



## **NORTH CAROLINA BUYER ADVISORY**

A CONSUMER INFORMATION PUBLICATION OF  
THE NORTH CAROLINA REALTORS®

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This Advisory is designed to assist home buyers in meeting their obligation to satisfy themselves as to the condition and desirability of property they are interested in purchasing. Common issues in real property transactions that home buyers often decide to investigate or verify are summarized in this Advisory. In addition to investigating or verifying these common issues, you should tell the agent with whom you are working about any special concerns or issues you may have regarding the condition of the property or surrounding area. Such special concerns are not addressed in this Advisory.

A real estate agent is vital to the home buying process and can provide a variety of services in locating property, negotiating the sale and advising you, the buyer. A real estate agent is generally not qualified to discover defects or evaluate the physical condition of property; however, a real estate agent can assist you in finding qualified inspectors, appraisers and other professionals, as well as provide you with documents and other resources containing vital information about a prospective new home.

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## **PROPERTY INFORMATION/DISCLOSURES**

### **MLS Information**

Most properties marketed for sale by real estate agents are listed in a Multiple Listing Service (MLS). Information about the listing, provided to the MLS by the listing agent, is made available to all subscribing members of the MLS. This information is typically contained in what is called an MLS "printout" or "data sheet." Most of the information contained in an MLS data sheet or printout is obtained from the seller or third-parties like the county assessor's office or other governmental entity. MLS data may be incomplete, an approximation or otherwise inaccurate. Personal property listed on the MLS data sheet should be included in the purchase agreement if you wish to have the personal property included in the sale. **YOU SHOULD NOT RELY ON MLS-PROVIDED INFORMATION IF THAT INFORMATION IS CONSIDERED IMPORTANT AND SHOULD VERIFY THE ACCURACY OF THE INFORMATION.**

### **Seller's Property Disclosure Statement**

In most cases, residential property sellers in North Carolina must provide a Residential Property and Owners Association Disclosure Statement (Disclosure Statement) to interested buyers before they make an offer. The form used by the seller is mandated by state law. The seller's representations regarding the property and any owner's association(s) that may regulate the property are based upon the seller's actual knowledge and are not the representations of any real estate agent engaged by the seller or buyer. A copy of the Disclosure Statement is available on the website of the NC Real Estate Commission [here](#).

The owners of certain properties are not required to provide a Disclosure Statement, including but not limited to the owner of a dwelling that has never been inhabited and sold, and a lender that owns a property acquired after foreclosing on a loan made by the lender.

In North Carolina, sellers generally do not have any legal obligation to disclose the condition or characteristics of their property; thus, the seller may check "No Representations" with respect to any or all of the questions on the Disclosure Statement. However, real estate agents are required by law to disclose all material facts about a property that they know about or reasonably should know about, whether or not the seller chooses to disclose such facts. Additionally, real estate agents are not responsible for inaccurate representations made by the seller unless they know or reasonably should know under the circumstances that the representation is inaccurate and they fail to disclose it.

You should carefully review the seller disclosures and verify, or ask their agent to verify, any statements of concern. **REVIEW OF THE SELLER'S DISCLOSURE STATEMENT IS NO SUBSTITUTE FOR YOUR OWN INVESTIGATION OF THE PROPERTY, INCLUDING PROFESSIONAL INSPECTIONS, AND ANY OWNER'S ASSOCIATION(S) THAT MAY REGULATE THE PROPERTY.**

### **Mineral Rights/Oil and Gas Rights**

The minerals in place underneath the surface of the earth, including oil and gas, can be owned separately from the surface of the property. This means that minerals and mining rights can be created and transferred separately from the surface rights, and that those mineral rights constitute a separate and distinct property interest.

The owner of the mineral rights typically has the right to use the surface of the property in such ways and to such an extent as is reasonably necessary to obtain the minerals under the ground. Therefore, unless otherwise agreed upon, the mineral and gas rights owner may enter onto the land to explore for production, construct roads to the drill site, build pipelines, storage tanks, power stations, and other structures, and perform other activities consistent with the owner's right to exercise its oil and gas rights. You should understand fully what, if any, rights are severed from a property you seek to purchase. Information about oil and gas leases in North Carolina in two NC Department of Justice publications is available on the NC Real Estate Commission's website [here](#) and [here](#).

In most cases, residential property sellers in North Carolina must provide a Mineral and Oil and Gas Rights Mandatory Disclosure Statement (MOG Disclosure Statement) to interested buyers before they make an offer. The form used by the seller is mandated by state law. The seller's representations regarding mineral and oil and gas rights are based upon the seller's actual knowledge and are not the representations of any real estate agent engaged by the seller or buyer. A copy of the MOG Disclosure Statement is available on the website of the NC Real Estate Commission [here](#).

The owners of certain properties are not required to provide an MOG Disclosure Statement, including but not limited to a lender that owns a property acquired after foreclosing on a loan made by the lender. However, the owner of a dwelling that has never been inhabited and sold is NOT exempt from the requirement to provide an MOD Disclosure Statement.

The severance of mineral, oil and/or gas rights affects the title to the property, and discovering and rendering opinions on matters affecting title to real property is outside the scope of a real estate broker's expertise and constitutes the practice of law. A North Carolina real estate attorney should be engaged to determine whether such rights have been severed from the property. This determination typically is a part of the title search performed by the closing attorney. If mineral, oil and/or gas rights (or other similar rights) have been severed from the property, you should consult with an attorney about the potential consequences of proceeding with any purchase of the property.

