

**ARE WE CLOSING IN ON INCLUDING COASTAL HAZARDS ON THE
NORTH CAROLINA REAL ESTATE DISCLOSURE FORM?**

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This article evaluates the prospects for adding coastal hazard disclosures to North Carolina's Residential Property Disclosure Form. While recent rulemaking successfully incorporated flood-related disclosures, similar efforts to address coastal risks such as erosion, sea level rise, and storm impacts have stalled. The authors trace past legislative attempts, assess the significance of the 2023 petition that secured new flood disclosure requirements, and compare North Carolina's framework with more comprehensive approaches in Texas and Florida. They argue that a petition for rulemaking could provide a viable path forward, offering buyers essential risk information while aligning disclosure practices with growing climate-related threats to coastal property.

I. INTRODUCTION

Real estate disclosure laws are a common tool used by states to ensure that potential buyers of property have transparency about possible issues with a property and allow buyers to trust that they are making informed decisions in purchasing a property. While coastal property is already particularly vulnerable to storms and beach erosion, impacts from climate change and sea level rise are increasing potential impacts that can threaten coastal property and undercut its value. Such impacts could be the subject of a coastal hazards real estate disclosure.

In North Carolina, a residential property seller is required to provide the North Carolina Real Estate Disclosure Form (Disclosure Form) to a potential buyer at the time of contract. The Disclosure Form is a valuable tool for informing potential buyers about possible risks associated with a particular property. These disclosures protect both buyers and sellers. For buyers, they provide essential knowledge to make informed decisions, potentially affecting property value and insurance costs. For sellers, complying with disclosure requirements helps mitigate liability and fosters transparency in transactions.

Amending the Disclosure Form law to add notice of coastal hazards is an approach attempted without success in the mid-2000's. However, amending the disclosure form rule to add information about coastal hazards through a petition for rulemaking now could be a successful approach.

II. WHAT IS A REAL ESTATE DISCLOSURE FORM?

A Real Estate Disclosure Form is a legal document that communicates known details of a property's condition to a prospective buyer. The seller provides this form to the buyer at the time the purchase contract is signed to foster transparency in residential real estate transactions. In North Carolina, the first disclosure form was required by the addition of the Residential Property Disclosure Act (Disclosure Act).¹ It lists the items required to be disclosed, such as damage or deficiencies in house systems or structures, and of other potentially hazardous conditions of the property.² This Chapter was significantly revised in 2011³ primarily to add new questions to the form related to homeowners' associations.⁴

The North Carolina Real Estate Commission (NCREC) was created in 1957 to regulate real estate activity within North Carolina.⁵ It is made up of nine members, including six members who are real estate professionals and three members of the public who are not part of the real estate industry and have no financial input in the real estate industry. The NCREC sets education standards, issues licenses, and enforces rules related to real estate professionals. The NCREC also provides educational content for the residential property-buying public.

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¹ An Act to Create the Residential Property Disclosures Act, N.C. Sess. Laws 1995-476 (codified at N.C. GEN. STAT. § 47E).

² N.C. GEN. STAT. § 47E-3.

³ An Act to Amend the Planned Community Act and the Condominium Act, N.C. Sess. Laws 2011-362.

⁴ Curtis E. Aldendifer, *Property Disclosure Form Revised as of January 1 To Include Properties Governed by Owners Associations*, NORTH CAROLINA REAL ESTATE COMMISSION (Feb. 2012).

⁵ N.C. GEN. STAT. § 93A-1.

The NCREC promulgates rules to implement the Disclosure Act pursuant to its rulemaking authority.⁶ Following the initial passage of the Disclosure Act in 1996, the NCREC promulgated its first set of rules related to the disclosure form in 1997. The new rules took effect in 1998. To date, the NCREC has amended the disclosure statement rule twelve times.⁷

In 2005, Representative Pricey Harrison sponsored two bills requiring sellers to disclose coastal hazards to prospective purchasers of coastal properties.⁸ Before her time in the North Carolina House of Representatives, Representative Harrison was appointed by Governor Hunt to the Coastal Resources Commission (CRC). She served until 2004 when she ran for a House Seat and won. During her years of service on the Coastal Resources Commission, she heard stories of homeowners who said they were not aware of the inherent risks of buying oceanfront property.⁹ These stories inspired her to introduce her coastal hazards disclosure bills. While there were some meetings with legislative staff and stakeholders to refine the language of her bills, neither bill made it to the full House for consideration. Stakeholders, including representatives of the Homebuilders Association and Realtors Association, raised concerns in these meetings about how coastal hazards information would be accessed in a timely manner to not slow a real estate transaction. At that time, the discussion focused on recording maps of coastal hazard areas in the register of deeds offices, which at the time were just starting to have online record searching—much different than the availability of relevant data online today.

