

NAR Legal Guidance: Disclosure of Flood Insurance Requirements, Rates, and Rate Increases by Brokers and Agents

The Biggert-Waters Flood Insurance Reform Act of 2012 reauthorized the National Flood Insurance Program for an additional 5 years. The Act also implements changes to the federal subsidy of flood insurance, resulting in increases in the premiums to be charged for flood insurance coverage, as determined by FEMA. Because those rate increases may be significant, brokers and agents have expressed concern about their exposure to misrepresentation claims by property purchasers who acquire property before such increases take effect and are later subject to substantial increases in their flood insurance premiums. The following guidance is offered for brokers and agents in connection with marketing and sale of property for which flood insurance may be required, or that is located in areas where the purchase of flood insurance may be prudent.

1. In general, brokers and agents owe buyers duty to disclose adverse material features, conditions, or aspects of property of which they have actual knowledge. Brokers and agents are not, however, generally required to investigate independently whether a property is in a flood zone or otherwise in an area likely to be subject to flooding or flood risks. However, if a broker or agent has actual knowledge that a property being marketed for sale is in an area where flood insurance is required or has specific knowledge that flood insurance has been required for that particular property in the past, those facts should be disclosed to the buyer. If the broker or agent has actual knowledge that the area in which the property is located has experienced flooding or is subject to flood risks that cause many or most owners to purchase flood insurance those facts should also be disclosed.
2. If a broker or agent determines that it is necessary to make disclosures to buyers regarding flood insurance, as described above, he should also advise buyers that, as a result of the Act, flood insurance rates are likely to be higher than in the past. Such advice should explain that prior flood insurance premiums are not representative of rates in the future and that rates may increase because of the Act. An example of a disclosure statement that could be used for this purpose is attached. Brokers and agents may also use different methods or language in communicating information about flood insurance. In circumstances where flood insurance is not required and there is no reasonable basis for a broker or agent to believe that it may be required or is prudent to have, no such disclosure need be provided.
3. For buyers who seek more information about the NFIP or flood insurance coverage or rates, the broker or agent should be prepared to provide sources of information about those subjects available from “official” sources or those otherwise known to be competent and reliable. These might include publications, pamphlets, or similar materials prepared or distributed by FEMA or other federal or state agencies or departments, or other sources known to be credible. [Examples of such publications can be found at the following links:] Brokers and agents may ask buyers to sign an acknowledgement of receipt of any such materials provided.
4. Where flood insurance may be required or may be advisable, brokers and agents may also find it helpful to identify to purchasers one or more suppliers of flood insurance policy coverage to be provided to interested purchasers seeking such information about flood insurance coverage and rates. Brokers and agents should not recommend or endorse any particular carrier, and it is prudent to identify more than one carrier and encourage interested buyers to compare flood insurance coverage among several different carriers.

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Sample Flood Insurance Disclosure Statement

Your mortgage lender [may] [will] require you to purchase flood insurance in connection with your purchase of this property. The National Flood Insurance Program provides for the availability of flood insurance but also establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Due to recent amendments to federal law governing the NFIP those premiums are increasing, and in some cases will rise by a substantial amount over the premiums previously charged for flood insurance for the property. As a result, you should not rely on the premiums paid for flood insurance on this property previously as an indication of the premiums that will apply after you complete your purchase. In considering your purchase of this property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, the premiums that are likely to be required to purchase such insurance and any available information about how those premiums may increase in the future.