

NAR Legal Guidance

Disclosure of Flood Insurance Requirements, Rates, and Rate Increases by Brokers and Agents

(Updated April 2, 2014)

The Biggert-Waters Flood Insurance Reform Act of 2012 (B-W Act) reauthorized the National Flood Insurance Program for an additional 5 years. That Act also largely eliminated federal subsidies of flood insurance, resulting in increases in the premiums to be charged for flood insurance coverage, as determined by FEMA. Because those rate increases were in some cases significant, many property owners or prospective property owners raised concerns about their exposure to higher flood insurance rates. Real estate brokers and agents also raised concerns about their possible exposure to misrepresentation claims by property purchasers who acquired property before such increases take effect and are later subject to substantial increases in their flood insurance premiums.

As a result of the concerns of property owners about higher flood insurance premiums, NAR and others sought from Congress legislation to slow the implementation of higher rates. On March 21, 2014 the President signed the Homeowner Flood Insurance Affordability Act of 2014. That Act changes the B-W Act to significantly mitigate the current impact of higher flood insurance rates. This includes eliminating the immediate application of full market-based rates upon the sale of a property or a new policy, limiting annual flood insurance premium rate increases to 18% for primary homes and 18-25% for second homes, directing FEMA to implement new rate tables based on the new Act within 8-16 months, allowing policy holders to receive a refund of premiums already paid in excess of the amount that would be allowed under the new law, allowing new owners to assume a prior owner's policy at existing rates, providing for properties to be "grandfathered" to retain their flood zone's rates even when remapped into different flood zones, and phasing in rate increases for newly mapped properties.

The following guidance is offered for brokers and agents in marketing and selling 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 B-W Act, flood insurance rates are likely to be higher than in the past. Although the amount of such rate increases may be lower than they would have otherwise been under the B-W Act alone, increases will nevertheless be implemented with the goal of reaching full market based premium amounts in time.

Such advice should further indicate that notwithstanding the 2014 Homeowner Flood Insurance Affordability Act, prior flood insurance premiums will not be representative of future rates and that rates will increase, although more slowly than anticipated under the B-W Act. An example of a disclosure statement that could be used for this purpose is attached, although brokers and agents may also use different methods or language to communicate to buyers information about flood insurance and flood insurance premiums. 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.

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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:

<http://www.fema.gov/national-flood-insurance-program/flood-insurance-reform-act-2012>

<http://www.floodsmart.gov>

<http://www.fema.gov/national-flood-insurance-program>

<http://www.fema.gov/floodplain-management/flood-insurance-rate-map-firm>

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 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.
5. Under the Homeowner Flood Insurance Affordability Act some sellers are entitled to a refund of flood insurance premiums that they previously paid that were higher than now provided for under the Act but may not be able to collect that refund prior to closing of a sale of the property. Listing brokers representing sellers in that position should suggest that the seller discuss with his or her attorney the best way to preserve their right to collect that refund after the transaction closes.

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 and establishes flood insurance policy premiums based on the risk of flooding in the area where properties are located. Recent changes to federal law (The Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014, in particular) will result in changes to flood insurance premiums that are likely to be higher, and in the future may be substantially higher, than premiums paid for flood insurance prior to or at the time of sale of the property. As a result, purchasers of property should not rely on the premiums paid for flood insurance on this property previously as an indication of the premiums that will apply after completion of the purchase. In considering purchase of this property you should consult with one or more carriers of flood insurance for a better understanding of flood insurance coverage, current and anticipated future flood insurance premiums, whether the prior owner’s policy may be assumed by a subsequent purchaser of the property, and other matters related to the purchase of flood insurance for the property. You may also wish to contact the Federal Emergency Management Agency (FEMA) for more information about flood insurance as it relates to this property.