

SC beachfront home sellers should disclose more about erosion, flood hazards, experts say

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Dozens of homes which were built on the southernmost spit of land on Litchfield Beach are threatened by the Atlantic Ocean on one side, and the inlet on the other. *JASON LEE jlee@thesunnews.com*

As South Carolina’s population grows and sea levels continue to rise, a group of experts across the state say now is the time to provide homebuyers increased transparency about what they’re purchasing, especially when it comes to beachfront living.

State law requires homeowners to fill out a disclosure form, which in part is intended to alert the purchaser of any prior or current issues with the property or home.

However, a recent report produced by the South Carolina Beach Preservation Stakeholder Workgroup, which was charged with shoring up beach preservation in the state, asserted that the disclosure form is not robust enough. It’s one of a handful of findings the group, convened by the S.C. Department of Health and Environmental Control’s Ocean and Coastal Resource Management division, made in its report. However, it was not part of the group’s formal recommendations and would need approval from the South Carolina Real Estate Commission if changes were made to the form.



The stakeholders discussed a disclosure form that would identify coastal hazards and expound on flooding threats properties faced.

Coastal hazards would include whether the property had gone through beach renourishment and how frequently it occurred. Disclosures would have to include why erosion control structures — such as seawalls or bulkheads — were built there and the potential price to maintain them. Both would point to levels of erosion threat.

Currently, state law requires some disclosure that beachfront property is subject to coastal regulation. Homeowners also must include the local erosion rate most recently made available by DHEC.

The additional information would include conveying how often the property had flooded and when the flooding occurred. Also, if a major storm event happened, how did it affect the property?

In conjunction with identifying the need for a more rigorous disclosure form, the group is pressing for education and outreach to further the public's understanding of beachfront property hazards and the most vulnerable coastal locations.

When it comes to beachfront homeownership, Emily Cedzo, a senior program director at the Coastal Conservation League, said many homebuyers aren't from the coast and do not fully understand the dynamic nature of the beach and the risks it can pose.

"I think there are many folks along the coast who are buying these properties who have absolutely no idea the vulnerability they themselves are inheriting," Cedzo said. "Are they prepared financially to be assessed for renourishment? Are they prepared to have emergency orders declared on their property? To potentially have the ocean move toward them and become on active beach?"

NEED FOR TRANSPARENCY AS SEA LEVELS RISE

Over a decade ago, the Shoreline Change Advisory Committee, a group under DHEC's coastal management division, recommended that coastal hazards be part of the disclosures provided to homebuyers.

General language about flooding is now included. Otherwise, 13 years later, the required disclosures have not been updated to require more in-depth flood or coastal hazard information.

Flooding questions make up two lines of the six-page disclosure statement. They are: Do flood hazards, wetlands, or flood hazard designations affect the property? And does flood insurance cover the property? The options are three boxes: Yes, no or no representation. The latter choice in layman's terms means, "I don't know," one Realtor explained.

Only when the "yes" box is checked does the owner need to provide an explanation and documentation.

Alex Butler, the South Carolina Office of Resilience planning director, said no representation leaves some people vulnerable to gaps in information about what they're buying.



“What we don’t want is people investing in a property and making these really big life decisions without the full picture of what their future risks are,” Butler said.

As South Carolina — the nation’s sixth-fastest growing state — swells in population, increased development goes hand-in-hand. More development, especially in coastal areas, can make areas more flood prone and can exacerbate beach erosion.

Sea level rise will create an intense shift in coastal flooding over the next 30 years as it causes tides and storm surges to move more inland, according to previous reporting by The State. A 2022 NOAA report noted that moderate flooding will occur more frequently, and sea levels are expected to increase by as much as 3 feet in the next 50 years, NOAA data says.

“I think the writing is sort of on the wall and the time is right to do something,” Cedzo said.

PERILS OF BEACHFRONT LIVING

In a Nov. 29, 2021 lawsuit, Rodney and Felicia Cain, who own a home in Debordieu, asserted that two years after purchasing the \$2.1 million property, they discovered sandbags had been buried there to offset “significant erosion’, according to previous reporting by The State.

The Cains said the sandbags were placed by the prior owners and buried, which hid how extreme the erosion was. When storms blew through and tides came in, hundreds of the bags began washing away. According to the suit, the Cains want the former homeowners to compensate them for failing to disclose prior to selling the house the hidden sandbags and the extent of beach erosion.

