

## **Is Your Property in a Flood Plain?**

Real Estate In-Depth July, 2008

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More homeowners are faced with purchasing flood insurance than ever before. The cost of flood insurance can be quite burdensome and especially frustrating for homeowners who have never experienced floods but whose homes are now in designated flood plains. Real estate brokers have an affirmative duty to disclose the location of properties which are in designated flood plains and which require flood insurance. The flood plain maps for Westchester County were updated beginning in 2003 and became effective as of September 28, 2007. Existing flood plain maps for Putnam County are in the process of being updated and should be finished in mid 2009.

### **Licensees' Obligations**

Real Property Law §443 requires that every buyer and seller in a residential transaction involving a one to four family home be given a New York State Disclosure Form regarding real estate agency relationships. This form places the real estate licensee under an obligation to buyers to "disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law." If a listing agent therefore knows that a property is in a flood zone (and there is an affirmative duty to at least inquire of the sellers whether they are in a designated flood zone), that information must be communicated to the purchasers or the purchasers' agent.

### **Agencies Responsible for Flood Plain Management**

According to the Department of Environmental Conservation of the State of New York, "[f]lood plain management is the corrective and preventative measures for reducing flood damage. These measures are adopted by state and local governments so that the citizens in the community will be eligible to purchase flood insurance."

While state agencies do not provide or facilitate flood insurance, a federal program exists called the "National Flood Insurance Program" (NFIP), which enables property owners in participating communities to purchase insurance protection against flood loss. New York State's Department of Environmental Conservation ("NYSDEC") is involved in a major flood plain mapping program in partnership with the Federal Emergency Management Agency (FEMA).

### **What is the Goal of the Public Agencies?**

The goal of FEMA is to be certain that geographic areas which are vulnerable to flooding participate in the national flood insurance program so that the cost of future floods is borne by the private sector, i.e. insurance carriers rather than by government

disaster relief. Flood insurance is backed by the United States Treasury in order to keep rates at reasonable levels and to not expose private insurers to catastrophic losses.

Extreme changes in the weather, hurricane patterns and major flood losses suffered during the past decade have motivated federal and state agencies to remap the United States to redefine flood zones and to identify areas that are subject to particular risk. Moreover, extensive property development and improved mapping technology warrant this activity.

According to the United States Government's GAO (the United States Government Accountability Office), "floods inflict more damage and economic losses upon the United States than any other natural disaster." Between 1992 and 2001, flooding resulted in approximately \$55 Billion Dollars in damages. Hurricane Katrina caused such massive flooding in 2005 that the costs exceeded \$40 Billion to insurance carriers alone. Prior to Katrina, FEMA had already undertaken the remapping of the entire United States in order to update those areas which are vulnerable and to be certain that those areas are included in the National Flood Insurance Program.

In 2004, that National Flood Insurance Program insured 4.4 million homes throughout the United States. Some of the homes which were insured had flooded more than twice in a ten year period resulting in staggering claims to the insurance carriers and resulting in a burden of 25%-30% of all of the claims paid. FEMA reports that 1% of the policies issued, account for 38% of all claims. These involve approximately 49,000 structures. At the time (2004), the National Association of Home Builders was looking to Congress to "address repetitive loss properties in order to insure the long term viability" of the National Flood Insurance Program.

### **No Insurance - No Mortgage**

On October 16, 2007, the New York Times reported in an article entitled "Home Insurers Cancelling in East" that a property owner, James Gray, living on Long Island near the Atlantic Ocean who had never experienced a flood was being denied insurance coverage by his homeowners' insurance carrier. The response was that New York insurance commissioner Eric R. Dinallo, rebuked Liberty Mutual Fire Insurance Company for its actions. Mr. Gray's problems were just one amongst more than three million reported cancellations of homeowners' policies by insurance carriers not wanting to continue to insure properties in locales which were vulnerable to hurricanes and wind and rain issues. Flood insurance cannot be denied if it is obtained through the NFIP.

The problem that arises from the inability to obtain insurance coverage is that federally insured mortgages cannot be obtained without insurance coverages. Therefore, homeowners or prospective purchasers are faced with the inability to obtain adequate insurance for their properties and are unable to finance the purchase of homes which are vulnerable to hurricanes or floods.

