
Florida's Coastal Hazards Disclosure Law: Property Owner Perceptions of the Physical and Regulatory Environment

EXECUTIVE SUMMARY with Conclusions and Recommendations for Statutory Reform



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Following two dramatic years of landfalling hurricanes, the 2006 Florida Legislature amended Section 161.57, Florida Statutes to require that sellers of certain coastal property notify purchasers that the property being purchased was subject to natural hazards, special regulations, and the possible presence of nesting marine turtles. Florida's coastal hazards disclosure law applies only to property that is totally or partially seaward of the Coastal Construction Control Line (CCCL), a line of jurisdiction seaward of which a complex system of rules apply to development and construction.

The coastal hazards disclosure law requires that sellers or sellers' agents notify purchasers that the "property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the Coastal Construction Control Line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles." The law also requires sellers to provide purchasers an affidavit or survey that indicates the relationship between the property and the CCCL, a requirement that may be waived. The CCCL disclosure statute currently requires that notice be given "[a]t or prior to the time a seller and a purchaser both execute a contract for sale and purchase" of the coastal property. The disclosure statute further provides that the CCCL affidavit or survey be given to the buyer "at or prior to the closing" on the property. There are no penalties associated with noncompliance. Florida's coastal hazards disclosure law has been in effect for six years, and in that period, notwithstanding a significant downturn in the real estate market, thousands of real estate transactions have occurred involving properties totally or partially seaward of the CCCL. As a result, thousands of coastal property owners have, or should have, received the statutory coastal hazards disclosure statement.

This project was designed to determine how well Florida's coastal hazards disclosure law is performing, and the extent to which coastal property purchasers considered the information provided by the disclosure statement in their purchase decision. To accomplish this, a mail survey was distributed to 2,500 randomly selected coastal property owners in five coastal counties on the Atlantic Ocean, Gulf Coast, and in the Florida Panhandle (Brevard, Nassau, Sarasota, St. Johns, and Walton counties). Surveys were sent to property owners that records indicated had purchased their property after

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the effective date of the statute and were entitled to receive the notice based on the location of their property in relation to the CCCL. A total of 353 persons responded to the survey, resulting in a 14.1% return rate. While selection of recipients intended to target only those that had purchased their property after the effective date of the law, discrepancies arose so that of the 353 respondents, 290 had purchased their property after the law took effect, an 11.6% return rate. In Phase II of the project, those who responded to the mail survey were asked if they were willing to answer a series of follow-up questions designed to more fully understand the extent of their knowledge of the CCCL Program and coastal hazards. Phase II also included semi-structured telephone interviews conducted with real estate agents identified by a visual survey of “for sale” signs along the coastal highways of the five counties selected for the Phase I mail survey.

Some of the key results of the Phase I mail survey are summarized below, along with key recommendations for statutory reform. Complete Phase I results, along with the qualitative results of the Phase II surveys (interviews with willing property owner respondents and real estate agents), are provided in the final report (TP-194). In addition, both the report and this document include language for proposed revisions to Florida’s coastal hazards disclosure law, narrowly tailored to remediate defects in the current law identified by this study. There is federal and state disclosure law precedent for all of the recommended revisions to Florida’s current law, referenced in the body of the report.

Summary Conclusions

Florida’s coastal hazards disclosure law is not accomplishing its statutory purpose. The vast majority of the mail survey respondents (85.7%) either did not receive or do not recall receiving the coastal hazards disclosure statement that the law requires. A majority of mail survey respondents did not know their properties were partially or totally seaward of the CCCL, and did not consider that fact in their decision to buy coastal property. When asked who they received the information from, the majority of mail survey respondents either never received or do not remember receiving any information from a person regarding the CCCL (Figure 1).

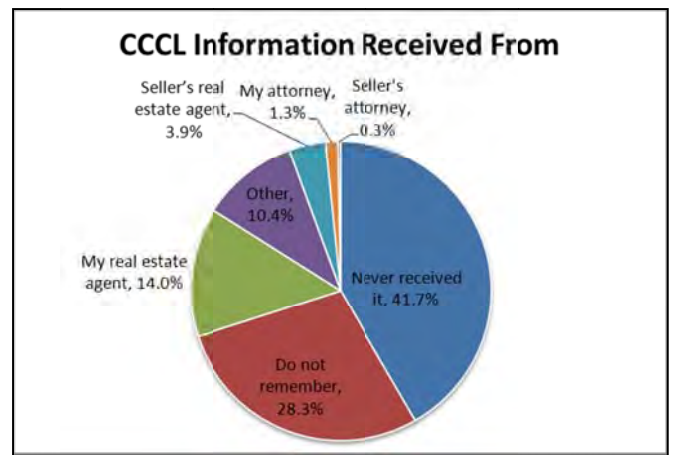


Figure 1. Who survey respondents received CCCL information from during their coastal property purchase.

