
What You Need to Know About the New Jersey Flood Risk Notification Law

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If you live or work in New Jersey, there is no debate that flooding is on the rise. It seems that we can't go more than a week before learning of another upcoming storm for which we must prepare. As a direct response to these increased flooding risks, New Jersey enacted a Flood Risk Notification Law that went into effect on March 20, 2024. The Law imposes strict requirements for landlords and sellers of real estate in the State.



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Residential and commercial landlords, regardless of how many units they own, must disclose the following information:

- (1) whether the property in question is located in a FEMA Special Flood Hazard Area
- (2) or Moderate Risk Flood Hazard Area and
- (3) the landlord or seller must also disclose if they have actual knowledge that the property in question or any portion of the parking areas has been subjected to flooding.

The requisite notice must be provided prior to the execution of the lease. If the lease is in writing, the notice can be included in the lease provided it is in a separate rider, individually signed or otherwise acknowledged by the tenant and written in not less than 12 point typeface. The lease must also contain a notice stating “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.”

The Department of Community Affairs in consultation with the Department of Environmental Protection has developed and published on its website a model notice that shall be used by landlords. The Department of Community Affairs’ website also contains a notification that Statewide flood risks are increasing. The Department

of Environmental Protection's website contains a user-friendly look up tool whereby persons can search by mailing address to determine whether the property is located in a FEMA Special or Moderate Risk Flood Hazard Area. The look up tool can be accessed by going to www.dep.nj.gov/flooddisclosure/.

If a landlord violates the law, the tenant may terminate the lease. If there is a violation and the tenant incurs damages to personal property, affects the habitability of the property or affects the tenant's access to the property, the tenant has a private cause of action to sue for damages.

Sellers are required to disclose the same three questions discussed above for landlords, plus the following:

- (4) if Seller has ever received assistance or is aware of a prior owner receiving assistance from FEMA, the U.S. Small Business Administration or any other federal disaster flood assistance for flood damage to the property? Notably properties that have received federal disaster assistance, the requirement to obtain flood insurance passes down to all future owners and failure to obtain and maintain flood insurance can result in the individual being ineligible for future assistance;
- (5) is there flood insurance on the property;
- (6) is there a FEMA elevation certificate available for the property? If so, the seller must share the elevation certificate with the buyer;
- (7) has seller ever filed a claim for flood damage to the property with any insurance provider; if so and the claim was approved, what was the amount received and
- (8) has the property experienced any flood damage, water seepage or pooled water due to a natural flood event? If so, how many times?

The disclosures from the Division of Consumer Affairs will include a notice that Statewide flood risks are increasing and that the risks can be reviewed by using the aforementioned look-up tool in the Department of Environmental Protection's website.

The property condition disclosure statement is being revised to comply with the flood risk notification law. The statement will require the seller to answer either yes or no to the questions above. If the answer is in the affirmative, the seller is required to explain her/his response. Practitioners should obtain the disclosure statement which is not always provided with the contract to ensure that the mandatory disclosures are included therein.

Interestingly, the statute does not provide for remedies for buyers of real estate when the sellers have failed to disclose the mandatory information. However, we anticipate common law causes of action for failure to provide the requisite information.

To err on the side of caution, for current transactions that have not yet closed that went into contract before the effective date of the law, practitioners should provide an addendum to the contract including the necessary disclosures to ensure Sellers are in compliance with the law.

Practitioners should ensure that lease forms are updated to include the requisite language. For current leases, an addendum can be prepared to ensure compliance with the law.

For more information about the Flood Notification Law, contact Mercedes Diego, Esq. of Cohn Lifland Pearlman Herrmann & Knopf LLP at md@njlawfirm.com.