

**South Carolina Real Estate Commission
Residential Property Condition Disclosure Statement Discussion Group
Minutes**

Wednesday, February 1, 2023 at 3:00 pm
110 Centerview Dr., Kingstree Building, Room 107
Columbia, South Carolina 29210

Public notice of this meeting was properly posted at the S.C. Real Estate Commission Office, Synergy Business Park, Kingstree Building, Commission website, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act. Members of the public who wished to attend could do so via WebEx as well as in-person.

Commission Members Present:

William “Andy” Lee, Chair – 3rd Congressional District
Candace Pratt – 1st Congressional District (via WebEx)

SCLLR STAFF PRESENT:

Kyle Tennis, Esq., Office of Advice Counsel
Meredith Buttler, Administrator
Ashlynn Kirk, Administrative Coordinator

PRESENT:

Austin Smallwood, SCR
Jenny Brennan, SELC
Emily Cedzo, CCL
Chris DeScherer, SELC
Hope Warren, SCOR

CALLED TO ORDER: Mr. Lee, Chair, called the discussion to order at 3:02 pm.

APPROVAL OF AGENDA

Motion: To approve the agenda.

Moved by Mr. Smallwood and seconded by Ms. Brennan, the motion carried by unanimous vote.

INTRODUCTION OF ATTENDEES

Commission members, staff, and attendees introduced themselves.

RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT DISCUSSION

Mr. Tennis informed the group that today would be an informal review and discussion of the property condition disclosure statement based on the public comments received at the January Commission meeting. The group’s recommendations will be taken to the Commission for a full review and approval of any proposed amendments.

Mr. Lee invited Ms. Brennan, with the Southern Environmental Law Center (SELC), to present their research and amendment requests. Based upon review of state flood and coastal hazard data

and other state property disclosure forms, Ms. Brennan and Ms. Cedzo, with the Coastal Conservation League (CCL), presented a list of proposed amendments to the property disclosure statement for discussion. Mr. Smallwood also brought to the group's attention some issues he has become aware of at SCR.

Discussions were held regarding the following:

- Clarity on the “no representation” explanation on page 1
 - o Ms. Brennan inquired about the “no representation” section of the disclosure statement, as the current explanation for “no representation” is confusing. Chairman Lee reminded the group the requirement for “no representation” is found in S.C. Code Ann. § 27-50-40(B). Mr. Smallwood proposed language to further clarify the explanation of “no representation” on the first page of the disclosure statement. Ms. Brennan inquired about the word “may” in the phrase “but owner still may have a duty to disclose information that is known or should have been known.” The group agreed to recommending editing the “no representation” explanation to the Commission for its review.
- Information regarding flooding problems to property and structures on the property during ownership as well as identification of flood zones and flood risk
 - o With respect to current Question 20, the group discussed broadening the scope of the question to include flooding or water intrusion damage to structures on the property. The group agreed that this change should be submitted to the Commission for its review.
 - o With respect to current Question 23, the group discussed adding flood zones and flood risk to the potential designations affecting the property. The group agreed that this addition should be submitted to the Commission for its review.
- More detail regarding erosion control and erosion control structures
 - o With respect to current Question 22, Ms. Cedzo proposed further clarifying language and an enhanced description. After discussion, the group came to the conclusion that the additional language would be submitted to the Commission for its review.
- Information regarding public or private insurance and insurance claims related to flooding
 - o With respect to current Question 24, the group discussed providing more detail, including whether the property was insured through private or public flood insurance. The group agreed that this change should be submitted to the Commission for its review.
 - o With respect to current Question 25, the group discussed providing more detail regarding filed flood insurance claims to include private or public flood insurance claims filed on the property during the owner's ownership, with an explanation of what should be included with a “Yes” answer. The group agreed that this change should be submitted to the Commission for its review.

- Information regarding repairs made as a result of flooding
 - o Individuals of the group raised the issue of whether an additional question regarding repairs made to the property that were not filed with insurance, either public or private, should be added to the disclosure statement, along with an explanation of what information should be provided with a “Yes” answer. After discussion, the group agreed that this additional question should be submitted to the Commission for its review.

- Information regarding federal flood disaster assistance
 - o Individuals of the group raised the issue of whether an additional question regarding whether federal flood disaster assistance had been received during the owner’s ownership of the property, along with an explanation of what information should be provided with a “Yes” answer. After discussion, the group agreed that this additional question should be submitted to the Commission for its review.

- Information regarding wastewater treatment
 - o Upon review, it was determined that there was no need for further information on this issue as it was already addressed in Section I, Question 4.

- Information regarding beach nourishment
 - o After discussions among the group about the issues facing coastal communities, the group agreed that a new question should be added regarding whether the property had been assessed for or been subject to a beach nourishment project during the owner’s ownership. The group agreed that this additional question should be submitted to the Commission for its review.

- Clarity regarding roof system issues compared to structural repairs and/or modifications
 - o Mr. Smallwood explained that SCR had been receiving calls regarding confusion in Section II, specifically with respect to whether the question regarding modifications was directed only to roofs or if it applied to structural components as well because the current language, including the heading of Section II, has led to some confusion. Mr. Smallwood and Mr. Tennis agreed to discuss the issue further and present any proposed language to alleviate the confusion to the Commission for its review.

- Clarity regarding pest infestations
 - o Mr. Smallwood suggested Section IV(C) of page 3 to include clarification of other pests as it was unclear how Sections IV(A) and (C) should best be read together. Chairman Lee suggested changing the section heading to include adding broader language at the end of the heading, such as “or other pest infestations.” The group agreed to recommend this change to the Commission for its review.

- Inclusion of “first right of refusal” which could affect title to property
 - o Mr. Smallwood proposed changing Question 18 to include first rights of refusal as another issue that could affect title to property based on trends SCR has seen.

After discussion the group agreed to present this proposal to the Commission for its review.

- More information regarding the vacation rental act's recognition of vacation rental agreements and vacation rental management agreements that begin within 90 days of the purchaser recording their interest with the deeds office
 - o Based on discussions that the Commission has had at several meetings regarding the importance of purchasers of property recognizing vacation rental agreements per the South Carolina Vacation Rental Act, additional language emphasizing this recognition was proposed for the Commission's review in Section VII, on page 6 of 6 regarding the current status of the property to include "vacation/short term rental," as well as including a reference to the Vacation Rental Act's requirements in the purchaser acknowledgement section above the page 6 of 6's signature block.

The group shared potential future amendments to the disclosure statement for the group's knowledge. These amendments would capitalize on a public database that is currently in development and will assist both owners and purchasers to better understand the history of the property. The group discussed balancing the need for purchaser information with not overburdening the owner, as the owner's ability to obtain accurate information for any future amendments would largely depend on the aforementioned public database being available for owners when filling out the disclosure statement.

Chairman Lee and Mr. Tennis will draft proposed verbiage for the property disclosure statement pursuant to the discussions held and send to the attendees for review. The amended form will be added to the agenda for Commission consideration at the upcoming meeting on February 15, 2023.

PUBLIC COMMENTS

None

ADJOURNMENT

The meeting was adjourned by Chairman Lee at 3:53pm.