

Introduced by

Senators Meyer, Larson

Representatives Boschee, B. Koppelman

1 A BILL for an Act to amend and reenact section 47-10-02.1 of the North Dakota Century Code,
2 relating to property disclosure requirements.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 47-10-02.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **47-10-02.1. Property disclosure - Requirements - Exceptions.**

- 7 1. This ~~Except as provided under subsection 6~~ Unless the transaction is exempted under
8 subsection 7, this section applies to a transaction for the sale, exchange, or purchase
9 of real property if:
- 10 a. A real estate broker, real estate broker associate, or real estate salesperson who
11 is associated with a real estate brokerage firm represents or assists a party to the
12 transaction; and
 - 13 b. The ~~the~~ real property is ~~an owner-occupied primary residence~~ a residential
14 dwelling with no more than four units located in this state being sold or
15 exchanged by the owner.
- 16 2. ~~Before~~ Except as otherwise provided by the prospective buyer in the purchase-
17 agreement, before the parties sign a final agreement for the sale, exchange, or
18 purchase of real property, the seller shall make a written disclosure to the prospective
19 buyer. The written disclosure must include all material facts of which the seller is
20 aware could adversely and significantly affect an ordinary buyer's use and enjoyment
21 of the property or any intended use of the property of which the seller is aware. The
22 written disclosure must include latent defects, general condition, environmental issues,
23 structural systems, and mechanical issues regarding the property in an offer to
24 purchase agreement, before the parties sign the final acceptance of the purchase

1 agreement for the sale, exchange, or purchase of the real property, the seller in a
2 transaction subject to subsection 1 shall prepare a written disclosure form and shall
3 make the written disclosure form available to the prospective buyer. The written
4 disclosure form must include all material facts the seller is aware could adversely and
5 significantly affect an ordinary buyer's use and enjoyment of the property or any
6 intended use of the property of which the seller is aware. The written disclosure form
7 must be in the form of the written disclosure form established by the North Dakota real
8 estate commission under subsection 4 or in a substantially similar form and must
9 include latent defects, general condition, environmental issues, structural systems,
10 and mechanical issues regarding the property. The seller shall ~~make~~complete the
11 written disclosure in good faith and based upon the best of the seller's knowledge at
12 the time of the disclosure.

- 13 3. Followingif a real estate broker, real estate broker associate, or real estate
14 salesperson who is associated with a real estate brokerage firm represents or assists
15 a party to the transaction, following the sale, exchange, or purchase of real property,
16 the brokerage firm shall retain a copy of the written disclosure completed and signed
17 by the seller and signed by the prospective buyer. The brokerage firm's duties under
18 this section do not supersede any other common law or statutory duties.
- 19 4. The North Dakota real estate commission shall establish and make available a written
20 disclosure form meeting the requirements of this section. In establishing the form, the
21 commission shall consult with stakeholders, such as professional organizations.
- 22 5. If a real estate broker, real estate broker associate, or real estate salesperson who is
23 associated with a real estate brokerage firm violates this section, the state real estate
24 commission may investigate and take disciplinary action under section 43-23-11.1.
- 25 6. Unless the transaction is subject to subsection 1 or exempted under subsection 7, the
26 seller of real property that is a residential dwelling with no more than four units located
27 in this state being sold or exchanged by the owner shall comply with the provisions of
28 this subsection. Except as otherwise provided in an offer to purchase agreement,
29 before the parties sign the final acceptance of the purchase agreement for the sale,
30 exchange, or purchase of the real property, the seller in a transaction subject to this
31 subsection shall disclose to the buyer, in writing, all material facts the seller is aware

1 could adversely and significantly affect an ordinary buyer's use and enjoyment of the
2 property or any intended use of the property of which the seller is aware. The written
3 disclosure may be in the form of a written property disclosure form.

4 7. This section does not apply to transactions for the sale, exchange, or purchase of real
5 property made:

6 a. Pursuant to a court order;

7 b. Between government agencies;

8 c. By a mortgagor in default to a mortgagee;

9 d. Pursuant to a foreclosure sale;

10 e. By a mortgagee or a beneficiary of a deed of trust who acquired the real property
11 by a:

12 (1) Foreclosure;

13 (2) Deed in lieu of foreclosure; or

14 (3) Collateral assignment of beneficial interest;

15 f. By a fiduciary administering a decedent's estate, guardianship, conservatorship,
16 or trust;

17 g. Between co-owners of the real property;

18 h. To a spouse, child, parent, sibling, grandchild, or grandparent; or

19 i. If the real property is newly constructed residential real property with no previous
20 occupancy.