

CHAPTER 50
The Residential Property Condition Disclosure Act
Article 1
Residential Property Condition Disclosure Statements

SECTION 27-50-10. Definitions.

As used in this article:

- (1) "Commission" means the South Carolina Real Estate Commission.
- (2) "Disclosure statement" means a residential property condition disclosure statement written on a form as required by this article and as promulgated by regulations of the commission.
- (3) "Listing agent" means a real estate licensee who represents an owner of real property in the sale, lease, or other transfer of the subject real property through the use of a written listing agreement as required by law.
- (4) "Owner" means each person having a recorded present or future interest in real estate who is identified in a real estate contract subject to this article, but does not include the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or other lien or security interest in the real property. This disclosure is limited to the actual residential dwelling and does not address common elements or areas for which the owner has no direct and primary responsibility.
- (5) "Purchaser" means each person or entity named as a purchaser, buyer, or tenant in a real estate contract subject to this article.
- (6) "Real estate contract" means a contract for the transfer of ownership of real property.
- (7) "Real estate licensee" means an individual licensed under Title 40, Chapter 57.
- (8) "Real property" means the lot or parcel and the dwelling unit described in a real estate contract subject to this article.
- (9) "Selling agent" means a real estate licensee who represents a purchaser of real property through the use of a written agency agreement as required by law, a real estate licensee who is a subagent as defined by law who represents the owner, or a dual agent as defined by law who represents both the purchaser and owner.

SECTION 27-50-20. Scope of article.

This article applies to the following transfers of residential real property consisting of at least one but not more than four dwelling units:

- (1) sale or exchange;
- (2) installment land sales contract; or
- (3) lease with an option to purchase contract.

SECTION 27-50-30. Certain transfers excluded from scope of article.

This article does not apply to transfers:

- (1) pursuant to court order including transfers in administration of an estate, pursuant to a writ of execution, by foreclosure sale, by a trustee in bankruptcy, by a receiver, by eminent domain, and resulting from a decree for specific performance;
- (2) to a mortgagee from the mortgagor or his successor in interest in a mortgage if the indebtedness is in default, by a trustee pursuant to a deed of trust or to a mortgagee pursuant to a mortgage if the indebtedness is in default, by a trustee under a mortgagee pursuant to a foreclosure sale, or by a mortgagee who has acquired the real property at a sale conducted pursuant to a judgment and order of foreclosure;
- (3) by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust;
- (4) from one or more co-owners solely to one or more other co-owners;
- (5) made solely to a spouse or a person or persons in the lineal line of consanguinity of one or more transferors;

- (6) between spouses resulting from a divorce decree or support order or marital property distribution order;
- (7) made by virtue of the record owner's failure to pay federal, state, or local taxes;
- (8) to or from the federal government;
- (9) to the State, its agencies and departments, and its political subdivisions including school districts;
- (10) involving the first sale of a dwelling never inhabited;
- (11) real property sold at public auction;
- (12) to a residential trust;
- (13) between parties when both parties agree in writing not to complete a disclosure statement;
- (14) of a vacation time sharing plan as defined in Section 27-32-10(9); and
- (15) of a vacation multiple ownership interest as described in Section 27-32-250.

SECTION 27-50-40. Disclosure statements; contents; owner options.

(A) The owner of the real property shall furnish to a purchaser a written disclosure statement. The disclosure statement must contain the language and be in the form promulgated by the commission and the form may be delivered electronically through the Internet or other similar methods. The commission may charge a reasonable fee for the printed form but shall post the form for free downloading on its public website. The disclosure statement must include, but is not limited to, the following characteristics and conditions of the property:

- (1) the water supply and sanitary sewage disposal system;
- (2) the roof, chimneys, floors, foundation, basement, and other structural components and modifications of these structural components;
- (3) the plumbing, electrical, heating, cooling, and other mechanical systems;
- (4) present infestation of wood-destroying insects or organisms or past infestation, the damage from which has not been repaired;
- (5) the zoning laws, restrictive covenants, building codes, and other land- use restrictions affecting the real property, any encroachment of the real property from or to adjacent real property, and notice from a governmental agency affecting this real property;
- (6) presence of lead-based paint, asbestos, radon gas, methane gas, underground storage tank, hazardous material or toxic material, buried or covered, and other environmental contamination; or
- (7) existence of a rental, rental management, vacation rental, or other lease contract in place on the property at the time of closing, and, if known, any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property the tenant leases.
- (8) existence of a meter conservation charge, as permitted by Section 58-37-50, that applies to electricity or natural gas service to the property.