### **Lead-Based Paint Disclosure**

Residential property built before 1978 (called "target" housing) is subject to the Residential Lead-Based Paint Disclosure Program administered by the Environmental Protection Agency (EPA) and the Department of Housing and Urban Development (HUD). The Act requires sellers of target housing to provide you with a lead-based paint disclosure and the pamphlet entitled "Protect Your Family From Lead in Your Home," and give you an agreed-upon period of time to obtain a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards. Information about the requirements can be found on HUD's website [here](#).

In North Carolina, a "Lead-Based Paint Or Lead-Based Paint Hazard Addendum" (jointly-approved by the NC Association of REALTORS and the NC Bar Association) is commonly provided by sellers of homes built before 1978 to prospective buyers. If you make an offer on such a home and do not receive the pamphlet and the Addendum, you should ask your real estate agent about lead-based paint disclosures. More information is available on the website of the NC Department of Health and Human Services (Epidemiology Section of the Division of Public Health) [here](#). You may search for lead professionals at that location.

## **PUTTING PROPERTY UNDER CONTRACT**

**Written contract required.** A contract for the sale of real property must be in writing to be enforceable in a North Carolina court. A VERBAL AGREEMENT SHOULD NOT BE RELIED UPON. Contracts for the sale of real property are legally binding contracts, and with limited exceptions (for example, the first sale of a condominium unit), are not subject to any "cooling off" period during which the buyer may terminate any such contract.

THE BUYER AND SELLER ARE RESPONSIBLE FOR SELECTING THE TERMS AND CONDITIONS OF THEIR AGREEMENT. REAL ESTATE AGENTS CAN GIVE A PARTY IMPORTANT MARKETING, BUSINESS AND NEGOTIATING ADVICE AND INFORMATION AND CAN ASSIST IN PREPARATION OF THE SALES CONTRACT. REAL ESTATE AGENTS ARE NOT ATTORNEYS AND ARE PROHIBITED BY LAW FROM GIVING LEGAL ADVICE OR DRAFTING LEGAL CLAUSES.

**Overview of Standard Contract.** In North Carolina, many real estate agents use the standard "Offer to Purchase and Contract" (form 2-T) for North Carolina residential real property transactions (the "Standard Contract"). The Contract is jointly-approved by the NC REALTORS® and the NC Bar Association and is widely used across the State of North Carolina. A real estate agent may assist a buyer or seller in completing a pre-printed sales contract form and is expected to possess a basic understanding about the buyer and seller's rights and responsibilities under the Standard Contract.

- **Earnest Money.** It is common, but not required, for earnest money, called an "Earnest Money Deposit" in the Standard Contract, to be paid by a buyer as an indication of the buyer's intention and ability to buy the property. An Earnest Money Deposit is held in trust by an Escrow Agent (typically a real estate firm representing the seller or buyer or an attorney who will "close" the transaction), and is refunded to the buyer under certain circumstances, including the buyer's notification to the seller prior to the end of the Due Diligence Period (defined below) that the buyer is terminating the contract, or the seller's inability to complete the transaction.

- **Buyer's "Due Diligence" Process.** The Standard Contract permits the buyer, at buyer's cost, to investigate the condition of the property and the financial aspects of the transaction (financing, appraisal, insurance, etc.) for an agreed-upon period of time, called the "Due Diligence Period," and to terminate the contract for any reason or no reason during the Due Diligence Period. Although not required to form a binding contract, in many cases a negotiated fee, called the "Due Diligence Fee," is paid to the seller in exchange for the buyer's right to terminate the contract during the Due Diligence Period. Unlike an Earnest Money Deposit, the Due Diligence Fee is paid directly to the seller and generally is non-refundable; however, if the buyer completes the purchase, the amount of the Due Diligence Fee will be credited toward the purchase price.

The length of the Due Diligence Period and the amount of any Due Diligence Fee are entirely negotiable between the buyer and seller, and are influenced by market forces such as the availability of housing inventory, the desirability of the property, as well as the motivation of the seller to sell the property and the buyer's motivation to buy it. The buyer should negotiate a Due Diligence Period of sufficient length to permit the conduct of any desired inspections of the property during the Due Diligence Period and to pursue qualification for any loan that the buyer may obtain, taking in to account time needed for an appraisal to be completed and for the lender to provide sufficient information for the buyer to decide whether to proceed with or terminate the contract.

Examples of things the buyer should consider investigating during the Due Diligence Period are described in the Standard Contract. As a result of the buyer's investigation of the property, the buyer may request that the seller make repairs or improvements. Any such request should be made well before the end of the Due Diligence Period to allow sufficient time to negotiate repairs or improvements. The seller may be willing to negotiate repairs or improvements, but is not required to do so. If the buyer is not satisfied with the results of the buyer's Due Diligence or the progress of repair/improvement negotiations, the buyer should, *before the end of the Due Diligence Period*, enter into a written agreement with seller to extend the Due Diligence Period or terminate the contract.

- **Financing**

If a buyer intends to finance the purchase of any property they purchase, they should pursue qualification for and approval of any loan during the Due Diligence Period if the Standard Contract is used in the transaction. It is important that the buyer consult with their lender prior to signing the Contract to assure that the Due Diligence Period allows sufficient time for any appraisal to be completed and for the lender to provide sufficient information for the buyer to decide whether to proceed with or terminate the transaction. A buyer should consider seeking pre-approval from a lender prior to writing an offer. A pre-approval letter should state that the lender has reviewed the buyer's credit report, income requirement and cash to close and pre-approves the buyer for the loan, subject to an acceptable appraisal of the property. The appraiser will normally work for the lender, not the buyer. A buyer may check the status of an appraiser on the website of the North Carolina Appraisal Board [here](#).