III. SELC'S PETITION FOR RULEMAKING ABOUT FLOODING HAZARDS

On December 1, 2022, the Southern Environmental Law Center (SELC), on behalf of several environmental-group clients, filed a Petition for Rulemaking

⁶ The NREC's rulemaking authority can be found at N.C. GEN. STAT. §§ 93A-3(c) and 93A-51.

⁷ 21 N.C. ADMIN. CODE 58A .0114.

⁸ H.R. 1512, 2005 Reg. Sess. (N.C. 2005); H.R. 1628, 2007 Reg. Sess. (N.C. 2007) (both bills short titled Coastal Hazards Disclosure).

⁹ Gareth McGrath, *Building Near Inlets a Risky Proposition*, WILMINGTON STAR NEWS (Mar. 26, 2005).

(SELC Petition).¹⁰ The SELC Petition sought to change the NCREC's administrative rule which lists what information is required on the Disclosure Form and proposed the addition of flood-related disclosure questions to the Disclosure Form. The clients included the Natural Resources Defense Council, North Carolina Justice Center, MDC Inc., North Carolina Disaster Recovery and Resiliency School, Robeson County Church Community Center, and NC Field.¹¹ In the period leading up to the filing of the petition, North Carolina had recently experienced flooding and damage to coastal properties from Hurricanes Matthew, Florence, Dorian, and others. In addition to damage from these more frequent and intense tropical storms, in 2010 the CRC released its initial report on sea level rise.¹² A 2012 N.C. law required the CRC to have a draft update to the 2010 report by March 2015, with an updated report finalized by 2016.¹³ The CRC finalized and released its 2015 update in accordance with these deadlines.¹⁴ The CRC released an additional sea level rise science update in 2024.¹⁵ These reports, as well as international reports, predict accelerating sea level rise that will inevitably impact coastal properties through flooding.

The NCREC is an agency of the state.¹⁶ As an agency of the state, the NCREC is subject to the North Carolina Administrative Procedure Act, which provides that "a person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption."¹⁷ Petitions for Rulemaking are a less-frequently used tool for citizens to engage with a commission-agency about potential changes to administrative rule language.

¹⁰ Press Release, Southern Environmental Law Center, [North Carolina Real Estate Commission Petitioned to Disclose Flood History](#) (Dec. 1, 2022).

¹¹ *Id.*

¹² N.C. COASTAL RES. COMM'N SCI. PANEL ON COASTAL HAZARDS, [NORTH CAROLINA SEA-LEVEL RISE ASSESSMENT REPORT](#) (2010).

¹³ Act of Aug. 1, 2012, N.C. Sess. Laws 2012-202 (requiring a five-year update to the 2010 sea level rise report).

¹⁴ N.C. COASTAL RES. COMM'N SCI. PANEL ON COASTAL HAZARDS, [NORTH CAROLINA SEA-LEVEL RISE ASSESSMENT REPORT, 2015 UPDATE TO THE 2010 REPORT AND 2012 ADDENDUM](#) (2015).

¹⁵ N.C. COASTAL RES. COMM'N SCI. PANEL ON COASTAL HAZARDS, [NORTH CAROLINA 2024 SEA LEVEL RISE SCIENCE UPDATE](#) (2024).

¹⁶ N.C. GEN. STAT. § 150B-1.

¹⁷ *Id.* § 150B-20; 21 N.C. ADMIN. CODE 58A.0700.