(B) The disclosure statement must give the owner the option to indicate that the owner has actual knowledge of the specified characteristics or conditions, or that the owner is making no representations as to any characteristic or condition.

(C) The rights of the parties to a real estate contract in connection with conditions of the property of which the owner has no actual or constructive knowledge are not affected by this article.

SECTION 27-50-50. Delivery of and effect of failure to provide disclosure statement; responsibility of listing or selling agent.

(A) The owner of real property subject to this article shall deliver to the purchaser the disclosure form required by this article before a real estate contract is signed by the purchaser and owner, or as otherwise agreed in the real estate contract.

(B) Failure to provide the disclosure form required by this article to the purchaser does not:

- (1) void the agreement;
- (2) create a defect in title; or
- (3) present a valid reason to delay or otherwise interfere with the closing of a real estate transaction by a party including a closing attorney or lender.

(C) A real estate licensee acting as a listing agent or a selling agent is subject to the regulations governing his license and performance of his responsibilities as licensee, as provided by the commission. This article does not limit any other remedy available to the purchaser under law.

SECTION 27-50-60. Corrected disclosure statements; reasonable repairs before closing.

If the owner discovers, after his delivery of a disclosure statement to a purchaser, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the owner shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the purchaser or make reasonable repairs necessitated by the occurrence before closing.

SECTION 27-50-65. Knowing disclosure of false, incomplete, or misleading material information; civil liability; attorney fees.

An owner who knowingly violates or fails to perform any duty prescribed by any provision of this article or who discloses any material information on the disclosure statement that he knows to be false, incomplete, or misleading is liable for actual damages proximately caused to the purchaser and court costs. The court may award reasonable attorney fees incurred by the prevailing party.

SECTION 27-50-70. Listing agent to notify owner of disclosure obligations; liability for refusal or inaccuracy of disclosure statement.

(A) A listing agent or any real estate licensee operating for any party in a residential real estate transaction must inform in writing each owner covered by the listing agreement of the owner's obligations prescribed in this article. If the listing agent performs this duty, he is not liable for the owner's refusal or failure to provide a prospective purchaser with a disclosure statement.

(B) This article does not conflict with or alter the duties of the real estate licensee pursuant to the regulations of the commission. The real estate licensee, whether acting as the listing agent or selling agent, is not liable to a purchaser if:

(1) the owner provides the purchaser with a disclosure form that contains false, incomplete, or misleading information; and

(2) the real estate licensee did not know or have reasonable cause to suspect the information was false, incomplete, or misleading.

SECTION 27-50-80. Obligation of purchaser to inspect.

This article does not limit the obligation of the purchaser to inspect the physical condition of the property and improvements that are the subject of a contract covered by this article. The real estate licensee, whether acting as listing agent or selling agent, has no duty to inspect the onsite or offsite conditions of the property and any improvements.

SECTION 27-50-90. "Psychologically affected" property disclosure exceptions.

(A) An owner is not required to disclose the fact or suspicion that a property may be or is psychologically affected, as described in subsection (B).

(B) A cause of action may not arise against an owner of real estate in a covered transaction for failure to disclose:

(1) that the subject real estate is or was occupied by an individual who was infected with a virus or other disease which has been determined by medical evidence to be highly unlikely to be transmitted through his occupancy of a dwelling place; or

(2) that the death of an occupant of a property has occurred or the manner of the death; or

(3) public information from the sex offender registry as defined in Article 7, Title 23.

(C) Subsection (B) does not preclude an action against an owner of real estate who makes intentional misrepresentations in response to direct inquiry from a purchaser or prospective purchaser with regard to psychological effects or stigmas associated with the real estate.

SECTION 27-50-100. Landlord-tenant relationship.

This article does not affect the landlord-tenant relationship between the parties to a lease with an option-to-purchase contract during the term of the lease, and the rights of the landlords and tenants pursuant to the South Carolina Residential Landlord and Tenant Act remain in effect until transfer of ownership of the property to the purchaser.

SECTION 27-50-110. Agreements by parties relating to physical condition of property to be sold “as is”.

Nothing in this article is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold including, but not limited to, agreements for the sale of real property “as is”.