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Real Estate Alert

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New Jersey passes Flood Risk Notification Law

By Denise A. Pursley

The new law requires New Jersey sellers of real property and landlords to make certain notifications and disclosures regarding flooding.



What's the Impact?

- / New Jersey's new law is among the nation's strongest flood risk disclosure laws, creating risks for noncompliant landlords.
- / Be on the lookout for the state to issue a model notice to be used by landlords, along with additional notifications of statewide flood risks.

With the passage on July 3, 2023, of the Flood Risk Notification Law (Senate Bill 3110; P. L. 2023, c. 93), New Jersey became the 30th state in the nation to require landlords and sellers of commercial and residential property to disclose knowledge of a property's history of flooding, flood risk, and location in a flood zone or area to prospective tenants and purchasers. Additionally, the new law requires every residential lease to contain a notice to tenants that flood insurance may be available to renters through the Federal Emergency Management Agency (FEMA) National Flood Insurance Program.

In what has been touted as one of the nation's strongest flood risk disclosure laws, if a landlord violates the disclosure requirements and a tenant subsequently becomes aware that the leased

premises are located in a FEMA Special or Moderate Risk Flood Hazard Area, the tenant may immediately terminate their lease without penalty and within 30 days after tenant surrenders possession of the leased premises to landlord receive a refund of all rent or other amounts paid in advance under the lease. Additionally, if a landlord violates the disclosure requirements and flooding occurs that results in damage to a tenant's personal property, affects the habitability of the leased premises, or affects the tenant's access to the leased premises, the tenant may pursue all legal remedies under the law to recover damages recognizing the landlord's failure to disclose critical information.

Landlord disclosure requirements

The Flood Risk Notification Law supplements and amends the existing statutory disclosure requirements in N.J.S.A. 46:8-50 by requiring every landlord who rents or leases, for a term of at least one month, commercial space or residential dwelling units in a premises containing more than two dwelling units (or more than three dwelling units where one unit is owner-occupied) to notify each tenant in writing prior to lease signing or renewal, (a) whether a property is located in a FEMA Special Flood Hazard Area (100-year floodplain) or Moderate Risk Flood Hazard Area (500-year floodplain) and (b) whether the landlord has actual knowledge that the rental premises or any portion of the parking areas of the real property containing the rental premises have been subject to flooding. 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. The foregoing disclosure requirement does not apply to hotels, motels, or other guest houses serving transient or seasonal guests (defined as those who rent a property for a period of less than 120 days).

The New Jersey Department of Community Affairs (DCA), in consultation with the New Jersey Department of Environmental Protection (DEP), is tasked with developing and publishing on its website and in the *New Jersey Register* a model notice to be used by landlords, along with additional notifications of statewide flood risks and links to the DEP website. Although the act takes effect immediately, the landlord disclosure requirements are only applicable to the signing or renewal of leases of rental property occurring on or after the 90th day next following the publication of the model notice by DCA. In anticipation of the publication of the model notice, a prudent landlord may include in its form lease the following information in substantially similar language as set forth in the law:

Flood risk notice:

- / Is any or all of the rental property located wholly or partially in the Special Flood Hazard Area (100-year floodplain) according to FEMA's current flood insurance rate maps for the leased premises area? **__Yes __No**
- / Is any or all of the rental property located wholly or partially in a Moderate Risk Flood Hazard Area (500-year floodplain) according to FEMA's current flood insurance rate maps for the leased premises area? **__Yes __No**

- / Has the rental premises or any portion of the parking areas of the real property containing the rental premises subject to the lease ever experienced any flood damage, water seepage, or pooled water due to a natural flood event? If so, how many times? Yes No Unknown

DEP is required to provide on its website information that helps property owners provide the required disclosures, including a tool searchable by mailing address to identify if the property is in a FEMA Special or Moderate Risk Flood Hazard Area. The requirement to disclose if the property is in the FEMA Special or Moderate Risk Flood Hazard Area, beyond actual knowledge, takes effect after the website look-up tool is in place. Until that time, a landlord should disclose such information to its actual knowledge.

Every residential lease must also contain the following notice to tenants:

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.

Seller disclosure requirements

The Flood Risk Notification Law also requires a seller of real property to disclose on the property condition disclosure statement required to be delivered under N.J.S.A. 56:8-19.1 whether the property is located in the FEMA Special or Moderate Risk Flood Hazard Area and any actual knowledge of the seller concerning flood risks of the property, as required by a landlord with respect to leasing property. DCA, in consultation with DEP, is tasked with revising the regulations governing the requirements of the property condition disclosure statement to incorporate the requirements of the Flood Risk Notification Law. In advance of such rulemaking, however, DCA is required to make the revised form available for use by publishing the revised form on DCA's website. A seller of real property is required to use the revised form for sales and exchanges of real property occurring on or after the 90th day following its publication on DCA's website.

The additions to the property condition disclosure statement will include the heading "Flood Risk" and contain the following questions:

- / Is any or all of the property located wholly or partially in the Special Flood Hazard Area (100-year floodplain) according to FEMA's current flood insurance rate maps?
- / Is any or all of the property located wholly or partially in a Moderate Risk Flood Hazard Area (500-year floodplain) according to FEMA's current flood insurance rate maps?
- / Is the property subject to any requirement under federal law to obtain and maintain flood insurance on the property? Properties in the Special Flood Hazard Area, also known as high risk flood zones, on FEMA's flood insurance rate maps with mortgages from federally regulated or insured lenders are required to obtain and maintain flood insurance. Even when

not required, FEMA encourages property owners in high-risk, moderate-risk, and low-risk flood zones to purchase flood insurance that covers the structure and the personal property within the structure. Also note that properties in coastal and riverine areas may be subject to increased risk of flooding over time due to projected sea level rise and increased extreme storms caused by climate change which may not be reflected in current flood insurance rate maps.

- / Have you ever received assistance from, or are you aware of any previous owners receiving assistance from FEMA, the US Small Business Administration, or any other federal disaster flood assistance for flood damage on the property? For properties that have received flood disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain and maintain flood insurance can result in an individual being ineligible for future assistance.
- / Is there flood insurance on the property? A standard homeowner's insurance policy typically does not cover flood damage. You are encouraged to examine your policy to determine whether you are covered.
- / Is there a FEMA elevation certificate available for the property? If so, it must be shared with the buyer. An elevation certificate is a FEMA form, completed by a licensed surveyor or engineer, that provides critical information about the flood risk of the property and is used by flood insurance providers under the National Flood Insurance Program to help determine the appropriate insurance rating for the property. A buyer may be able to use the elevation certificate from a previous owner for their flood insurance policy.
- / Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program? If the claim was approved, what was the amount received?
- / Has the property experienced any flood damage, water seepage, or pooled water due to a natural flood event, such as heavy rainfall, coastal storm surge, tidal inundation, or river overflow? If so, how many times?

Takeaways

Property owners and landlords should become familiar with the requirements under the new law and update their notification and disclosure policies and procedures as needed.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

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