The Petitioners sought to amend the NCREC disclosure to require sellers to disclose information about past flood damage to potential buyers. Petitioners argued that the NCREC only requires that property sellers disclose whether a home is in a flood plain or subject to a flood hazard. Petitioners describe this language as “falling outside of best practices for flood hazard disclosure.” It argued that such a disclosure would not require identification of relevant issues such as actual damage to a property, cost of flood insurance, and if previous owners have received federal disaster assistance. The Petition asserted that flooding in North Carolina will continue to worsen with climate change, and the proposed disclosures will provide North Carolina homebuyers with critical information regarding flood history and flood risk, including by empowering homebuyers to mitigate the risks of a flood-prone home.¹⁸ Finally, Petitioners stated that strong, bi-partisan support for flood disclosure exists in North Carolina.

On February 15, 2023, the NCREC granted the petition for rulemaking and began rulemaking at its March 15, 2023 and April 19, 2023 meetings. On May 17, 2023, the NCREC reviewed over 700 public comments concerning the proposed rule change, reviewed a draft of the amended Disclosure Form (different from the amended rule) which included items about flooding on it, and voted to adopt the rule changes as presented by staff.¹⁹ The added questions included:

- (F5) Is the property location in a federal or other designated flood hazard zone?
- (F6) Has the property experienced 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 flow?
- (F7) Have you ever filed a claim for flood damage to the property with any insurance provider including the NFIP?
- (F8) Is there a current flood insurance policy covering the property?
- (F9) Have you received assistance from FEMA, US SBA, or any other federal disaster flood assistance for flood damage to the property?

¹⁸ 21 N.C. ADMIN. CODE 58A .0114 (as reviewed by the Rules Review Commission on May 18, 2023).

¹⁹ [*Commission Meeting of May 17, 2023*](#), N.C. REAL EST. COMM’N (May 31, 2023).

- (F10) Is there a flood or FEMA elevation certificate for the property?²⁰

After proceeding through the rulemaking process, the Rules Review Commission approved the amended disclosure form rule at their May 18, 2023 meeting. The rule became effective on July 1, 2023. Following the Rules Review Commission's approval of the amended rule, the NCREC staff worked to amend the Disclosure Form.²¹

While the NCREC granted the petition for rulemaking to allow the addition of flood information, it is interesting to speculate about whether the NCREC would similarly grant a petition for rulemaking which proposed the addition of a coastal hazards question on the Disclosure Form. On one hand, a comment by one of the NCREC board members during discussion of the SELC's Petition might forecast a stormier reception of a coastal hazards disclosure requirement by the NCREC. The comment differentiated the proposed flood-related disclosures, which would be applicable to all 100 counties of the state, from disclosures that may only apply to a sub-set of the state, such as the twenty coastal counties governed by the Coastal Area Management Act (CAMA). Further, the NCREC is comprised of a majority of members (six of nine) who are real estate professionals. These members may be less likely to vote for additional disclosures to be added to the form. During the hearing on the SELC's petition, the board discussed making it clear that the form is to be filled out by the owner and not the real estate professional. The board also discussed concerns about ensuring that listing agents were not responsible for gathering information related to flood issues.

On the other hand, the inclusion of a discussion about what other states have for their own disclosure forms could be helpful to assure NCREC members that other states have successfully included coastal hazards information on their disclosure forms. For example, Texas' Seller's Disclosure Notice—which was last updated in 2023—is quite robust.²² It includes information about flooding in

²⁰ N.C. REAL EST. COMM'N, [RESIDENTIAL PROPERTY AND OWNERS' ASSOCIATION DISCLOSURE STATEMENT](#) (2025).

²¹ *Id.*

²² TEX. REAL EST. COMM'N, [SELLER'S DISCLOSURE NOTICE](#) (2023).

questions 6-8, and question 10 gives notice that property in a coastal area near the Gulf coast or Intracoastal Waterway may be subject to either the Open Beaches Act²³ or the Dune Protection Act.²⁴ It also includes a penalty for a non-disclosure. Florida's Seller's Property Disclosure Form²⁵ is similarly robust as it relates to coastal hazard notification. It requires disclosure of the property's location "seaward of the coastal control line" in Question 3(d) and disclosure of the presence of mangroves or other environmentally sensitive areas in Question 9(d). Both Texas and Florida have monetary penalties when a Seller inappropriately completes the disclosure form. Perhaps the NCREC would be interested in strengthening the Disclosure Form to match that of these other coastal states.