Furthermore, most mail survey respondents were either never told or do not remember when during their property transaction they may have received information regarding the CCCL (Figure 2).

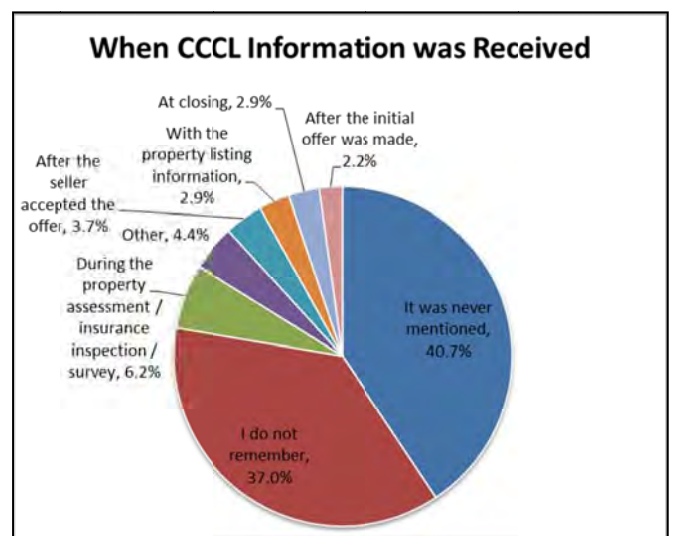


Figure 2. When survey respondents received CCCL information during their coastal property purchase.

In a True/False test designed to objectively assess knowledge of the CCCL Program, mail survey respondents who had heard of the CCCL had an average score of 51.5% correct, or 1.5% higher than randomly guessing every answer. These results suggest that the manner in which the disclosure is presented, during the transaction process, is inadequate to meet the stated objectives of Florida Statute 161.57(1).

Furthermore, factors that mail survey respondents stated that they did not initially consider important (sea turtle nesting restrictions, erosion, winter storms, and beach renourishment) resulted in being factors that they ultimately encountered after they purchased their property. This suggests that prospective purchasers need to have more and better information available related to coastal hazards and restrictions than is currently provided pursuant to the disclosure statute.

Summary Recommendations

The following recommendations are suggested for improving the coastal hazards disclosure law. Precedent exists in other states and at the federal level for all of the revisions suggested here for the Florida law.

- The coastal hazards disclosure law should be amended to require that the seller or seller's agent provide the obligatory disclosure statement at or before the time that the prospective purchaser receives the seller's written acceptance of offer or counter offer on the affected property. This would provide the prospective purchaser an opportunity to consider the significance of the relationship between the property and the CCCL and to conduct any additional due diligence that may be required (such as ascertaining whether the property is located in a "critically eroding area," and the presence of protected species).
- The coastal hazards disclosure law should be amended to require that the seller or seller's agent provide the purchaser with the affidavit or survey and separate writing (freestanding pamphlet or brochure) no later than five business days from the date of the seller's written acceptance of offer or counter offer on the affected property.
- Along with the affidavit or survey, the coastal hazards disclosure law should be amended to require that prospective purchasers be provided with a separate writing (freestanding pamphlet or brochure), approved by the Florida Department of Environmental Protection, that fully apprises them of coastal hazards and regulations.
- The coastal hazards disclosure law should be amended to remove the option given to purchasers to waive the right to receive the affidavit or survey that shows the relationship of the property to the CCCL.
- The coastal hazards disclosure law should be amended to require that both the purchaser and seller acknowledge in writing that the purchaser has received the obligatory disclosure statement, freestanding brochure or pamphlet, and affidavit or survey within five business days of the seller's acceptance of an offer or within five business days of the seller's counter offer.
- The purchaser may rescind the contract for sale within 10 business days of receipt of the separate writing (freestanding brochure or pamphlet) and affidavit or survey and receive a full refund, without any penalties, of any escrow, earnest money, or other funds given to the seller or seller's agent. If the purchaser was not given the obligatory disclosure statement, separate writing, and affidavit or survey, and the affected property is totally or partially seaward of the CCCL, the purchaser may rescind the contract for sale at any time up until closing.
- Consideration should be given to imposing civil penalties on sellers or sellers' agents who knowingly violate Florida's coastal hazards disclosure law. Consideration could be given to establishing a "professional negligence" standard for sellers' agents (real estate agents or attorneys) since they should be presumed to know about the statutory requirement as part of their professional duties and continuing professional education to demonstrate competency in their profession.