Because of what they say were undisclosed issues, they have incurred “major expenses” to protect the house, and the property value has decreased, according to the lawsuit. “

There’s just so many different experiences we’ve heard about,” Cedzo said. “That just speaks to the fact that the process is not necessarily consistent for every property owner.”

About 30 minutes north of Debordieu sits Litchfield Beach, which serves as another example of the hazards and, sometimes, unexpected expense of beachfront homeownership. A single row of homes built along a narrow peninsula was in danger after erosion ate away the shoreline.

Because it’s not a beach with public access, homeowners did not get the benefit of state monies when looking to renourish the beach. Instead, those homeowners had to pay “somewhere around \$300,000 a piece” for the renourishment project, according to previous reporting by The State.

Afterward, some homeowners turned around and sold their properties, fearful they’d eventually have to pay again for renourishment.



More transparency is part of the puzzle in helping people understand what it means to own vulnerable beachfront property.

“If that’s a risk they’re willing to take, then that’s fine. People make those decisions to take those kinds of risks all the time,” Amy Armstrong, director of the S.C. Environmental Law Project, said. “But they should be informed decisions.”

Some information is available, such as an interactive DHEC website that hashes out the details of renourishment projects around the state since 1979. But there isn’t a one-stop shop for prospective buyers to understand the coastal hazards or flood risks to their properties.

Cedzo said DHEC’s coastal management office receives calls from prospective buyers about properties, but if the agency doesn’t have time to do that for every potential buyer.

Largely, current information about a property’s coastal hazards or flood risk depends on the real estate agent and seller.

CLOSING INFORMATION GAPS

Peter Geary, with RE/MAX Island Realty on Hilton Head, said a “happy-medium” is needed if the disclosure form becomes more robust.

He agrees that the form needs to be completed, as it stands now, as truthfully and thoroughly as possible. But he also has concerns.

A potential buyer should know if there is anything wrong with the property and, at the same time, Geary said he questions whether the seller would have enough knowledge to accurately fill out additional coastal hazard information. At the same time, the more problems identified with the property, the further in value it will drop.

He wonders if the homeowner would know the details of renourishment if it happened on their property and if it’s expected in the future. Would they understand why an erosion structure is nearby and the shape it’s in? Or could they recall the times the house flooded and the associated cost of repair?

He isn’t so sure. And he thinks that if the disclosure form becomes more stringent, a professional may be needed to assess items in the disclosure form.

For now, Geary is focused on ensuring the current disclosure is taken seriously by his clients, because written on the form is a clear and important clause. “If owner fails to check ‘yes’ or make a disclosure and owner knows there is a problem, owner may be liable for making an intentional or negligent misrepresentation.” Further, it could result in the owner owing the purchaser actual damages, court costs and attorney fees, according to the document.

Discussions about changing disclosure forms are in the very early stages and would need approval from the South Carolina Real Estate Commission.





In the meantime, Cedzo said DHEC is working on a public database that would provide stats in one place. According to the work group report, the “Beach Atlas” would include erosion rates, erosion control structures, emergency orders, renourishment projects, and special permit projects.

It could also include flood information, Butler said.

“We also want to be very careful about not putting up incorrect information in the realm of real estate transactions, because we understand that there’s a financial aspect of this,” he said.

WORK GROUP RECOMMENDATIONS

An update to disclosure forms was one of a handful of beachfront preservation proposals the 17-person work group outlined in its January report. However, it was not included as a formal recommendation.

Three of the six recommendations were related to pilot research projects. Since 1977, state law allows for a permitting exception for research directed by state agencies and educational institutions as long as they “cause no material harm to the flora, fauna, physical or aesthetic resources of the area,” the report said.

In 2014, language was updated to allow for those projects to address erosion problems.

The work group wants more “clarity in terms of project standards, specifications, and process,” and agrees that when it comes to projects focused on erosion, “the primary objective should be the preservation of the dry sand beach and beach/dune system.” They’re also pushing to require public notice of the proposals.

Additionally, the report pushes for a crackdown on clarifying the ban on erosion control structures, such as sea walls. For Butler, his main takeaway was working to maintain the function of the beach — a place that’s known for people to recreate, for sea turtles to nest and shorebirds to feed on.

Cedzo said the next step is for DHEC’s coastal resource office to figure out which recommendations need to go down a regulatory path and what might require new legislation. Below are the following six recommendations the group made:

- Define beach preservation
- Establish a beach nourishment technical advisory committee
- Establish a pilot project ad hoc technical advisory committee
- Enhance the pilot project authorization process
- Modify the pilot project statutory language
- Prohibit new erosion control structures within the beaches critical area