Any fact directly affecting a buyer's ability to complete a transaction, including but not limited to any need to sell and/or close on a current property before the buyer will be able to close on the sale of the seller's property, is a material defect that must by law be disclosed by the buyer's agent. A real estate agent working with a buyer cannot hide any material fact relating to the buyer's ability to complete the transaction and should not be asked to do so.

- **Closing/Closing Attorney.** If the buyer decides to continue with the transaction, a "closing" will be scheduled. It is the position of the NC Bar Association and the NC REALTORS® that all buyers should hire an NC-licensed attorney to perform the closing. The Standard Contract provides that the closing attorney is selected and paid by the buyer. A real estate agent may be able to assist the buyer in finding a North Carolina real property attorney. Among other things, the closing attorney will perform an examination of the property's title to ensure that the seller can convey clear title to the buyer, obtain title insurance, prepare and/or supervise the execution of all closing documents, and record the deed and any deed of trust (the document the buyer signs pledging the property as collateral for repayment of any loan).

- **Costs of Closing.** The Standard Contract allocates responsibility to the buyer and seller for the payment of various costs and fees associated with closing the transaction, including but not limited to real estate taxes, attorneys' fees, loan-related costs, dues and fees charged by any owners association or owners association management company, and any "Special Assessments," which are defined in the Standard Contract as certain charges against the property by a governmental authority or owners association. Unless otherwise agreed by the parties, Special Assessments that are confirmed prior to Settlement must be paid by the seller, while Special Assessments that are under consideration but have not been approved prior to Settlement are the responsibility of the buyer.
- **Closing Process.** "Closing" is defined in the Standard Contract as the completion of the legal process which results in the transfer of the title to the Property from the seller to buyer. Closing includes a number of steps, including the "Settlement," which is the signing and delivery to the closing attorney of all documents necessary to complete the transaction (deed, settlement statement, loan documents, etc.) and the closing attorney's receipt of all funds necessary to complete the transaction. The Settlement commonly takes place at the closing attorney's office. The last step in the Closing is when the closing attorney records the deed and any deed of trust (the document the buyer signs pledging the property as collateral for repayment of the loan). This is commonly, but not always, done on the same day as the Settlement.
- **Delays in Settlement/Closing.** The Standard Contract contains an agreed-upon "Settlement Date." As noted above, Settlement is the first step in the process of Closing and commonly takes place at the closing attorney's office. On occasion, a party is unable to complete the Settlement by the Settlement Date. Common examples include a delay by the buyer's lender in completing the loan process or the discovery by the closing attorney of a defect in the title to the property that requires corrective action by the seller. In such cases, the Standard Contract permits the "Delaying Party" up to 14 days after the Settlement Date to complete Settlement and Closing. In making their plans, it is prudent for the buyer and seller to take into account the potential for a delay in the completion of the transaction.

### **Real Estate Taxes**

In North Carolina, when property is bought and sold, the law provides that unless otherwise provided by contract, real property taxes are prorated between the buyer and the seller on a calendar-year basis. The seller pays the taxes from January of the current year through the settlement date and the buyer pays the taxes from the settlement date through the end of the year.

Cities and counties in North Carolina operate on a fiscal year that begins on June 1<sup>st</sup> of each year, so tax rates are established and bills are released by the tax office in the middle of the year. If, at the time of settlement, tax rates and bills haven't been established/released, taxes are typically prorated based on the prior year's taxes, and the buyer is given a credit for the seller's portion of the taxes. In this case, the buyer is responsible for paying the taxes on the property for the entire year once the tax bill is released. If the tax rates and bills have been released by the tax office and have not yet been paid by the seller, taxes are prorated and paid at settlement. If the seller has already paid the taxes, taxes are prorated and the seller is given a credit for the buyer's portion of the taxes.

The Standard Contract provides for a calendar-year tax proration of the real property taxes. Responsibility for payment of the taxes may be allocated between the parties in some other mutually-agreed manner, such as a fiscal-year tax proration.

Some properties (such as properties being used for the production of agricultural, horticultural or forest products, or unoccupied property in a builder's inventory) are specially assessed and taxes deferred. The sale of such a property can result in changes in the tax status and cause deferred taxes to become due. You should consult with the tax office and/or seek the advice of a lawyer or other tax professional regarding the tax consequences of purchasing the property. The Standard Contract obligates the seller to pay any deferred, discounted or rollback taxes due and owing as a result of the sale, and any such taxes should be paid by the seller prior to closing. Real estate agents are not trained or licensed to provide legal or tax advice.

**Non-Standard Contracts.** A buyer and seller are free to use a contract form other than the Standard Contract to put property under contract, use non-standard addenda with the Standard Contract form, draft

their own contracts or have an attorney draft their contract. A real estate agent is not expected to possess an understanding of the buyer and seller's legal rights and responsibilities under a non-standard sales contract form. A buyer or seller should seek legal advice from a North Carolina real estate attorney before signing any contract they do not understand or do not feel provides for their legal needs, whether it is the Standard Contract or a non-standard contract form.

### **Contracts for Short Sale Properties**

A "short sale" property is a property whose sale will not result in sufficient proceeds to enable the seller to pay off the mortgage and other costs of sale, and the seller does not have sufficient liquid assets to make up the difference. The standard Short Sale Addendum (jointly-approved by the NC Association of REALTORS and the NC Bar Association) makes the transaction contingent upon the seller reaching agreement with the seller's lender (and other creditors with liens on the property) to release their liens upon payment of an amount less than what they are owed. Because the transaction is contingent upon the consent of third parties, short sales take a great deal of time and often fail. You should understand and plan for the resulting uncertainty. Contract deadlines and termination provisions must be carefully considered in a short sale. Because the transaction is contingent on the consent of one or more third parties, sellers can, and often do, continue to market the property and seek better offers. Creditors will often demand changes in the terms of the sale agreement as a condition of giving their consent. You should be prepared to deal with the additional uncertainty created by the potential for multiple offers and third party demands. Real estate agents can give you important marketing, business and negotiating advice and information and can assist in preparation of the sale agreement but only pursuant to your instructions. Real estate agents are not attorneys and are prohibited by law from giving legal advice. Although real estate agents can communicate information to and from lenders and other creditors of the seller, they generally should refrain from negotiating what terms and conditions a lender or other creditor would accept, as such negotiation may constitute the unauthorized practice of law.

