

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 605

Short Title: Coastal Hazards Disclosure. (Public)

Sponsors: Representatives Harrison, Justice (Primary Sponsors); M. Alexander, Hall, Insko, Luebke, and Weiss.

Referred to: Environment and Natural Resources, if favorable, Commerce, Small Business, and Entrepreneurship, if favorable, Appropriations.

March 16, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR DISCLOSURE OF COASTAL HAZARDS TO PROSPECTIVE
3 PURCHASERS OF COASTAL PROPERTIES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 9 of Chapter 39 of the General Statutes is amended by adding
6 a new section to read:

7 **"§ 39-51. Disclosure of coastal hazards.**

8 (a) Definitions. – As used in this section:

9 (1) "Area of environmental concern" means geographic areas that have been
10 designated by the Commission pursuant to G.S. 113A-113 and
11 G.S. 113A-115.

12 (2) "Commission" means the Coastal Resources Commission.

13 (3) "Prospective purchaser" means a person or entity that, in writing, makes an
14 offer to purchase, exchange, or option real property, or that exercises an
15 option to purchase real property pursuant to a lease with an option to
16 purchase. The term "prospective purchaser" includes a person or entity that
17 makes an offer to purchase, exchange, or option real property or any
18 fractional or future interest in real property or that exercises an option to
19 purchase real property or any fractional or future interest in real property
20 pursuant to a lease with an option to purchase.

21 (b) Legislative Findings. – The General Assembly finds that there are many properties
22 along the Atlantic Ocean that are particularly susceptible to coastal hazards, including, but not
23 limited to, erosion, flooding, storm damage, and inlet migration. The natural features of the
24 beach system are highly dynamic, and there is a high degree of potential loss of life and
25 property in certain particularly hazardous areas. The nature and extent of these coastal hazards
26 for particular parcels of land are not readily apparent to or known by potential purchasers of
27 property. It is therefore in the public interest that the General Assembly establish a system
28 whereby prospective purchasers of coastal properties subject to certain hazards can receive
29 reasonable notice of these hazards prior to acquisition of property. Public disclosure of these
30 hazards is essential to fully apprise prospective purchasers of the coastal hazards involved with
31 development and use of property, to prevent any misrepresentation as to the coastal hazards
32 affecting the property, and to allow prospective purchasers to have complete and accurate
33 information regarding property that may be affected by coastal hazards.

34 (c) Scope. – The provisions of this section apply to all properties that are adjacent to an
35 ocean shoreline, as that term is defined in G.S. 113A-115.1(a)(2), and all properties located



1 along shorelines in areas that have been designated as inlet hazard areas by the Coastal
2 Resources Commission pursuant to G.S. 113A-113 and G.S. 113A-115.

3 (d) Description of Coastal Hazards Filed With the Clerk of Court. – The Commission
4 shall file with the clerk of court in each county that includes any geographic area that has been
5 designated as an area of environmental concern a notice that includes all of the following
6 information:

7 (1) A map of each area of environmental concern in the county that delineates
8 properties described in subsection (c) of this section. The map shall show the
9 long-term average annual erosion rates, as determined by the Commission,
10 where applicable, for the properties.

11 (2) A notice that properties located within areas described in subsection (c) of
12 this section may be subject to certain hazards, including, but not limited to,
13 erosion, storm recession, flooding, and inlet hazards.

14 (3) A notice that a seller of real property that is located within areas described in
15 subsection (c) of this section shall be required to provide a Coastal Hazards
16 Disclosure Statement to a prospective purchaser of the real property.

17 (4) A notice that further information specific to individual properties may be
18 available from the Coastal Resources Commission and shall include contact
19 information for the appropriate office of the Commission.

20 (e) Coastal Hazards Disclosure Statement. – The Coastal Resources Commission shall
21 prepare and make available at no charge a form on which a seller shall make the disclosures
22 required by this section. The Coastal Resources Commission shall maintain current information
23 that is required to complete the form and shall provide the information at no charge. The
24 disclosure statement shall:

25 (1) Provide general information relative to conditions and rules affecting
26 potential development or redevelopment of the property, including, but not
27 limited to, annual erosion rates, setback requirements, 100-year storm
28 recession estimates, high hazard flood areas, inlet hazard areas, flood
29 elevation levels, variances, and other relevant data for all property.

30 (2) Disclose any site-specific information of which the seller has actual
31 knowledge.

32 (3) Include a notice that further information specific to individual properties
33 may be available from the Coastal Resources Commission and shall include
34 contact information for the appropriate office of the Commission.

35 (4) Include notice of the remedies available under this section.

