January 1, 2013; January 1, 2012; July 1, 2010; July 1, 2009; January*
16 *1, 2008; July 1, 2006; September 1, 2002; July 1, 2000;*
17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 1, 2018;*
18 *Amended Eff. July 1, 2023; July 1, 2021; July 1, 2018.*
19

Burgos, Alexander N

Subject: FW: [External] RE: 21 NCAC 58A .0114
Attachments: Real Estate Commission.docx

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, June 6, 2023 2:02 PM
To: Melissa A. Vuotto <Melissa@NCREC.GOV>
Cc: Sarah Dixon <sdixon@NCREC.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: 21 NCAC 58A .0114

Good afternoon,

Thank you for your email.

Attached please find my comments on the revisions to the above captioned rule. Absent additional revisions, it is my present inclination to recommend that the RRC object to the rule.

If the Commission desires to make further revisions to the rule, please send them to me by email no later than Friday, June 9, 2023.

Absent a request for extension, the rule will be reviewed by the RRC at its next meeting on June 15, 2023.

As always, if you have any questions or concerns, please do not hesitate to contact me.

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Lines 10 and 11, Paragraph (a): Paragraph (a) requires the owner to disclose the “characteristics and conditions” of the property listed in G.S. 47E-4(b) and (b1) as well as those listed within in Subparagraphs (1)-(9). Notwithstanding the General Assembly’s use of the phrase “characteristics and conditions” in G.S.47E-4(b), the Commission’s employment of this phrase within the rule is unclear and ambiguous. The average owner does not possess the background to know what the Commission wants by “characteristics and conditions”. The Commission needs to clearly define what “characteristics and conditions” the owner is supposed to disclose.

For example, if the form merely asks the owner for the “characteristics and conditions” of the “plumbing” pursuant to G.S.47E-4(b)(3), the owner could satisfy the rule simply by replying “Indoor and wet.” Neither this response nor the rule allowing this response appears to be within the spirit of G.S. 47E-4. The Commission needs to be clear about what the owner needs to disclose. If the Commission requires the owner to disclose whether the plumbing is in working order and functioning to facilitate the purpose for which it is intended, it needs to require such in the rule. The Commission cannot augment the owner’s disclosure requirements under the umbrella of it falling within the ambiguous “characteristics and conditions” of plumbing simply by adding language to the form after rule adoption. Such would deprive the public of the opportunity to comment and the due process afforded by Chapter 150B of the North Carolina General Statutes.

An excellent example of the clarity required is in the current language of the form being stricken by the Commission.

Lines 16-19, Subparagraph (a)(4) and Line 24, Subparagraph (a)(8): See comments above regarding ambiguity.

Line 20, Subparagraph (a)(5): While the Commission provided an answer to the questions posed in the Request for Changes, the Commission did not change the language of the rule. It remains ambiguous. I will add the Commission’s response is likewise ambiguous. It would add clarity if the Commission identified the procedures by which a property receives the “historic designation or registration”. i.e., National Register of Historic Places pursuant to National Historic Preservation Act. But I think what the Commission is getting at is any historic designation which places restrictions on the use of the property such as changes to the façade, etc.

Line 23, Subparagraph (a)(7): The Commission continues to be unclear. To which flood hazard status is the Commission referring? If this is what the Commission intends, consider: “Whether any portion of the property is designated as within a Special Flood Hazard Area pursuant to Title 44, Chapter 1, Subchapter B, Part 65 of the Code of Federal Regulations.”

Lines 31-32, Paragraph(c): If Paragraph (c) does nothing more than reiterate G.S. 93A-6(a)(1) as suggested in the response, why is it necessary pursuant to G.S. 150B-21.9(a)(3)? However, here the Rule requires the broker to “discover” which sounds like an additional duty beyond the prohibition from “misrepresentation” or “omission” in G.S. 93A-6(a)(1). The Commission’s response to the Request for Changes states, “The Commission regularly educates brokers on what is considered a material fact and the due diligence expectation of brokers.” The definitions taught and the due diligence presented by the Commission to the brokers is what needs to be in the rule if Commission wants to enforce those “expectations”.

Consider: "A material fact is a fact that a reasonable person would recognize as relevant to a purchaser in deciding to purchase the property the suppression of which would reasonably result in a different decision."