### **Contracts for "REO" Properties**

When a lender forecloses on a property, obtains title in lieu of foreclosure or otherwise obtains title to real property as a result of a mortgage or lien, the property becomes what is called a "Real Estate Owned" or REO property. Lenders typically sell REO property using the same listing and marketing techniques as ordinary home owners. REO property, however, is almost always sold using forms and procedures developed by the lender. Such forms and procedures can significantly affect your rights and obligations in the transaction. For instance, REO forms may delay formation of the contract until right before closing, or otherwise reserve to the seller the right to cancel the contract. You should understand and plan for the resulting uncertainty. REO forms typically contain very detailed clauses that shift responsibility for the condition of the property to the buyer and make it difficult or impossible for the buyer to sue the seller if a defect is discovered after closing. Real estate agents can give you important marketing, business and negotiating advice and information and can assist in completion of the sale agreement, but only pursuant to your instructions. A real estate agent is not qualified to give you advice about your rights and responsibilities under a non-standard sales contract form. You should consult a North Carolina real estate attorney under such circumstances.

## **PROPERTY INSPECTION AND INVESTIGATION**

### **Professional Home Inspections**

OBTAINING A PROFESSIONAL HOME INSPECTION IS THE SINGLE MOST IMPORTANT THING A BUYER CAN DO FOR THEIR PROTECTION. A professional home inspection report will provide the buyer with detailed information about the home's physical condition, its systems and fixtures and usually note any potential future problems. Be sure to read the report itself and not just the Summary Page to ensure you understand all aspects of the inspection and report. The Summary Page is intended to cover the major concerns found by the inspector during their inspection but may not be the only issues discovered.

A home inspection done for compensation *must* be done by a home inspector or contractor licensed by the North Carolina Home Inspector Licensure Board (NC HILB). To inspect two or more components of a residential building (heating system, cooling system, plumbing system, electrical system, structural components, foundation, roof, masonry structure, exterior and interior components, or any other related residential housing component), the home inspector must be licensed. All licensed home inspectors in North Carolina are required to provide a written contract that describes the services to be performed, standards of practice, limitations and the cost of the services. This contract is required to be signed before

the home inspection is performed. Some home inspectors may not inspect heating and cooling systems, the roof or other systems or components. You should carefully review an inspector's proposal to determine the scope of the inspection.

You can review state home inspector requirements on the website of the NC Home Inspector Licensure Board [here](#). Additional information about inspections and inspectors is available on the website of the North Carolina American Society of Home Inspectors [here](#), the North Carolina Licensed Home Inspectors Association [here](#), and the International Association of Certified Home Inspectors [here](#).

Inspection of property is beyond the scope of expertise of a real estate agent, but real estate agents may help you identify a local inspector. You may check with the NC HILB to obtain information about inspectors in your area, determine an inspector's current license status and whether there has been disciplinary action against the inspector. This can be done by clicking [here](#)

You should not rely upon reports done for others (the seller and/or previous buyers) because the report may not be current and you may have no recourse against an inspector you have not retained. If the Standard Contract is used, you should obtain your own professional home inspection report from a licensed professional inspector during the Due Diligence Period. If a professional inspection you have done shows defects in the property, you may want to terminate the contract or attempt to reach an agreement with the seller to repair the defects. Unless otherwise provided for in the contract, the cost of the inspection will not be refunded to you should you terminate the contract.

If a sales contract other than the Standard Contract is used, it is important that it contain a clause that allows you to terminate the agreement if a professional inspection you have done shows defects in the property. A real estate agent may assist you in completing the Standard Contract and is expected to possess a basic understanding about the buyer and seller's rights and responsibilities under the Standard Contract. However, a real estate agent is not qualified to give you advice about your rights and responsibilities under a non-standard sales contract form. You should consult a North Carolina real estate attorney under such circumstances.

### **Pest Inspection**

Pest inspections are done in many residential real estate transactions and may be required by the lender. Whether or not required by the lender, you are encouraged to obtain a pest inspection. Persons engaged in structural pest control for the general public must be licensed by the Structural Pest Control Division of the North Carolina Department of Agriculture & Consumer Services. If a pest inspection is desired or required, you should verify that the inspector is properly licensed. The license status of a structural pest control licensee can be checked [here](#). Real estate agents do not have the training or expertise to inspect property for pests, but they can help you identify a local pest inspector. Like any property condition report, you should not rely on the report of a pest inspector you did not hire. A pest inspection is a limited inspection and is no substitute for a complete whole home inspection by a licensed home inspector.

### **Square Footage**

Although real estate agents are not required by North Carolina law to report the square footage of properties offered for sale, when they do report square footage, they are expected to provide reasonably accurate information. However, if the square footage of a property is a material consideration in purchasing a property, you should verify the accuracy of the reported square footage. Your agent may assist you in measuring the property and calculating its square footage, or another professional, such as a state-licensed or state-certified appraiser, may be engaged to do so, especially if the dwelling is of an unusual or complex design. Because all properties are unique, minor discrepancies in deriving square footage are not considered to constitute negligence on the part of the agent by the North Carolina Real Estate Commission. Minor variations in tape readings and small differences in rounding off or conversion from inches to decimals, when multiplied over distances, will cause reasonable discrepancies between two competent measurements of the same dwelling. In addition to differences due to minor variations in measurement and calculation, discrepancies between measurements may also be attributable to reasonable differences in interpretation.