36 (f) Duties of Seller. – A seller of real property subject to this section shall prepare and
37 execute a Coastal Hazards Disclosure Statement. The seller shall furnish each prospective
38 purchaser of the real property with a copy of the Coastal Hazards Disclosure Statement no later
39 than the end of the third calendar day after the prospective purchaser makes an offer to
40 purchase, exchange, or option real property, or exercises the option to purchase real property
41 pursuant to a lease with an option to purchase.

42 (g) Change in Circumstances. – If, subsequent to the delivery of a Coastal Hazards
43 Disclosure Statement by a seller to a prospective purchaser and prior to settlement, the seller
44 discovers a material inaccuracy in the disclosure statement or the disclosure statement is
45 rendered inaccurate in a material way by the occurrence of some event or circumstance, the
46 seller shall promptly correct the inaccuracy by delivering a corrected Coastal Hazards
47 Disclosure Statement to the prospective purchaser. A prospective purchaser shall have the right
48 to cancel or rescind until the end of the third calendar day following the prospective purchaser's
49 receipt of the corrected Coastal Hazards Disclosure Statement. If a seller fails to deliver a
50 corrected disclosure statement as required by this subsection, the prospective purchaser shall
51 have any remedies that may be provided for by law.

1 (h) Duties of Agent. – A real estate broker or salesperson acting as an agent in a real
2 property transaction has the duty to inform each of the clients of the real estate broker or
3 salesperson of the rights and obligations of the client under this section. If the real estate broker
4 or salesperson has discharged this duty, the broker or salesperson shall not be liable for any
5 refusal by the seller to provide a prospective purchaser with a Coastal Hazards Disclosure
6 Statement. This section shall not be construed to alter the duties of a real estate broker or
7 salesperson under Chapter 93A of the General Statutes.

8 (i) Exemptions. – The requirements of this section shall not apply to the following
9 transfers:

10 (1) Transfers pursuant to court order, including transfers ordered by a court in
11 administration of an estate, transfers pursuant to a writ of execution,
12 transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers
13 by eminent domain, and transfers resulting from a decree for specific
14 performance.

15 (2) Transfers to a beneficiary from the grantor or the grantor's successor in
16 interest in a deed of trust, or to a mortgagee from the mortgagor or the
17 mortgagor's successor in interest in a mortgage, if the indebtedness is in
18 default; transfers by a trustee under a deed of trust or a mortgagee under a
19 mortgage, if the indebtedness is in default; or transfers by a trustee under a
20 deed of trust or a mortgagee under a mortgage pursuant to a foreclosure sale.

21 (3) Transfers by a fiduciary in the course of the administration of a decedent's
22 estate, guardianship, conservatorship, or trust.

23 (4) Transfers from one or more co-owners solely to one or more other
24 co-owners.

25 (5) Inter vivos gifts made solely to a spouse or a person or persons in the lineal
26 line of consanguinity of one or more transferors.

27 (6) Transfers between spouses resulting from a decree of divorce or a
28 distribution pursuant to Chapter 50 of the General Statutes or comparable
29 provision of another state.

30 (7) Transfers made by virtue of the failure by the owner of record to pay any
31 federal, State, or local taxes.

32 (8) Transfers to the State or any political subdivision of the State.

33 (j) Remedies. – If a seller fails to provide a Coastal Hazards Disclosure Statement to
34 the prospective purchaser as required by this section, the prospective purchaser may cancel the
35 offer to purchase, exchange, or option real property, or rescind the exercise of an option to
36 purchase real property pursuant to a lease with an option to purchase. The prospective
37 purchaser's right to cancel or rescind shall expire if not exercised prior to whichever of the
38 following first occurs:

39 (1) The end of the third calendar day following the prospective purchaser's
40 receipt of the Coastal Hazards Disclosure Statement.

41 (2) The end of the third calendar day following the date the offer is made.

42 (3) In the case of a sale or exchange, settlement, or occupancy by the
43 prospective purchaser.

44 (4) Settlement, in the case of a purchase pursuant to a lease with option to
45 purchase.

46 (k) Exercise of Remedies. – In order to cancel or rescind as permitted by this section,
47 the prospective purchaser shall, within the time provided, give written notice to the seller or the
48 seller's agent either by hand delivery or by depositing into the United States mail, postage
49 prepaid, and properly addressed to the seller or the seller's agent. If the prospective purchaser
50 cancels or rescinds in compliance with this section, the cancellation or rescission shall be
51 without penalty to the prospective purchaser, and the prospective purchaser shall be entitled to

1 a refund of any deposit the prospective purchaser may have paid. Any right of a prospective
2 purchaser to cancel or rescind under this section is waived if the right is not exercised in the
3 manner required by this section.

4 (l) Remedies Not Exclusive. – Any right of a prospective purchaser to cancel or rescind
5 for reasons other than those set out in this section are not affected by this section. The right to
6 cancel or rescind under this section shall be in addition to any other remedies available under
7 any other provision of law.