Burgos, Alexander N

Subject: FW: [External] RE: 21 NCAC 58A .0114
Attachments: 21 NCAC 58A .0114.docx; 06.2023 Request for Changes Real Estate.docx

From: Melissa A. Vuotto <Melissa@NCREC.GOV>
Sent: Thursday, June 1, 2023 1:39 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Sarah Dixon <sdixon@NCREC.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: 21 NCAC 58A .0114

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Good afternoon,

Attached please find the Real Estate Commission's responses to the technical change requests along with the revised rule text. If you have any further questions or need clarification on any of the changes, please do not hesitate to contact.

Thank you!



Melissa Vuotto
Paralegal Supervisor
Regulatory Affairs Division
North Carolina Real Estate Commission
Phone 919-875-3700, ext. 142
Web www.ncrec.gov **Email** melissa@ncrec.gov
P.O. Box 17100, Raleigh, NC 27619-7100



North Carolina State Bar Certified Paralegal

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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. **Language revised.***

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

*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. **Language revised to include 47E-4(b). 47E-4(b) and (b1) identify required disclosures that must be included in the Disclosure Statement in addition to the requirements listed in the proposed 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. **The intent was not to require adherence to the instructions so this language has been deleted.***

*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? **Yes, the owner is allotted space to provide an open-ended response and an option to attach additional pages to the Disclosure Statement, if needed.***

William W. Peaslee
Commission Counsel

Date submitted to agency: May 23, 2023

*Line 19, Paragraph (a)(6): What does the Commission mean by “historic designation or registration”? Designation by whom? Registration where? **Historic designation refers to the formal recognition of a property's historical, architectural, cultural, or archaeological significance by a governing body or organization. Historic registration refers to the act of formally recording a property's historical information, often in a government or private database or registry. Historic designations or registrations are accomplished through national or local government agencies and varies from each municipality.***

*Line 20, Paragraph (a)(7): “Other issue” is ambiguous. “Affect” is ambiguous. **Language revised to clarify what “other issue” means. “Affect” is a term taken from GS 47E-4, for example 47E-4(b)(6) specifically requires disclosures ‘affecting this real property.’ This term was retained for cohesion between the rule and the statute.***

*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. **Yes, the owner is allotted space to provide an open-ended response and an option to attach additional pages to the Disclosure Statement, if needed.***

*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? **Yes, the owner is allotted space to provide an open-ended response and an option to attach additional pages to the Disclosure Statement, if needed.** What does the Commission mean by “affecting”? Does level grading “affect” the property? **“Affect” is a term taken from GS 47E-4, for example 47E-4(b)(6) specifically requires disclosures ‘affecting this real property.’ This term was retained for cohesion between the rule and the statute. The level of grading can drastically affect the property, especially in the mountains of North Carolina, resulting in slope problems, landslides, etc.***

*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? **Language removed.***

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

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

William W. Peaslee
Commission Counsel

Date submitted to agency: May 23, 2023

of a broker's license, why is this paragraph necessary pursuant to G.S. 150B-21.9(a)(3)?
The broker is not a guarantor and is required by 93A-6(a)(1) to disclose material facts. "Material facts" is an industry term of art understood by our public that covers a variety of issues that can arise while purchasing a home. The Commission regularly educates brokers on what is considered a material fact and the due diligence expectation of brokers. Paragraph(c) is intended to provide clarity to the owner that it is the broker's duty to disclose material facts and not solely rely on the owner's disclosure. For example, if the owner answered untruthfully regarding a material fact, the broker is required to disclose that material fact regardless of what the owner disclosed or has marked as no representation.

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

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

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

(a) Every owner of real property subject to a transfer of the type governed by Chapter 47E of the General Statutes shall complete ~~the following~~ a Residential Property and Owners' Association Disclosure Statement (hereinafter "Disclosure Statement") and furnish a copy of the complete statement to a buyer-purchaser in accordance with the requirements of G.S. 47E-4. ~~The form shall bear the seal of the North Carolina Real Estate Commission and shall read as follows:~~ Disclosure Statement is a form prescribed by the Commission and available on the Commission's website at <https://www.ncrec.gov/Forms/Consumer/rec422.pdf>. The Disclosure Statement shall include the requirements characteristics and conditions of the property set forth in ~~[G.S. 47-E]~~ G.S. 47E-4(b) and (b1)(1) and the:

(1) property address;

(2) owner's name(s), signature(s), and date of Disclosure Statement completion;

~~(3)~~ instructions for Disclosure Statement completion;

~~(4)~~ (3) year the dwelling was constructed;

~~(5)~~ (4) condition of the property's:

~~(i)~~ (A) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems;

and

~~(ii)~~ (B) fixtures and appliances that may be included in the conveyance.