**Survey.** You should give serious consideration to obtaining a new survey of the property from a North Carolina registered surveyor. Situations arise all too often that could have been avoided if the buyer had obtained a new survey. A survey will normally reveal such things as encroachments on the property from adjacent properties (fences, driveways, etc.); encroachments from the property onto adjacent properties; road or utility easements crossing the property; violations of set-back lines; lack of legal access to a public right-of-way; and indefinite or erroneous legal descriptions in previous deeds to the property. Although title insurance companies may provide lender coverage without a new survey, the owner's policy contains an exception for easements, set-backs and other matters which would have been shown on a survey. Many such matters are not public record and would not be included in an attorney's title examination. In addition, if you do not obtain your own survey, you would have no claim against a surveyor for inaccuracies in a prior survey. While real estate agents are not trained and do not have the expertise to measure or calculate a property's acreage, they may be able to help you identify a North Carolina registered surveyor. A surveyor must be licensed by the NC Board of Examiners for Engineers and Surveyors. The license status of a surveyor can be checked on the Board's website [here](#).

If the Standard Contract is used, any square footage measurement/calculation and/or survey of a property should be completed during the Due Diligence Period.

### **Defective Products and Materials**

Some materials used in home construction are, or have been, subject to a recall, class action suit, settlement or litigation. These materials are typically, but not limited to, modern engineered construction materials used for siding, roofing, insulation or other building purposes. It is important that you carefully review any disclosures or representations of the seller regarding such materials. A real estate agent may assist you in that review, but inspection of property for defective products, systems, fixtures or materials is beyond the scope of expertise of a real estate agent. You therefore should make certain inspection for such materials is within the scope of any home inspection ordered by the buyer. Like any property condition report, you should not rely on the report of an inspector you did not hire.

Similarly, homes may contain products in their systems or fixtures that are, or have been, subject to a recall, class action suit, settlement or litigation. Plumbing, heating and electrical systems, among others, may contain such products. It is important that you carefully review any disclosures or representations of the seller regarding such products. You should determine whether inspection for such products is within the scope of any home inspection ordered by you. A real estate agent can help you find a suitable inspector.

### **Repairs and Remodels**

You should look for signs of repairs or remodeling when viewing property. If repairs or remodeling have been done, you will want to make certain the work was properly done. You can ask the seller for any invoices or other documentation for the work but, as with other questions of property condition, there is no substitute for professional inspection. A real estate agent can help you assess the need for a building code compliance inspection but do not themselves have the training or expertise to evaluate building code compliance. If building permits were required for work done on the property (such permits are typically required for structural changes, new additions, and new plumbing and electrical work), you should check with the city or county building department to make sure the permits are in order. If permits were not properly obtained, the new property owner could be held responsible. Ask your agent for assistance in getting contact information for the appropriate building department.

If the parties agree that the seller will make any repairs during the transaction, the repairs should be performed by a person who is licensed to perform the particular repairs. After the repairs have been done, you should consider having a re-inspection done to assure the repairs were done properly. Unless otherwise provided in the sales contract, the cost of any re-inspection is typically your responsibility.

### **Sewer and Septic Systems**

Whether the property is connected to a city sewer or on-site wastewater treatment system (i.e., septic system) is important information. Even if the MLS data sheet or the Residential Property and Owners Disclosure Statement indicates that the home is connected to the city sewer, you should have your home inspector, or a licensed plumber, verify the connection and its condition, as well as to determine whether there is any other plumbing associated with the system (for example, a pump installed in connection with a later-added basement bathroom). Real estate agents are not licensed to do plumbing or septic inspections. If the property has an on-site wastewater treatment system, the system should be inspected

by a licensed on-site wastewater inspector hired by you. If the inspector discovers a problem with the system that requires repair, the repairs must be performed by a licensed on-site wastewater contractor after a permit for the repairs is issued by the county health department. On-site wastewater inspectors and contractors are licensed by the North Carolina Onsite Wastewater Contractor Inspector Certification Board (“NCOWCICB”). You may check with the NCOWCICB to confirm that the inspector and/or contractor is licensed. Click [here](#) for information on the NCOWCICB website. You should check with the county health department for specific information on a particular property.

### **Wells**

If domestic water for the property is supplied by a private well, you should have the water quality tested. Testing may be performed by the county health department or by an employee of a state-certified laboratory. A listing of certified labs is available on the website of the NC Department of Environmental Quality [here](#).

Any inspection of the well’s structure should be done by a certified well contractor or an environmental health specialist. Well contractors are certified by the North Carolina Well Contractor’s Certification Commission. A listing of certified well contractors is available on the Commission’s website [here](#).

Local health departments are required to permit, inspect and test new private drinking water wells. Construction permits are valid for 5 years from the date of issuance. Repairs to a private drinking water well also require a health department permit. Construction or repair of a private drinking water well must be performed by a certified well contractor or a licensed plumber who has taken the appropriate training courses/continuing education.

Even when wells are inspected and tested, it is impossible to guarantee a continuous supply of water. Catastrophic events can and do occur that can change well quality/quantity virtually overnight. Other events, such as improper development and drought, can affect the yield and quality of an aquifer over time. Any test of a well is merely a snapshot in time and is not an indication of a well’s performance in the future. Any kind of well report should be viewed in this light.

While real estate agents are not trained and do not have the expertise to test wells or the quality of well water, they may be able to help direct you to the appropriate well professionals.

