

[Third Reprint]

SENATE, No. 3110

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED SEPTEMBER 29, 2022

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Senator RICHARD J. CODEY

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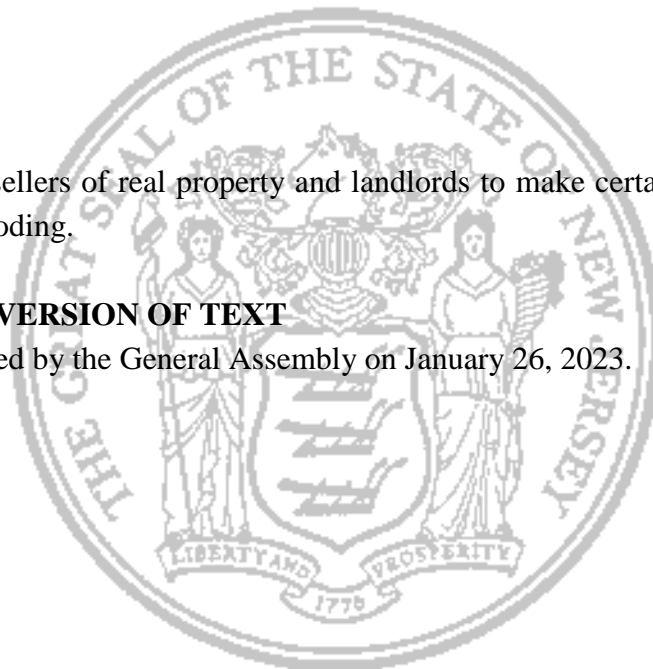
Assemblywoman Park and Senator Greenstein

SYNOPSIS

Requires sellers of real property and landlords to make certain notifications regarding flooding.

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 26, 2023.



(Sponsorship Updated As Of: 3/20/2023)

1 AN ACT concerning real property and flood notifications, amending
 2 P.L.2001, c.313, and supplementing P.L.1960, c.39 (C.56:8-1 et
 3 seq.).

4
 5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
 6 *of New Jersey:*

7
 8 1. Section 1 of P.L.2001, c.313 (C.46:8-50) is amended to read
 9 as follows:

10 1. a. Every landlord shall notify each of the landlord's tenants
 11 **[upon the event that the rental property which is the subject of a**
 12 **lease has been determined to be located in a flood zone or area]**
 13 ²**[whether the rental property, which is the subject of a lease, has**
 14 **been or could be affected by flooding]** prior to lease signing or
 15 renewal, whether a property is located in the FEMA Special Flood
 16 Hazard Area (“100-year floodplain”) or Moderate Risk Flood
 17 Hazard Area (“500-year floodplain”) and if the landlord has actual
 18 knowledge that the rental premises or any portion of the parking
 19 areas of the real property containing the rental premises has been
 20 subjected to flooding². Seasonal rentals of less than 120 days shall
 21 be exempt from the requirements of this section. Each new tenant
 22 shall be **[notified]** provided the notices required pursuant to this
 23 section in writing ²**[at the time of application]**² and prior to the
 24 time **[that occupancy]** that the lease of the rental unit is **[assumed]**
 25 signed. ²**If the lease is in writing, the notice required under this**
 26 **subsection may be included in the written lease or the written**
 27 **renewal lease, provided that the notice is a separate rider,**
 28 **individually signed or otherwise acknowledged by the tenant, and**
 29 **written in not less than 12-point typeface.**²

30 b. The Department of Community Affairs ³, in consultation
 31 with the Department of Environmental Protection,³ shall
 32 ³**[promulgate]** develop³ a ²**[form]** model notice² to be used by
 33 landlords pursuant to this section. The ²**[form]** model notice² shall
 34 contain the heading “Flood Risk” and contain questions, and space
 35 for landlords to answer yes, no, or unknown², based upon the
 36 landlord’s actual knowledge. The questions regarding the property
 37 being located in a FEMA Special or Moderate Risk Flood Hazard
 38 Area shall not contain the option for unknown². The ²**[form]**
 39 model notice² ¹**[provide]** shall include¹ the following information
 40 in substantially similar language:

41 (1) ²**[Is any or all of the rental property** ¹**[is]**¹ located in a
 42 Federal Emergency Management Agency (FEMA) designated
 43 floodplain ¹?¹ ;

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEN committee amendments adopted October 6, 2022.

²Senate floor amendments adopted November 21, 2022.

³Assembly floor amendments adopted January 26, 2023.