~~(6)~~ (5) historic designation or registration of the property, if applicable;

~~(7)~~ (6) noise, odor, smoke, or other [issue] nuisance from commercial, industrial, or military sources that affect the property;

~~(8)~~ (7) federal flood hazard status of the property;

~~(9)~~ (8) condition of the drainage, grading, or soil stability affecting the property;

~~(10)~~ (9) private road(s) abutting or adjoining the property and the maintenance agreements, if applicable;

~~(11)~~ buyer's acknowledgement of examination of the Disclosure Statement prior to signing the Disclosure Statement; and

~~(12)~~ buyer's signature and date of Disclosure Statement receipt;

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

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

[N.C. REAL ESTATE COMMISSION SEAL]

STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY AND OWNERS' Association DISCLOSURE STATEMENT

Instructions to Property Owners

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.~~
 - c. ~~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: _____
 Owner's Name(s): _____
 Owner(s) acknowledge(s) having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date _____,
 Owner Signature: _____ Date _____,
 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.

Buyer Signature: _____ Date _____,
 Buyer Signature: _____ Date _____,

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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.

- | | No | Repre- | |
|---|-----|--------|-----------|
| | Yes | No | sentation |
| 1. In what year was the dwelling constructed? _____ Explain if necessary: _____ | — | — | — |
| 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? | — | — | — |
| 3. The dwelling's exterior walls are made of what type of material? Brick Veneer Wood Stone Vinyl Synthetic Stucco Composition/Hardboard Concrete Fiber Cement Aluminum Asbestos Other _____ (Check all that apply) | — | — | — |
| 4. In what year was the dwelling's roof covering installed? _____ (Approximate if no records are available.) Explain if necessary: _____ | — | — | — |
| 5. Is there any leakage or other problem with the dwelling's roof? | — | — | — |
| 6. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab? | — | — | — |
| 7. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)? | — | — | — |
| 8. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)? | — | — | — |

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):

2 _____

3 _____

4 _____

5 _____

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.

9

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.

12

13 No

14 Repre-

15 — Yes No — sentation

32. ~~Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit?~~ ~~— — —~~

~~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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 6
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| | Yes | No | Repre- 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: _____ _____ _____ | - | - | - |
|---|---|---|---|

38. Which of the following services and amenities are paid for by the owners' association(s) identified above out of the association's regular assessments ("dues")? (Check all that apply.)

| | No Representation | |
|--|-------------------|----|
| | Yes | No |
| Management Fees | - | - |
| Exterior Building Maintenance of Property to be Conveyed | | |
| Master Insurance | | |
| Exterior Yard/Landscaping Maintenance of Lot to be Conveyed | - | - |
| Common Areas Maintenance | - | - |
| Trash Removal | - | - |
| Recreational Amenity Maintenance (specify amenities covered) _____ | - | - |
| _____ | | |
| Pest Treatment/Extermination | - | - |
| Street Lights | - | - |
| Water | - | - |
| Sewer | - | - |
| Storm Water Management/Drainage/Ponds | - | - |
| Internet Service | - | - |
| Cable | - | - |
| Private Road Maintenance | - | - |
| Parking Area Maintenance | - | - |
| Gate and/or Security | - | - |
| Other: (specify) _____ | - | - |
| _____ | | |
| _____ | | |

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.

Burgos, Alexander N

From: Peaslee, William W
Sent: Thursday, May 25, 2023 12:02 PM
To: melissa@ncrec.gov
Cc: sdixon@ncrec.gov; Burgos, Alexander N
Subject: RE: 21 NCAC 58A .0114

Good afternoon,

In addition to the request for changes sent last week, please be advise that (a)(5)(i) and (ii) should be (a)(5)(A) and (B).

Thank you.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Peaslee, William W
Sent: Tuesday, May 23, 2023 11:50 AM
To: melissa@ncrec.gov
Cc: sdixon@ncrec.gov; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 21 NCAC 58A .0114

Good morning,

I am the attorney assigned to the review the above captioned rule for the Rules Review Commission (RRC). Attached please find a Request for Changes. Please reply by June 7, 2023.

The RRC will review this rule at its June 2023 meeting on June 15, 2023.

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Tuesday, May 23, 2023 11:50 AM
To: melissa@ncrec.gov
Cc: sdixon@ncrec.gov; Burgos, Alexander N
Subject: 21 NCAC 58A .0114
Attachments: 06.2023 Request for Changes Real Estate.docx

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The RRC will review this rule at its June 2023 meeting on June 15, 2023.

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
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