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Real Estate Alert

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New Jersey publishes Flood Risk Disclosure requirements for Landlords and Sellers

By Denise Pursley

Learn more about the model notice required to be used by landlords to make commercial and residential renters aware of flood risks, and the updated Seller's Property Condition Disclosure Form now required for both commercial and residential sales.



What's the Impact

- / New leases and renewals of existing leases executed on or after March 20, 2024, are subject to the flood risk disclosure requirements.
- / Beginning March 20, 2024, all sellers of real property in New Jersey must provide the updated Property Condition Disclosure Form to a purchaser.

The [New Jersey Flood Risk Notification Law signed](#) into law on July 3, 2023, mandates disclosure by landlords and sellers of commercial and residential property of a property's flood risk, history of flooding, and location in a FEMA designated Special or Moderate Flood Hazard Area. See our previously published [Real Estate alert](#) regarding same. In accordance with the requirements of the Flood Risk Notification Law, on December 21, 2023, the New Jersey Department of Community Affairs (DCA) published a Rental Flood Risk Model Notice and an updated Seller's Property Condition Disclosure Form. The New Jersey Department of Environmental Protection (DEP)

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simultaneously unveiled the [Flood Risk Notification Tool](#), an online tool searchable by mailing address to determine if property is in a FEMA-designated Special or Moderate Flood Hazard Area.

Rental Flood Risk Model Notice

The [Rental Flood Risk Model Notice](#) posted on the DCA's website is to be used by landlords who rent or lease for a term of at least one month commercial space or residential dwelling units in premises containing more than two dwelling units or more than three dwelling units where one unit is owner-occupied. Hotels, motels, or other guest houses serving transient or seasonal guests are exempt. The model notice contains three questions required by the Flood Risk Notification Law: (1) Is the rental property located in a FEMA-designated Special Flood Hazard Area ("100-year floodplain")? (2) Is the rental property located in a FEMA-designated Moderate Risk Flood Hazard Area ("500-year floodplain")? and (3) Has the rental property or any portion of the parking areas of the rental property been subject to flood damage, water seepage, or pooled water due to a natural flood event? The landlord must answer yes or no to questions (1) and (2) utilizing the [Flood Risk Notification Tool](#) and may not rely upon its actual knowledge or answer unknown. The landlord may rely upon its actual knowledge to answer question (3) and thus has the option to answer unknown. The model notice also contains the requisite notice to residential tenants that, "Flood insurance may be available to renters through FEMA's National Flood Insurance Program to cover your personal property and contents in the event of a flood. A standard renter's insurance policy does not typically cover flood damage. You are encouraged to examine your policy to determine whether you are covered." Additionally, the model notice contains a statement and additional links to information regarding the effects of climate change on flood risks in New Jersey.

The landlord disclosure requirements are applicable to the signing or renewal of leases of rental property occurring on or after March 20, 2024. If the lease is in writing, the required notice may be included in the written lease, provided that, in the case of a residential lease, the notice must be in a separate rider, written in no less than 12-point typeface, and individually signed or otherwise acknowledged by the tenant.

Seller's Property Condition Disclosure Statement

The Seller's Property Condition Disclosure Statement is a required form in which sellers of properties report defects or problems with the property to potential buyers. Under a new heading entitled "Flood Risk," the updated disclosure form requires sellers to answer questions about a property's flood history and potential flood risk including whether a property is located within the FEMA-designated Special Flood Hazard Area or Moderate Risk Flood Hazard Area, whether the property has experienced flood damage or pooled water due to heavy rainfall or other natural flood event, and if the property is subject to any requirement under federal law to obtain and maintain flood insurance. The Seller's Property Condition Disclosure Statement was previously only required for residential sales. With the enactment of the Flood Risk Notification Law, however, beginning March 20, 2024, sellers of commercial and industrial property now must

deliver a completed form to the purchaser. The updated Seller's Property Condition Disclosure Statement can be found on the [New Jersey Division of Consumer Affairs website](#).

The Flood Risk Notification Tool and links to both disclosure forms may also be found [here](#).

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