1 (2)]² Is any or all of the rental property ¹[is]¹ located wholly or
2 partially in the Special Flood Hazard Area ("100-year floodplain")
3 according to FEMA's current flood insurance rate maps for the
4 leased premises' area ¹?¹ ;

5 ²[(3)] (2)² Is any or all of the rental property ¹[is]¹ located
6 wholly or partially in a Moderate Risk Flood Hazard Area ("500-
7 year floodplain") according to FEMA's current flood insurance rate
8 maps for the leased premises' area ¹?¹ ; and

9 ²[(4)] (3)² Has the rental ²[property] premises or any portion of
10 the parking areas of the real property containing the rental premises
11 subject to the lease² ever experienced any flood damage, water
12 seepage, or pooled water due to a natural flood event²[, such as
13 heavy rainfall, coastal storm surge, tidal inundation, or river
14 overflow.] ?² If so, how many times?

15 c. Every residential lease shall also contain the following
16 notice to tenants: "Flood insurance is available to renters through
17 FEMA's National Flood Insurance Program to cover your personal
18 property and contents in the event of a flood. A standard renter's
19 insurance policy does not typically cover flood damage. You are
20 encouraged to examine your policy to determine whether you are
21 covered."

22 d. The Department of Community Affairs, in consultation with
23 the Department of Environmental Protection, shall create and
24 prepare a notification that Statewide flood risks are increasing and
25 that the tenant may review these risks by going to the website that
26 the Department of Environmental Protection shall ensure is
27 managed with current and scientifically-supported information,
28 which is linked to and published on the website of the Department
29 of Community Affairs. ²The Department of Environmental
30 Protection's website shall at a minimum include information that helps
31 property owners provide the disclosures enumerated in this section. The
32 website shall include access to a user-friendly look-up tool searchable
33 by mailing address that identifies if a property is in the FEMA Special
34 or Moderate Risk Flood Hazard Area. The requirement to disclose if
35 the property is in the FEMA Special or Moderate Risk Flood Hazard
36 Area, beyond actual knowledge, shall take effect after the website look-
37 up tool is in place.²

38 e. If a landlord violates this section and a tenant suffers a
39 substantial loss or damage to the tenant's personal property as a
40 result of flooding, the tenant may terminate the lease by giving a
41 written notice of termination to the landlord not later than the 30th
42 day after the date the loss or damage occurred and may pursue all
43 legal remedies under the law to recover damages recognizing the
44 landlord's failure to disclose critical information. For purposes of
45 this subsection, a tenant suffers a substantial loss or damage to
46 personal property if the total cost of repairs to or replacement of the
47 personal property ²[is 50 percent or more of the personal property's

1 market value] exceeds five times the monthly rent² on the date the
2 flooding occurred. Termination of a lease under this subsection is
3 effective when the tenant surrenders possession of the dwelling.

4 f. Not later than the 30th day after the effective date of the
5 termination of a lease under subsection f. of this section, the
6 landlord shall refund to the tenant all rent or other amounts paid in
7 advance under the lease for any period after the effective date of the
8 termination of the lease.

9 g. For the purposes of this section, "landlord" means any
10 person who rents or leases, for a term of at least one month,
11 commercial space or residential dwelling units other than dwelling
12 units in a premises containing not more than two such units, or in an
13 owner-occupied premises of not more than three dwelling units, or
14 in hotels, motels, or other guest houses serving transient or seasonal
15 guests defined as those who rent a property for a period of less than
16 120 days.

17 (cf: P.L.2001, c.313, s.1)

18

19 2. (New section) a. A seller of real property located in this
20 State shall disclose, on the property condition disclosure statement,
21 ²whether the property is located in the FEMA Special or Moderate
22 Risk Flood Hazard Area and² any actual knowledge of the seller
23 concerning flood risks of the property, as required pursuant to this
24 section, to the purchaser before the purchaser becomes obligated
25 under any contract for the purchase of the property.

26 b. The Division of Consumer Affairs, in consultation with the
27 ³Department of Environmental Protection,³ Department of
28 Community Affairs and New Jersey Real Estate Commission, in
29 addition to any other question as the director deems necessary, shall
30 add the following specific questions and information to the property
31 condition disclosure statement concerning certain flood risks to a
32 property being sold. The additions to the property condition
33 disclosure statement shall contain the heading "Flood Risk" and
34 contain questions, and space for sellers to answer yes, no, or
35 unknown. If a seller answers yes to any question, the disclosure
36 statement shall require the seller to explain the answer. The
37 disclosure statement shall contain the following questions and
38 explanatory language:

39 (1) ²**[**Is any or all of the property located in a Federal
40 Emergency Management Agency (FEMA) designated floodplain?

