

PROPOSED PERMANENT RULEMAKING

*Residential Property and Owners' Association Disclosure Statement
Rulemaking with a Proposed Effective Date of July 1, 2023*

In accordance with N.C.G.S. §150B-19.1(c), the Real Estate Commission (“Commission”) hereby gives notice that it has submitted to the Office of Administrative Hearings - Rules Review Commission for publication in the *North Carolina Register* the Notice of Text for proposed rule changes under consideration. No federal certifications or fiscal notes are required for any of these proposed changes.

The Notice of Text includes a summary explaining the reason for the proposed change. Changes to the proposed rule text are reflected by underscoring text that will be added and striking through text that will be deleted.

A public hearing on the proposed rules will be held in-person at the Historic 1767 Chowan County Courthouse located at 117 East King Street, Edenton, North Carolina on Thursday, April 20, 2023, at 9:00 a.m.

The period for accepting comments on the proposed rules begins March 15, 2023, and continues through May 15, 2023. You may submit written comments on the proposed rule by contacting the Commission’s Rulemaking Coordinator as follows:

Melissa Vuotto
Rulemaking Coordinator
North Carolina Real Estate Commission
P.O. Box 17100
Raleigh, NC 27619
public.comment@ncrec.gov

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission (“RRC”). If the RRC receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the RRC approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The RRC will receive written objections until 5:00 p.m. on the day following the day the RRC approves the rule. The RRC will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the RRC, please call a RRC staff attorney at 919-431-3000.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 58 - REAL ESTATE COMMISSION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Real Estate Commission intends to amend the rule cited as 21 NCAC 58A .0114.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncrec.gov

Proposed Effective Date: July 1, 2023

Public Hearing:

Date: April 20, 2023

Time: 9:00 a.m.

Location: Chowan County Courthouse, 117 East King Street, Edenton, NC 27932

Reason for Proposed Action: 21 NCAC 58A .0114 - RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT

In response to a Rule-making Petition, the Commission is proposing amendments to clarify form contents, including additional questions regarding the flood status of the property. The Commission is also proposing amendments to include historic registration or designation property status, private well testing, and elevator systems, and to further clarify rule text relating to form contents.

Comments may be submitted to: Melissa Vuotto, PO Box 17100, Raleigh, NC 27619-7100; phone (919) 875-3700; email Public.Comment@ncrec.gov

Comment period ends: May 15, 2023

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

SUBCHAPTER 58A – REAL ESTATE BROKERS

SECTION .0100 - GENERAL BROKERAGE

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 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 set forth in G.S. 47-E 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) year the dwelling was constructed;
- (5) condition of the property's:
 - (A) central vacuum, pool, hot tub, spa, sump pump, irrigation system, elevator or other systems; and
 - (B) fixtures and appliances that may be included in the conveyance.
- (6) historic designation or registration of the property, if applicable;
- (7) noise, odor, smoke, or other issue from commercial, industrial, or military sources that affect the property;
- (8) flood hazard status of the property;

- (9) condition of the drainage, grading, or soil stability affecting the property;
- (10) 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 _____, _____

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 Repr-

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?

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

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

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

No Repr
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

* 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.

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: _____

☐ ☐ ☐

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 ☐ ☐ ☐
- 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.