8 (m) Limitations on Construction of Section. – This section shall not be construed to
9 relieve a seller of any other legal duty, obligation, or liability of disclosure. A disclosure under
10 this section shall not be construed to constitute a warranty by the seller that the property may be
11 developed or redeveloped or that the property is not subject to hazards in addition to those
12 required to be disclosed under this section.

13 (n) Rights and Duties of Landlords and Tenants. – This section shall not affect the
14 landlord-tenant relationship between the parties to a lease with option to purchase contract
15 during the term of the lease, and the rights and duties of landlords and tenants under Chapter 42
16 of the General Statutes shall remain in effect until transfer of ownership of the property to the
17 purchaser."

18 **SECTION 2.** G.S. 47E-4 reads as rewritten:

19 **"§ 47E-4. Required disclosures.**

20 (a) With regard to transfers described in G.S. 47E-1, the owner of the real property
21 shall furnish to a purchaser a residential property disclosure statement. The disclosure
22 statement shall:

- 23 (1) Disclose those items which are required to be disclosed relative to the
24 characteristics and condition of the property and of which the owner has
25 actual knowledge; or
26 (2) State that the owner makes no representations as to the characteristics and
27 condition of the real property or any improvements to the real property
28 except as otherwise provided in the real estate contract. This subdivision
29 does not apply to subdivision (7) of subsection (b) of this section.

30 (b) The North Carolina Real Estate Commission shall develop and require the use of a
31 standard disclosure statement to comply with the requirements of this section. The disclosure
32 statement shall specify that certain transfers of residential property are excluded from this
33 requirement by G.S. 47E-2, including transfers of residential property made pursuant to a lease
34 with an option to purchase where the lessee occupies or intends to occupy the dwelling, and
35 shall include at least the following characteristics and conditions of the property:

- 36 (1) The water supply and sanitary sewage disposal ~~system;~~system.
37 (2) The roof, chimneys, floors, foundation, basement, and other structural
38 components and any modifications of these structural
39 ~~components;~~components.
40 (3) The plumbing, electrical, heating, cooling, and other mechanical
41 ~~systems;~~systems.
42 (4) Present infestation of wood-destroying insects or organisms or past
43 infestation the damage for which has not been ~~repaired;~~repaired.
44 (5) The zoning laws, restrictive covenants, building codes, and other land-use
45 restrictions affecting the real property, any encroachment of the real property
46 from or to adjacent real property, and notice from any governmental agency
47 affecting this real ~~property;~~ and property. This provision shall include
48 information required to be disclosed pursuant to G.S. 39-51(e).
49 (6) Presence of lead-based paint, asbestos, radon gas, methane gas, underground
50 storage tank, hazardous material or toxic material (whether buried or
51 covered), and other environmental contamination.

1 (7) The existence of coastal hazards that are required to be disclosed under
2 G.S. 39-51(e).

3 (b1) The disclosure statement shall provide the owner with the option to indicate whether
4 the owner has actual knowledge of the specified characteristics or conditions, or the owner is
5 making no representations as to any characteristic or condition. This subsection does not apply
6 to subdivision (7) of subsection (b) of this section.

7 (c) The rights of the parties to a real estate contract as to conditions of the property of
8 which the owner had no actual knowledge are not affected by this Article unless the residential
9 disclosure statement states that the owner makes no representations as to those conditions. If
10 the statement states that an owner makes no representations as to the conditions of the property,
11 then the owner has no duty to disclose those conditions, whether or not the owner should have
12 known of them."

13 **SECTION 3.** The Coastal Resources Commission shall complete the filings
14 required by G.S. 39-51(d), as enacted by Section 1 of this act, and shall develop the Coastal
15 Hazards Disclosure Statement required by G.S. 39-51(e), as enacted by Section 1 of this act, no
16 later than January 1, 2010. The North Carolina Real Estate Commission shall revise the
17 residential property disclosure statement required under Chapter 47E of the General Statutes no
18 later than January 1, 2010.

19 **SECTION 4.** The Division of Coastal Management of the Department of
20 Environment and Natural Resources shall make available on the Division's Web site the
21 information required to be filed with clerks of court as provided in G.S. 39-51(d), as enacted by
22 Section 1 of this act. There is appropriated from the General Fund to the Department of
23 Environment and Natural Resources the sum of five thousand dollars (\$5,000) for the
24 2009-2010 fiscal year to be used by the Division of Coastal Management to implement the
25 provisions of this section.

26 **SECTION 5.** Sections 4 and 5 of this act become effective July 1, 2009. Sections
27 1, 2, and 3 of this act become effective July 1, 2010, and apply to any offer to sell, exchange, or
28 option real property made on or after that date.