41 (2) ²**]** Is any or all of the property located wholly or
42 partially in the Special Flood Hazard Area ("100-year floodplain")
43 according to FEMA's current flood insurance rate maps for your
44 area?

45 ²**[(3) (2)²** Is any or all of the property located wholly or
46 partially in a Moderate Risk Flood Hazard Area ("500-year

1 floodplain") according to FEMA's current flood insurance rate maps
2 for your area?

3 **²[(4)] (3)²** Is the property subject to any requirement under
4 federal law to obtain and maintain flood insurance on the property?
5 Properties in the special flood hazard area, also known as high risk
6 flood zones, on FEMA's flood insurance rate maps with mortgages
7 from federally regulated or insured lenders are required to obtain
8 and maintain flood insurance. Even when not required, FEMA
9 encourages property owners in high risk, moderate risk, and low
10 risk flood zones to purchase flood insurance that covers the
11 structure and the personal property within the structure. Also note
12 that properties in coastal and riverine areas may be subject to
13 increased risk of flooding over time due to projected sea level rise
14 and increased extreme storms caused by climate change which may
15 not be reflected in current flood insurance rate maps.

16 **²[(5)] (4)²** Have you ever received assistance, or are you aware
17 of any previous owners receiving assistance, from FEMA, the U.S.
18 Small Business Administration, or any other federal disaster flood
19 assistance for flood damage to the property? For properties that
20 have received federal disaster assistance, the requirement to obtain
21 flood insurance passes down to all future owners. Failure to obtain
22 and maintain flood insurance can result in an individual being
23 ineligible for future assistance.

24 **²[(6)] (5)²** Is there flood insurance on the property? A standard
25 homeowner's insurance policy typically does not cover flood
26 damage. You are encouraged to examine your policy to determine
27 whether you are covered.

28 **²[(7)] (6)²** Is there a FEMA elevation certificate available for
29 the property? If so, the elevation certificate must be shared with the
30 buyer. An elevation certificate is a FEMA form, completed by a
31 licensed surveyor or engineer. The form provides critical
32 information about the flood risk of the property and is used by flood
33 insurance providers under the National Flood Insurance Program to
34 help determine the appropriate flood insurance rating for the
35 property. A buyer may be able to use the elevation certificate from
36 a previous owner for their flood insurance policy.

37 **²[(8)] (7)²** Have you ever filed a claim for flood damage to the
38 property with any insurance provider, including the National Flood
39 Insurance Program? If the claim was approved, what was the
40 amount received?

41 **²[(9)] (8)²** Is any or all of the property located in a designated
42 wetland?

43 **²[(10)] (9)²** Has the property experienced any flood damage,
44 water seepage, or pooled water due to a natural flood event, such as
45 heavy rainfall, costal storm surge, tidal inundation, or river
46 overflow? If so, how many times?

1 c. The ³**Department of Community Affairs** Division of
2 Consumer Affairs³, in consultation with the Department of
3 Environmental Protection, shall include in the disclosure
4 requirements and form to be distributed to purchasers of real
5 property before the purchaser becomes obligated under any contract
6 for the purchase of the property, that Statewide flood risks are
7 increasing and that the purchaser may review these risks by going to
8 the website that the Department of Environmental Protection shall
9 create and ensure is managed with current and scientifically-
10 supported information, and linked to and published on the website
11 of the Department of Community Affairs. The Department of
12 Environmental Protection's website shall at a minimum include
13 information that helps property owners provide the disclosures
14 enumerated in this statute. ²The website shall include access to a
15 user-friendly look-up tool searchable by mailing address that
16 identifies if a property is in the FEMA Special or Moderate Risk
17 Flood Hazard Area. The requirement to disclose if the property is in
18 the FEMA Special or Moderate Risk Flood Hazard Area, beyond
19 actual knowledge, shall take effect after the website look-up tool is
20 in place.²

21

22 ¹3. (New section) No later than 90 days after the date of
23 enactment of this act, the Department of Community Affairs shall
24 adopt, pursuant to the "Administrative Procedure Act," P.L.1968,
25 c.410 (C.52:14B-1 et seq.), rules and regulations necessary to
26 implement this act.¹

27

28 ¹**[3.] 4.**¹ This act shall take effect on the 90th day next
29 following the promulgation of regulations implementing the
30 requirements of this ¹**[law]** act¹ and ¹the¹ preparation of forms
31 required to implement ¹**[the law.** The appropriate State entity shall
32 have 90 days to publish regulations following enactment] this act,
33 except that the Department of Community Affairs may take
34 anticipatory administrative action, in advance thereof, as may be
35 necessary for the implementation of this act¹.