### **Underground Oil Storage Tanks**

You should be aware of potential problems associated with underground storage tanks (“USTs”). Although USTs used for home heating oil are not regulated, such tanks can cause serious problems if they have leaked oil. You are advised to hire appropriately trained environmental professionals (environmental consulting companies, licensed geologists, licensed engineers) to inspect the property if a UST is present or suspected. While real estate agents are not trained and do not have the expertise to test USTs, they may be able to help direct you to the appropriate environmental professionals. Some lenders may require a UST to be tested and some may require a UST to be removed and a “no further action letter” obtained from the Division of Waste Management (DWM). Some local fire inspectors’ offices regulate USTs, so the local office should be contacted prior to removal.

If contamination is discovered, the local DWM regional office should be notified immediately. According to an FAQ published by the UST Section of the DVM, available [here](#), the “statutory tank owner” primarily is responsible for cleaning up the contamination. Who the “statutory tank owner” is depends upon when the tank was last used. Information on home heating oil USTs can be found on the website of the UST Section of the DWM [here](#).

## **Environmental Hazards**

You should carefully review the Residential Property and Owners Association Disclosure Statement and any inspection reports available to determine if any of a number of potential external or internal environmental hazards may require further investigation. External environmental hazards include floods, landslides and expansive soils. If you are concerned about external environmental hazards, you should check with the county in which the property is located.

**Flood Hazards.** You should determine whether the property and/or any permanent improvements on the property are wholly or partially located in a Special Flood Hazard Area and whether it is advisable for you, or whether your lender may require you, to obtain flood hazard insurance. A definition of the term “Special Flood Hazard Area” can be obtained from the website of the Federal Emergency Management Agency [here](#). Information about the state of North Carolina’s Floodplain Mapping Program is available on the website of the NC Flood Mapping Program [here](#).

If the property is located in a Special Flood Hazard Area, your lender may require you to purchase flood insurance in connection with your purchase of the property. The National Flood Insurance Program provides for the availability of flood insurance and establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. You should not rely on the premiums paid for flood insurance on the property previously as an indication of the premiums that will apply after completion of the purchase. In considering purchase of this property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, current and anticipated future flood insurance premiums, whether the prior owner’s policy may be assumed by a subsequent purchaser of the property, and other matters related to the purchase of flood insurance for the property. You may also wish to contact the Federal Emergency Management Agency (FEMA) for more information about flood insurance as it relates to the property. You can obtain more information about the National Flood Insurance Program on FEMA’s website [here](#).

**Landslide Hazards.** Information about landslide hazards is available on the website of the NC Department of Environmental Quality [here](#). The NC Real Estate Commission does not require a real estate agent to investigate slide hazards or warn buyers of the potential for such hazards unless the agent has actual knowledge of such hazards or circumstances exist that would lead a reasonably prudent agent to conclude that there is a potential hazard.

**Superfund Sites.** Superfund sites are areas that have been listed by the federal government as contaminated. A wealth of information on superfund sites, including their locations, is available by visiting the EPA’s website [here](#). Information about superfund sites is also available on the website of the Superfund Section of NC Division of Waste Management [here](#).

**Indoor Hazards.** Environmental hazards can also include indoor air quality (e.g., radon or carbon monoxide) and hazardous materials, like asbestos. Publications and resources about indoor air quality are available on the website of the Environmental Protection Agency (EPA) [here](#). Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal guidelines have been found in buildings in North Carolina. The lead agency for radon activities in North Carolina is NC Radiation Protection a section of the Division of Environmental Health of the Department of Health and Human Services (NCDHHS). Information about the NC Radon Program is available online [here](#).

Real estate agents are not trained, and do not have the expertise, to discover and evaluate environmental hazards. You therefore are advised to hire appropriately trained environmental professionals to inspect the property and its systems or fixtures for environmental hazards. A real estate agent may be able to help direct you to the appropriate professionals.

**Mold.** Molds are one of a variety of biological contaminants which can be present in human structures, including in residential housing. Mildew is perhaps the most common and best known of the molds. Less well known, and far less common, are certain molds identified as possible contributors to illness, particularly in people with allergies. Such cases usually involve property with defective siding, poor construction, water penetration problems, improper ventilation or leaking plumbing. In a few cases, these problems have led to the growth of molds which caused medical conditions in some people. If you are concerned about potentially harmful molds, you should arrange for inspection by a qualified professional. Information on

moisture intrusion and mold problems associated with human structures can be found on the EPA website [here](#).

A Fact Sheet on mold prepared by the National Toxicology Program is available on the website of The American Industrial Hygiene Association [here](#).

Inspection, discovery and evaluation of specific water intrusion or mold problems requires specialized training and is well beyond the scope of a real estate agent's expertise. You are therefore advised to hire appropriately trained professionals to inspect the property if you are concerned about the possibility of harmful molds. Information on how you should go about hiring a mold consultant or contractor is available on the website of the N.C. Department of Health and Human Services (Epidemiology Section) [here](#).

**Renovation, Repair or Painting of Housing Built Before 1978.** If renovation, repair, or painting (RRP) on a home built before 1978 is planned, you should be aware of EPA rules that require such work to be done by certified contractors who must follow certain work guidelines. This may complicate or add expense to such projects. RRP rules in North Carolina are administered and enforced by the Health Hazards Control Unit (HHCU) of the NC Department of Health and Human Services, Division of Public Health. No person may perform lead-based paint renovation activities for compensation in target housing in North Carolina until that person has been certified under the state program. Information about various aspects of the state program is available on the HHCU's website [here](#). The EPA publication "Small Entity Compliance Guide to Renovate Right" contains an excellent summary of the requirements of the new EPA rules and is available on the EPA's website [here](#).