The New York Times article stated that “insurance companies, determined to avoid another \$40 billion Katrina bill, have essentially begun to redraw the outline of the eastern United States somewhere west of the Appalachian Trail.”

### **Should Everyone Have Flood Insurance?**

What many homeowners and Realtors are unaware of, is that flood insurance can be obtained by every homeowner. The NFIP Program is in place to assure homeowners in particularly vulnerable areas, that they can obtain flood insurance coverage and to attempt to make that coverage available at reasonable cost. Many homeowners and Realtors do not understand that the FEMA maps identify vulnerability from flooding as a result of hurricanes and proximity to water courses. The FEMA maps do not address storm drainage problems. Drainage systems installed by local municipalities may be adequate or inadequate for their intended purposes. For example, the losses experienced in April of 2007 in Mamaroneck were the result in part of storm drainage issues which would not have been identifiable on a FEMA map. FEMA maps show areas subject to the highest risk, but do not attempt to show all risks. Moreover, FEMA maps do not identify all risk zones, e.g. small streams, risks in rural areas or floods that exceed 100 year flood levels. They also do not address the condition or risks relating to dams and levees which may be subject to failure.

An interesting aspect of available coverages is that if the ground water in a particular area rises, the insurance coverage contains exclusions which would provide no compensation to the homeowner. When water travels over ground and enters a property, coverage usually applies. If an individual is in an area vulnerable to rising ground water and no water runs onto the property, the homeowners may find themselves without recourse even though homeowners’ insurance includes a flood insurance rider.

For persons who are not in a flood plain, purchasing flood insurance can be a fairly nominal additional cost to a homeowners’ insurance policy and should be considered. The FEMA website identified this writer’s home as one with “low to moderate” risk and provided annual flood insurance premium costs as follows:

\$39 - \$571	Contents Only
\$285 - \$849	Building Only
\$119 - \$1,385	Building and Contents

### **Westchester Website**

FEMA and NYSDEC worked cooperatively to create updated flood zone maps for Westchester County. Many people thought this was in response to the extensive flooding in Westchester communities along the Long Island Sound in April of 2007. In

fact, FEMA and NYSDEC had begun the re-mapping in 2003 and the release of the new maps in September 2007 was coincidental. Current reports indicate that hardships resulting from the Westchester flooding continue to exist and that many homeowners and property owners were not able to fully recover. Much of the received assistance came in the form of interest bearing loans which must be repaid and hardly make up for the extensive damage caused to these Westchester properties. Interestingly, the mapping along Long Island Sound and the Hudson River remained the same. New studies addressing these zones will be initiated in the coming years.

### **Digital Flood Insurance Rate Maps**

In January of 2007, FEMA, in cooperation with New York's DEC, released new hard copy versions of proposed digital flood insurance rate maps for Westchester County. The maps were finalized on September 28, 2007. They are available on the website of the Westchester County Government [www.WestchesterGov.com](http://www.WestchesterGov.com) and on FEMA's website at <http://www.fema.gov/business/nfip/mscjumppage.shtm>. (The maps contain large amounts of data. Downloads using dial-up service are not recommended). Westchester County actually held public open houses in September of 2007 to discuss the new maps and the National Flood Insurance Program in general. The notification on the Westchester County Government website indicates "flood designations will change with the new flood maps. It is important that community residents and business owners know their flood risk and understand how these map changes will affect their flood insurance requirements."

### **For more information call:**

The New York State Department of Environmental Conservation maintains the Bureau of Flood Protection and Dam Safety. The individual responsible for Westchester and Putnam Counties regarding the Flood Protection Program recently retired and NYSDEC is seeking to hire his replacement. In the interim, information can be obtained from the Albany Office of NYSDEC at 518-402-8151.

### **The Role of Real Estate Licensees**

Real estate licensees must become familiar with the new maps. The new maps have been created "because of erosion and changes in drainage patterns." (GAO Report 2005) There have been many new technological advances in the way information is obtained and maps are created, for assessing and displaying flood risks. Accordingly, this process will be ongoing. Realtors must be aware about whether properties are in a flood zone and communicate appropriate information to prospective purchasers. Sellers must also be educated about the difficulty which may be encountered by prospective purchasers when seeking to obtain mortgages because of insurance requirements which may be difficult to meet.