



April 17, 2023

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**MEMORANDUM**

**TO:** NC Real Estate Commission

**FROM:** Donna Creef, Government Affairs Director, Outer Banks Association of REALTORS®

**RE:** Revisions to Residential Property and Owners' Association Disclosure Form

These comments are submitted on behalf of the Outer Banks Association of REALTORS® (OBAR) regarding the proposed revisions to the Residential Property and Owners' Association Disclosure Statement. A copy of the draft revised form was provided to OBAR by NC REALTORS®.

1. The draft revised disclosure form includes "Instructions to Real Estate Brokers" as a new section. The last sentence on page 1 states "A broker shall discover and disclose any material facts about the subject property that the broker knows or reasonably should know and not rely solely on the seller's representation." Item #3 on the current disclosure form is similar, but the word "discover" has been added to the draft form. Additional guidance on the expectations of "discover" is requested. Does this mean a home inspection should be conducted by the broker as part of the discovery process?
2. Although question #3 on the draft form has not been revised, some OBAR members indicated this question involves knowledge that only a structural engineer would be able to discern, not a real estate agent. Issues with a foundation of a structure are generally not readily apparent unless an engineering analysis is performed.
3. Question 14 requests information on the dwelling's water supply. It may be prudent to also include a question on the type of wastewater system – on-site septic or centralized system.
4. Questions 22-23 address elevators systems in structures. It may be appropriate to include a reference to NCGS 143-143.7 *Elevator safety requirements for certain residential rentals* in these questions.
5. Questions 34 – 37 address the flood hazards associated with a property and request information about flood damage and flood claim history for a property, flood insurance coverage, and federal assistance for flood damage.

Although a current owner may be aware of past flood damage or any flood claims filed during their tenure of ownership, a broker may not readily secure a history of flood claims.

Due to federal privacy laws, NFIP flood loss history is only released to the current property owner, the insured, or the claimant. The annual premiums for flood insurance policies have the potential to vary significantly depending on the individual's circumstances and an answer to question 36 will not necessarily be the same for a new buyer. An elevation certificate does provide valuable information about a structure; however, an elevation certificate is no longer required for flood insurance coverage under the NFIP Risk Rating 2.0 program. In lieu of these five questions, a general statement about the importance of flood insurance coverage is recommended such as: *Structures in special flood hazard areas with federally regulated or federally insured mortgages are required to have flood insurance by federal law. Even when not required, the Federal Emergency Management Agency encourages property owners in all flood zones, including Shaded X zones and X zones, to purchase flood insurance coverage for the structure and contents within the structure.*

6. There are several items in question 47 that are proposed to be deleted. These items are useful information for real estate transactions, and it is recommended they be kept in the disclosure form.

[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~~ that the broker 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). **Buyers**"). 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.

**Instructions to Real Estate Brokers**

A licensed real estate broker shall furnish their seller-client with a Disclosure Statement for the seller to complete in connection with the below referenced transaction. The broker shall review such completed form to ensure that the seller completed all answers and confirm that the disclosures made by the seller on the form are consistent with the broker's knowledge or representations about the property.

A broker shall discover and disclose any material facts about the subject property that the broker knows or reasonably should know and shall not rely solely on the seller's representations.

**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. owner name(s), signature(s), 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.**

- |   | Yes | No | No Representation |
|---|-----|----|-------------------|
| 1. In what year was the dwelling constructed? _____<br>Explain if necessary: _____  |     |    | □                 |
| 2. <b>Is the dwelling designated or registered as a historic property or located in a historic district?</b>  | □   | □  | □                 |
| 3. 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? | □   | □  | □                 |