IV. WHAT COULD A NORTH CAROLINA COASTAL HAZARDS DISCLOSURE LOOK LIKE?

If a petitioner were to propose rulemaking to add disclosure of coastal hazards to the Disclosure Form, what kind of information would be most helpful to potential buyers while still being easy to access in the often fast-paced real estate market? About two decades ago, the NCREC teamed up with Spencer Rogers of North Carolina Sea Grant to produce an educational brochure entitled "Questions and Answers on Purchasing Coastal Real Estate in North Carolina."²⁶ It gives general information about potential coastal hazards, and who to contact for additional information. This brochure was last updated in 2011, so the information and contacts are out of date. Mr. Rogers produced the brochure for potential coastal real estate buyers, especially those who come from other states who may not know North Carolina's rules.²⁷ While this brochure is not currently required to be provided to a potential buyer, this is the kind of information that would be helpful to all coastal real estate buyers. Future rulemaking might make sharing this brochure a requirement of the seller.

²³ [Open Beaches](#), TEX. GEN. LAND OFF. (last visited July 7, 2025).

²⁴ TEX. NAT. RES. CODE § 63.001 (2025).

²⁵ FLA. REALTORS, [SELLER'S PROPERTY DISCLOSURE-RESIDENTIAL](#) (2016).

²⁶ N.C. REAL EST. COMM'N, [QUESTIONS AND ANSWERS ON: PURCHASING COASTAL REAL ESTATE IN NORTH CAROLINA](#) (2011).

²⁷ Brad Rich, [Buying Your Piece of Coastal Heaven](#), COASTAL REV. (June 19, 2012).

If North Carolina followed the lead of other states like Texas and Florida, it could include information about CAMA—North Carolina’s law regulating coastal development near the ocean—to potential buyers. The portions of the coastal management program which would be most helpful to potential property buyers would be information about oceanfront setbacks, average oceanfront erosion rates, areas of jurisdiction where a permit is required, and what activities require a CAMA permit. Like the Sea Grant brochure, any information disclosure would likely need to be conveyed in general terms with contact information to government agencies for more specific questions so that the information does not quickly become out of date and require frequent updates.

Several public and private organizations are providing information about flooding and coastal hazard risks, including the National Oceanic and Atmospheric Association (NOAA), Zillow, and First Street. NOAA’s Office for Coastal Management developed a Coastal Flood Exposure Mapper GIS tool to allow online visualization to help buyers and communities assess their coastal hazard risks.²⁸ While it captures flood risk, its disclaimer notes that it does not account for erosion or subsidence, which would be especially helpful for oceanfront properties. Zillow researched how many homes (and the value of said homes) are at risk from the impacts of sea level rise, concluding that by 2100, almost 300 U.S. cities would lose at least half their homes and 36 U.S. cities would be completely lost.²⁹ Further, in 2024, Zillow added climate risk data, such as flood, wildfire, wind, heat, and air quality, to its listings by partnering with First Street to use their climate risk modeling.³⁰

Based on what other states have done related to coastal hazards disclosures and given the resources and data available, an educational notice approach appears to be most helpful. This could include updating the Sea Grant brochure and perhaps making sellers provide a copy or a link to a copy to

²⁸ [Coastal Flood Exposure Mapper](#), NAT’L OCEANIC & ATMOSPHERIC ADMIN. (last visited July 7, 2025).

²⁹ Krishna Rao, [Climate Change and Housing: Will a Rising Tide Sink All Homes?](#), ZILLOW (June 2, 2017).

³⁰ Susan Kelleher, [What is Climate Risk Data and How to Use It When Shopping for a Home](#), ZILLOW (Oct. 31, 2024).

perspective buyers so that they can more easily learn about coastal hazards impacting the property and who to contact for more detailed information.

V. CONCLUSION

Based on the success of SELC and its clients' Petition related to flooding hazards, it appears that a petition for rulemaking could be an effective tool to request the NCREC to similarly add coastal hazards information to the Disclosure Form. Like the flooding-related information now on the Disclosure Form, making a potential buyer aware of coastal hazards is an important consumer protection tool. The petition serves as a formal way to initiate changes to state regulations which the NCREC must consider and respond to. With climate change consequences such as sea level rise and more extreme storms, the importance of effective notice of coastal hazards will become more critical over time to ensure best practices that reflect both buyers and sellers.