

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1628

Short Title: Coastal Hazards Disclosure. (Public)

Sponsors: Representatives Harrison; Alexander, Glazier, Haire, Hall, Insko, Luebke, and Weiss.

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

April 19, 2007

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

The General Assembly of North Carolina enacts:

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

"§ 39-51. Disclosure of coastal hazards.

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

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

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

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

(b) Legislative Findings. – The General Assembly finds that there are many properties along the Atlantic Ocean that are particularly susceptible to coastal hazards, including, but not limited to, erosion, flooding, storm damage, and inlet migration. The natural features of the beach system are highly dynamic, and there is a high degree of potential loss of life and property in certain particularly hazardous areas. The nature and extent of these coastal hazards for particular parcels of land are not readily apparent to or known by potential purchasers of property. It is therefore in the public interest that

1 the General Assembly establish a system whereby prospective purchasers of coastal
2 properties subject to certain hazards can receive reasonable notice of these hazards prior
3 to acquisition of property. Public disclosure of these hazards is essential to fully apprise
4 prospective purchasers of the coastal hazards involved with development and use of
5 property, to prevent any misrepresentation as to the coastal hazards affecting the
6 property, and to allow prospective purchasers to have complete and accurate
7 information regarding property that may be affected by coastal hazards.

8 (c) Scope. – The provisions of this section apply to all properties that are
9 adjacent to an ocean shoreline, as that term is defined in G.S. 113A-115.1(a)(1), and all
10 properties located along shorelines in areas that have been designated as inlet hazard
11 areas by the Coastal Resources Commission pursuant to G.S. 113A-113 and
12 G.S. 113A-115.

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

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

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

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

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

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

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

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

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

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

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

12 (g) Change in Circumstances. – If, subsequent to the delivery of a Coastal
13 Hazards Disclosure Statement by a seller to a prospective purchaser and prior to
14 settlement, the seller discovers a material inaccuracy in the disclosure statement or the
15 disclosure statement is rendered inaccurate in a material way by the occurrence of some
16 event or circumstance, the seller shall promptly correct the inaccuracy by delivering a
17 corrected Coastal Hazards Disclosure Statement to the prospective purchaser. A
18 prospective purchaser shall have the right to cancel or rescind until the end of the third
19 calendar day following the prospective purchaser's receipt of the corrected Coastal
20 Hazards Disclosure Statement. If a seller fails to deliver a corrected disclosure statement
21 as required by this subsection, the prospective purchaser shall have any remedies that
22 may be provided for by law.

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

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

32 (1) Transfers pursuant to court order, including transfers ordered by a
33 court in administration of an estate, transfers pursuant to a writ of
34 execution, transfers by foreclosure sale, transfers by a trustee in
35 bankruptcy, transfers by eminent domain, and transfers resulting from
36 a decree for specific performance.

37 (2) Transfers to a beneficiary from the grantor or his successor in interest
38 in a deed of trust, or to a mortgagee from the mortgagor or his
39 successor in interest in a mortgage, if the indebtedness is in default;
40 transfers by a trustee under a deed of trust or a mortgagee under a
41 mortgage, if the indebtedness is in default; or transfers by a trustee
42 under a deed of trust or a mortgagee under a mortgage pursuant to a
43 foreclosure sale.

- 1 (3) Transfers by a fiduciary in the course of the administration of a
2 decedent's estate, guardianship, conservatorship, or trust.
3 (4) Transfers from one or more co-owners solely to one or more other
4 co-owners.
5 (5) Inter vivos gifts made solely to a spouse or a person or persons in the
6 lineal line of consanguinity of one or more transferors.
7 (6) Transfers between spouses resulting from a decree of divorce or a
8 distribution pursuant to Chapter 50 of the General Statutes or
9 comparable provision of another state.
10 (7) Transfers made by virtue of the failure by the owner of record to pay
11 any federal, State, or local taxes.
12 (8) Transfers to the State or any political subdivision of the State.

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

- 19 (1) The end of the third calendar day following the prospective purchaser's
20 receipt of the Coastal Hazards Disclosure Statement.
21 (2) The end of the third calendar day following the date the offer is made.
22 (3) In the case of a sale or exchange, settlement, or occupancy by the
23 prospective purchaser.
24 (4) Settlement, in the case of a purchase pursuant to a lease with option to
25 purchase.

26 (k) Exercise of Remedies. – In order to cancel or rescind as permitted by this
27 section, the prospective purchaser shall, within the time provided, give written notice to
28 the seller or the seller's agent either by hand delivery or by depositing into the United
29 States mail, postage prepaid, and properly addressed to the seller or the seller's agent. If
30 the prospective purchaser cancels or rescinds in compliance with this section, the
31 cancellation or rescission shall be without penalty to the prospective purchaser, and the
32 prospective purchaser shall be entitled to a refund of any deposit the prospective
33 purchaser may have paid. Any right of a prospective purchaser to cancel or rescind
34 under this section is waived if the right is not exercised in the manner required by this
35 section.

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

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

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

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

7 **"§ 47E-4. Required disclosures.**

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

- 11 (1) Disclose those items which are required to be disclosed relative to the
12 characteristics and condition of the property and of which the owner
13 has actual knowledge; or
- 14 (2) State that the owner makes no representations as to the characteristics
15 and condition of the real property or any improvements to the real
16 property except as otherwise provided in the real estate contract. This
17 subdivision does not apply to subdivision (7) of subsection (b) of this
18 section.

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

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

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

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

11 **SECTION 3.** The Coastal Resources Commission shall complete the filings
12 required by G.S. 39-51(d), as enacted by Section 1 of this act, and shall develop the
13 Coastal Hazards Disclosure Statement required by G.S. 39-51(e), as enacted by Section
14 1 of this act, no later than 1 January 2008. The North Carolina Real Estate Commission
15 shall revise the residential property disclosure statement required under Chapter 47E of
16 the General Statutes no later than 1 January 2008.

17 **SECTION 4.** This act becomes effective 1 July 2008 and applies to any
18 offer to sell, exchange, or option real property made on or after that date.