#### **Smoke and Carbon Monoxide Alarms**

The NC Residential Building Code requires smoke alarms in all new construction, and in existing dwellings where alterations, repairs or additions requiring a building permit occur, or, when one or more sleeping rooms are added or created. Counties and cities may also require smoke alarms in existing dwellings under local ordinances that are no more stringent than the State Building Code.

The NC Residential Building Code requires carbon monoxide alarms in all new construction, and in existing dwellings where interior alterations, repairs, fuel-fired appliance replacements, or additions requiring a building permit occur, or, when one or more sleeping rooms are added or created. Counties and cities may also require carbon monoxide alarms in existing dwellings under local ordinances that are no more stringent than the State Building Code.

Requirements for smoke and carbon monoxide alarms in residential rental properties are governed by landlord-tenant laws, which may be viewed on the website of the NC General Assembly [here](#).

Real estate agents are not trained in building code compliance. Therefore, if there is doubt about whether a smoke or carbon monoxide alarm complies with state and local requirements, a licensed home inspector or the local building inspections department should be consulted. Your real estate agent may be able to assist you in finding the right code compliance professional.

#### **Disclosure of Death, Illness, or Conviction of Certain Crimes**

Certain facts are considered *not* to be "material" according to North Carolina law, including the fact that the property was occupied previously by a person who died or had a serious illness while occupying the property, or that a person who is required to register under North Carolina's Sex Offender and Public Protection Registration Program or the Sexually Violent Predator Registration Program occupies, occupied, or resides near the property. See NC General Statutes section 39-50, which may be viewed on the website of the NC General Assembly [here](#). Thus, real estate agents are not required to voluntarily disclose such facts. If you specifically asks about such a matter, the agent may either decline to answer or respond honestly. If, however, you inquire as to whether a previous owner or occupant had AIDS, the agent is prohibited from answering such an inquiry because persons with AIDS are considered to be "handicapped" under fair housing laws.

Information about registered sex offenders can be found by visiting the website of the NC State Bureau of Investigation [here](#).

## **Meth Labs**

North Carolina law requires owners, operators or other persons in control of a residence who have knowledge that the property has been used for the manufacture of methamphetamine (“meth”) to comply with decontamination standards established by the NC Department of Health and Human Services (DHHS). A contaminated property may not be occupied prior to decontamination of the property in accordance with these standards, which are available on the Epidemiology Section of the DHHS website [here](#).

Although real estate agents would be required to disclose the existence of a meth lab on a property if they either knew or reasonably should have known of its existence, they are not required to check each time they list or show a property to see if decontamination or criminal records exist indicating the property was once used to manufacture meth. If a contaminated property has been decontaminated in accordance with decontamination standards, the previous existence of a meth lab on the property would not longer be considered a material fact which a real estate agent would be required to disclose.

If you are concerned that a property may have been used for illegal manufacture of meth, you should contact local law enforcement and the county health department.

## **Neighborhoods**

Neighborhoods change over time so you cannot expect the area surrounding the property to stay as it is when you purchase it. If you are concerned about potential development in the surrounding area, you should check with governmental authorities to determine if any large scale building projects are scheduled for the area. Building permits, zoning applications and other planning actions are a matter of public record. In North Carolina, local governments develop comprehensive plans that guide development over long periods of time. These plans may include “overlay districts”, “conservation districts” or “historic districts” that can have a significant effect upon development. If concerned about development, you should check with local government planning departments.

For information on state road building projects, you may check on the website of the North Carolina Department of Transportation [here](#).

Location within a school district can be an important attribute of a neighborhood. School boundaries, however, are subject to change. If location within a particular school district is material to your purchase of real property, you should investigate the boundaries and the likelihood of change by contacting the local school district directly.

## **Historic Property**

Cities and counties in North Carolina may by law choose to create Historic Preservation Commissions and to designate local historic districts and landmarks. A Historic Preservation Commission has the power to recommend to the local governing board properties to be designated as historic districts and landmarks. Landmark designations may apply to individual buildings, structures, sites, areas, or objects which are studied by the commission and judged to have historical, architectural, archaeological, or cultural value. Historic district designation may be either a type of overlay or special use zoning that applies to entire neighborhoods or other areas that include many historic properties. The zoning provides controls on the appearance of existing and proposed buildings. Owners of designated landmarks are eligible to apply for an annual property tax deferral as long as the property's important historic features are maintained. Recapture penalties may apply if the owner destroys the property or damages its historic value. Unlike landmark designation, local historic district designation has no effect on local property taxes for property owners within the designated district. Historic district zoning can help to stabilize property values by maintaining the neighborhood's character, and it benefits property owners by protecting them from inappropriate changes made by other owners that might destroy the special qualities of the neighborhood. Owners of local landmarks and of property in local historic districts are required to obtain certificates of appropriateness from their preservation commission before making significant changes or additions to a property, before beginning new construction, or before demolishing or relocating a property.

It is important for you to determine whether a property has been designated as a landmark or is in a designated historic district, as this may affect the property taxes and/or your ability to make changes to the property. More information about local historic property designations in North Carolina, as well as a roster of local governments in North Carolina with Historic Preservation Commissions, is available on the website of North Carolina State Historic Preservation Office [here](#).

## **Covenants, Conditions and Restrictions/Owner Associations**

Covenants, conditions and restrictions (“CC&Rs”) are formally recorded private limitations on the right to use real property. Although real estate agents are familiar with common CC&R provisions, determining the legal effect of specific provisions may constitute the practice of law in North Carolina and is therefore beyond the expertise of a real estate agent. Often, but not always, CC&Rs are enforced by an owners association. Most owners associations are governed by their own articles of incorporation, bylaws, rules and regulations. If the property is subject to regulation by an owners association, the association’s rules and regulations can significantly impact your plans for the property, including mandatory fees and ongoing owner obligations.