4. 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)
5. In what year was the dwelling's roof covering installed? \_\_\_\_\_  
(Approximate if no records are available.) Explain if necessary:  
\_\_\_\_\_
6. Is there any leakage or other problem with the dwelling's roof?
7. Is there any water seepage, leakage, dampness or standing water in the dwelling's basement, crawl space, or slab?
8. Is there any problem, malfunction or defect with the dwelling's electrical system (outlets, wiring, panel, switches, fixtures, generator, etc.)?
9. Is there any problem, malfunction or defect with the dwelling's plumbing system (pipes, fixtures, water heater, etc.)?     
Water heater fuel source: \_\_\_\_\_ Year of system manufacture: \_\_\_\_\_  
Explain if necessary: \_\_\_\_\_
10. Is there any problem, malfunction or defect with the dwelling's heating and/or air conditioning?
11. What is the dwelling's heat source?  Furnace  Heat Pump  Baseboard  Other \_\_\_\_\_ (Check all that apply)  
Age of system: Year of system manufacture: \_\_\_\_\_  
Explain if necessary: \_\_\_\_\_
12. What is the dwelling's cooling source?  Central Forced Air  Wall/Window Unit(s)  Other \_\_\_\_\_ (Check all that apply)  
Age of system: Year of system manufacture: \_\_\_\_\_  
Explain if necessary: \_\_\_\_\_
13. What is the dwelling's fuel source?  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)
14. What is the dwelling's water supply source?  City/County  Community System  Private Well  Shared Well  Other \_\_\_\_\_  
(Check all that apply)
15. If the dwelling's water source is supplied by a private well, have you had the well tested? If so, what was the date of the last well test?
16. The dwelling's water pipes are made of what type of material?  Copper  Galvanized  Plastic  Polybutylene  Other \_\_\_\_\_  
(Check all that apply)
17. Is there any problem, malfunction or defect with the dwelling's water supply (including water quality, quantity or water pressure)?

18. 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)
19. 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.
20. Is there any problem, malfunction or defect with the dwelling's sewer and/or septic system?
21. 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?
22. Is the dwelling equipped with an elevator system?
23. If the dwelling is equipped with an elevator system, is there any problem, malfunction, or defect with any component of the elevator system?
24. 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.)?
25. 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?
26. Is there any problem, malfunction or defect with the drainage, grading or soil stability of the property?
27. Are there any structural additions or other structural or mechanical changes to the dwelling(s) to be conveyed with the property?
28. 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)?
29. 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?
30. Is there any noise, odor, smoke, etc. from commercial, industrial or military sources which affects the property?
31. Is the property subject to any utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?
32. 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?

33. Is the property subject to a flood hazard or is the property located in a federally-designated flood hazard area?
34. Has the property experienced any damage due to flooding, water seepage, or pooled water attributable to a natural event such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow?
35. Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program? If yes, provide the amount received:
36. Is there current flood insurance on the property? If yes, provide the annual premium amount:
37. Have you or any previous owner received assistance from FEMA, the US Small Business Administration, or any other federal disaster flood assistance for flood damage to the property?     
[NOTE: For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance can result in an owner being ineligible for future assistance.]
38. Is there a FEMA elevation certificate for the property?
39. Does the property abut or adjoin any private road(s) or street(s)?
40. 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)-(1-40) please explain (attach additional sheets if necessary):**

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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.**

- |   | Yes                      | No                       | No Representation        |
|---|--------------------------|--------------------------|--------------------------|
| 41. Is the property subject to governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot or unit? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

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

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- |   |                          |                          |                          |
|---|--------------------------|--------------------------|--------------------------|
| 42. 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]: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|--------------------------|

(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 33-42 above, you must complete the remainder of this Disclosure Statement. If you answered "No" or "No Representation" to question 33-42 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                       | No Representation        |
|---|--------------------------|--------------------------|--------------------------|
| 43. 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:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____   |                          |                          |                          |
| _____   |                          |                          |                          |
| 44. 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:   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____   |                          |                          |                          |
| _____   |                          |                          |                          |
| 45. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against, pending lawsuits, or existing or alleged violations of the association's governing documents 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, unsatisfied judgment, or existing or alleged violation.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____   |                          |                          |                          |
| _____   |                          |                          |                          |
| 46. As of the date this Disclosure Statement is signed, are there any unsatisfied judgments against or pending lawsuits judgments or pending lawsuits against the association 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, unsatisfied judgment or pending lawsuit. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| _____   |                          |                          |                          |
| _____   |                          |                          |                          |
| _____   |                          |                          |                          |



47. 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
<b>Management Fees</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed			
<b>Master Insurance</b>			
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance (specify amenities covered) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>			
Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Street Lights</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Storm Water Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Internet Service</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Cable</b>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Gate and/or Security</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other: (specify) _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>			
<hr/>			

Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_  
 Buyer Initials and Date \_\_\_\_\_ Owner Initials and Date \_\_\_\_\_