Proposed Revisions to Section 161.57, Florida Statutes

Taking into consideration the objectives of Florida Statute 161.57 and its apparent shortcomings, the following proposed revisions to the current statute were written to better address who is affected by the Coastal Construction Control Line, why the regulations exist, and what the consequences are for the purchaser. Using statutory revision conventions, underlining identifies proposed language added to the current statute, while language deleted from the current statute is hyphenated-through.

161.57 Coastal properties disclosure statement.

(1) The Legislature finds that it is necessary to ensure that the purchasers of interests in real property located in coastal areas partially or totally seaward of the coastal construction control line as defined in s. 161.053 are fully apprised of the character of the regulation of the real property in such coastal areas and, in particular, that such lands are subject to frequent and severe fluctuations, including flooding, erosion, and windstorms, and that such property may harbor protected species subject to special regulations that result in limitations on land uses.

(2) At or prior to the time ~~a seller and a purchaser receives the seller's written acceptance of offer or counter offer for the both~~ execute a contract for sale and purchase of any interest in real property located partially or totally seaward of the coastal construction control line as defined in s. 161.053, the seller or seller's representative must give a written disclosure statement in the following form to the prospective purchaser which may be set forth in the contract or in a separate writing:

The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, construction of rigid coastal protection structures, beach nourishment, and the protection of marine turtles and other listed species. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions

associated with the shoreline of the property being purchased.

(3) No later than five business days from the date of the seller's written acceptance of offer or counter offer ~~Unless otherwise waived in writing by the purchaser, at or prior to the closing~~ of any transaction where an interest in real property located either partially or totally seaward of the coastal construction control line as defined in s. 161.053 is being transferred, the seller or seller's representative shall provide to the purchaser an affidavit, or a survey meeting the requirements of chapter 472, delineating the location of the coastal construction control line on the property being transferred.

Accompanying the affidavit or survey, the seller or seller's representative must also provide the purchaser a separate writing, approved by the Florida Department of Environmental Protection, that describes the purpose and regulatory effect of the Florida Coastal Construction Control Line Program, including critical erosion areas; and the significance of Special Flood Hazard Area designations, the potential regulatory impact that nesting sea turtles, beach mice, migratory shorebirds, and other protected species may have on the use of the property; and that provides the contact information at the Florida Department of Environmental Protection in order to obtain property-specific information.

(4) The seller and purchaser must both acknowledge in writing that the purchaser has received the disclosure statement described in subsection (2) and the affidavit or survey and separate writing described in subsection (3) within five business days of the seller's acceptance of an offer or within five business days of the seller's counter offer.

(5) Upon receipt of the separate writing and acknowledged affidavit or survey, the purchaser shall have 10 business days to ascertain any additional information related to the property, such as whether the property lies within a critically eroding area, a special flood hazard area, or an area subject to special regulations due to the presence of endangered species. Within that period the purchaser may rescind the contract for sale, without any penalties, of any escrow, earnest money, or other funds given to the seller or seller's representative if discovery of such additional

information is documented and provided to the seller or seller's representative.

(6)(4) A seller's or their representative's failure to deliver the disclosure, separate writing, affidavit, or survey required by this section within the timeframes specified and the real property is located totally or partially seaward of the coastal construction control line as defined in s. 161.053 gives the purchaser the right to rescind the contract at any time prior to closing with a full refund, without any penalties, of any escrow, earnest money, or other funds given to the seller or seller's representative. After closing, a seller's or their representative's failure to deliver the disclosure, separate writing, affidavit, or survey required by this section within the timeframes specified does not impair the enforceability of the sale and purchase contract by either party, create any right of rescission by the purchaser, or impair the title to any such real property conveyed by the seller to the purchaser.

(7) Any person who knowingly violates any provision of this section shall be subject to civil money penalties.

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