The Disclosure Statement that must be provided by the seller in most cases contains a number of questions about any owners association regulating the property. However, the seller may check “No Representation” with respect to any or all of the questions on the Disclosure Statement, and in any event, a review of the Disclosure Statement is no substitute for your own investigation of the governing documents, fees and owner obligations to which the property may be subject. If the Standard Contract is used, this process should take place during the Due Diligence Period. If you have questions about CC&Rs or your legal rights and remedies under homeowners’ association governing documents, you should have your attorney review the documents for you. A real estate agent is prohibited by law from giving legal advice. You may obtain more information on homeowners’ associations in two publications of the North Carolina Real Estate Commission entitled *Questions and Answers on: Condos and Townhouses*, available on the Commission’s website [here](#), and *Questions and Answers on: Residential Subdivisions and Planned Communities*, available on the Commission’s website [here](#).

## **DOCUMENT INSPECTION**

Information from third parties contained in the many documents associated with a real property transaction is not independently verified by real estate agents. It is your responsibility to read the documents provided and ask questions if uncertain or concerned. Interpretation of many real property transaction documents involves the practice of law and is therefore beyond the scope of a real estate agent’s expertise. IF YOU ARE UNCERTAIN ABOUT THE LEGAL EFFECT OF DOCUMENTS, YOU SHOULD CONSULT AN ATTORNEY.

## **Title Insurance Commitment**

The title insurance commitment to insure the title of the property will be issued by a title insurance company on a standard form promulgated by the American Land Title Association, based upon a title examination and report performed by an attorney-at-law. The title insurance commitment contains important information about the quality of the title to be conveyed by the seller to the buyer and should be reviewed by you. In particular, the title insurance commitment will contain a list of requirements in Schedule B, Section 1, which must be satisfied before the title insurer is obligated to issue its policy.

Schedule B, Section 2 of the title insurance commitment will list certain “exceptions” to title which are matters for which the insured will not be provided coverage under the terms of the title insurance policy. You should request copies of any exceptions mentioned in the title insurance commitment that are not understood or raise concerns about the quality of the title. Questions about the title insurance commitment, the exceptions and other matters relating to title should be directed to your attorney. Review of the title insurance commitment for legal adequacy or deficiencies constitutes the practice of law and cannot be performed by a real estate agent.

## **Homeowners’ Insurance**

The insurance claims history for a home may affect the cost and availability of homeowners’ insurance. Most insurance companies use a database service called the Comprehensive Loss Underwriting Exchange (CLUE) to track claims made. Depending on the content of the CLUE report, and the insurance company’s policy, home insurance may prove more difficult to get than expected. Your claims history and credit report may also be used to determine insurability. In North Carolina, the insurance company may cancel your policy if it has been in effect for less than 60 days for any reason by letting you know at least 10 days in advance, even after closing. IT IS CRITICAL THAT YOU ARRANGE FOR HOMEOWNERS’ INSURANCE EARLY IN THE PROCESS OF PURCHASING PROPERTY RATHER THAN WAITING UNTIL CLOSING TO GET INSURANCE. If the Standard Contract is used, this process should take place during the Due Diligence Period. A consumer publication entitled [“A Consumer’s Guide](#)

[To Homeowners Insurance](#)” can be found on the website of the North Carolina Department of Insurance. Your agent can provide you with information on companies offering homeowners’ insurance policies, but you should consult a North Carolina insurance agent for specific advice about the terms of the insurance contract.

### **Home Warranties**

A home warranty is an insurance contract. Home warranties for existing homes are common in today’s real estate market. The warranty generally covers the repair and replacement of equipment and appliances such as dishwashers, plumbing systems, electrical systems, and so on. Optional coverage may be available at additional costs for pools, built-in spa equipment, well pumps and other systems. Coverage and price vary considerably among warranty companies. You should discuss home warranties with your real estate agent prior to purchasing a home. Your agent can provide you with information on companies offering home warranties for purchase, but you should consult a North Carolina insurance agent for specific advice about the terms of the home warranty insurance contract.

The purchase of a home warranty by the seller can be included as a term in a contract of sale, and is addressed in the Standard Contract.

### **FRAUD PROTECTION/WIRE FRAUD**

Electronic communications such as email, text messages and social media messaging are neither secure nor confidential. Even the best security protections can be bypassed by a hacker. For this reason, you should never provide nonpublic personal information such as credit or debit card, bank account, routing or social security numbers by email or other unsecured electronic means. If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information, even though it may appear to be from your real estate agent, closing attorney or other professional, do not respond.

International criminal organizations attempting to steal large sums of money are targeting email accounts of parties involved in real estate transactions in North Carolina and elsewhere. Typically, a hacker will gain access to the email account of a buyer or seller, real estate agent or closing attorney. The email account is then monitored, likely for several weeks, and the hacker actively intervenes once the business practices of the parties are studied and understood and a significant wire transaction is to be produced. The fraudulent emails are sophisticated and convincing. If followed, large sums of money may be diverted to a criminal’s off-shore bank account and never recovered. Millions of dollars in wires have been illegally diverted from the trust accounts of North Carolina attorneys and from buyers and sellers.

Before sending any wire, you should call the closing attorney’s office to verify the instructions. If you receive wiring instructions for a different bank, branch location, account name or account number, they should be presumed fraudulent. Do not send any funds and contact the closing attorney’s office immediately. You should call the closing attorney’s office at a number that is independently obtained. To ensure that your contact is legitimate, you should not rely on a phone number in an email from the closing attorney’s office, your real estate agent or anybody else.