



ANDREW M. CUOMO
Governor

NY Rising Housing Program

Flood Insurance FAQs

Revised: December 5, 2017

NY Rising Housing Program (applies to all Programs)

WHO IS REQUIRED TO MAINTAIN FLOOD INSURANCE ON THEIR PROPERTY?

All Applicants who receive funds from the NY Rising Housing Recovery Program for a structure located in the 100-year floodplain are required to maintain an active flood insurance policy on their property, in perpetuity.

WHAT ARE THE REQUIREMENTS ASSOCIATED WITH MAINTAINING FLOOD INSURANCE?

Since your property is located in a "flood disaster area" as defined in 42 U.S.C. 5154a (d), and since you received Federal disaster relief assistance, you must obtain and maintain flood insurance in accordance with applicable Federal law. In the event of a sale or transfer of the property, you and all subsequent owners shall, on or before the date of transfer, notify the transferee in writing of the requirements to obtain and maintain flood insurance in accordance with Federal law. The Program strongly encourages you to record this requirement in the deed that transfers the ownership of the property. The covenants, terms, provisions and conditions regarding flood insurance will run with the land, binding all subsequent owners, encumbrances and tenants of the Property. To view a sample flood insurance covenant, please refer to the Program website at: <http://stormrecovery.ny.gov/housing-forms-and-resources>.

WHAT IS THE REQUIRED AMOUNT OF FLOOD INSURANCE COVERAGE?

You are required to obtain and maintain flood insurance in an amount at least equal to the development or project cost (less estimated land cost). The project cost includes both the Federally-assisted and the non-Federally assisted portion of the cost, including any machinery, equipment, fixtures, and furnishings. If the Federal assistance includes any portion of the cost of any machinery, equipment, fixtures, or furnishings, the total cost of that item must also be covered by flood insurance.

WHAT DOCUMENTATION IS CONSIDERED PROOF OF FLOOD INSURANCE PURCHASE?

A policy declaration form issued by the National Flood Insurance Program or a policy declaration form issued by an insurance company covered under the National Flood Insurance Program.

WHAT IS THE DUTY TO NOTIFY FUTURE PURCHASERS?

The obligation to maintain flood insurance stays with the property receiving federal disaster assistance, even if you sell it. Federal law requires the recipient of federal disaster assistance to notify the purchaser of their property of the obligation to obtain and maintain flood insurance in perpetuity. If you sell your property without notifying the purchaser of the obligation to obtain and maintain flood insurance, and the purchaser fails to secure flood insurance, the property is



Governor's Office of Storm Recovery

ANDREW M. CUOMO
Governor

later storm damaged, and the purchaser of your property receives federal disaster assistance, then you will be required to reimburse the Federal government in the amount of assistance provided to the purchaser. In order to comply with the duty to notify, the notice must be written into the deed of your property and you must file and record a "restrictive covenant" with your County Clerk's office.

WHAT IS A RESTRICTIVE COVENANT?

Any type of agreement that requires all subsequent buyers to take or abstain from taking a specific action. In real estate transactions, restrictive covenants are binding legal obligations written into the deed of a property by the seller.

DO I HAVE TO SIGN THE FLOOD COVENANT?

Restrictive flood covenants are no longer required to be signed by applicants before receiving their final payment. However, you are obligated to notify subsequent owners of the federal requirement to maintain flood insurance in perpetuity. To assist applicants with this requirement, the Program will file and record a covenant with the county clerk's office at no charge. (Alternatively, you may choose to file and record a covenant with the county clerk's office on your own; however, you will then be responsible for paying all associated filing and recording fees.) The Program strongly encourages applicants to allow the Program to file and record a covenant on their behalf.

ARE THESE FLOOD INSURANCE REQUIREMENTS APPLICABLE TO CONDO/CO-OP BUILDINGS AND UNITS?

If your building is organized as a Condominium whereby each unit is individually owned and deeded, either the Condominium Association or the Unit Owner will be required to obtain flood insurance for the individual unit. However, the Condominium Association is always responsible for maintaining flood insurance on the common elements if the Condominium Association is receiving NY Rising funds to repair those common elements.

Unit Owners seeking financial assistance through NY Rising will be responsible for providing proof of flood insurance on their individual units in order to be eligible for the program. This can be accomplished either by obtaining flood insurance on their unit, as permissible, or by providing a copy of the Association's policy evidencing coverage of their individual unit.

However, if your building is organized as a Cooperative whereby unit residents buy shares in the Cooperative rather than the real estate itself, the Cooperative Board will be required to obtain and maintain flood insurance for any individual units receiving assistance as well as the common elements of the building (if the Board received funding to repair the common elements).

This requirement may be fulfilled by recording a covenant against the Property or by amending the bylaws or other governing documents of the Condo Association or Co-op Board, as applicable.



ANDREW M. CUOMO
Governor

WHAT DO THE FEDERAL REGULATIONS SAY?

U.S. Code › Title 42 › Chapter 68 › Subchapter III › § 5154a42 U.S. Code § 5154a - Prohibited flood disaster assistance. Current through Pub. L. 113-121. (See Public Laws for the current Congress.)

(a) General prohibition:

Notwithstanding any other provision of law, no Federal disaster relief assistance made available in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) Transfer of property

(1) Duty to notify

In the event of the transfer of any property described in paragraph (3), the transferor shall, not later than the date on which such transfer occurs, notify the transferee in writing of the requirements to—

- (A) obtain flood insurance in accordance with applicable Federal law with respect to such property, if the property is not so insured as of the date on which the property is transferred; and
- (B) maintain flood insurance in accordance with applicable Federal law with respect to such property.

Such written notification shall be contained in documents evidencing the transfer of ownership of the property.

(2) Failure to notify

If a transferor described in paragraph (1) fails to make a notification in accordance with such paragraph and, subsequent to the transfer of the property—

- (A) the transferee fails to obtain or maintain flood insurance in accordance with applicable Federal law with respect to the property,
 - (B) the property is damaged by a flood disaster, and
 - (C) Federal disaster relief assistance is provided for the repair, replacement, or restoration of the property as a result of such damage,
- the transferor shall be required to reimburse the Federal Government in an amount equal to the amount of the Federal disaster relief assistance provided with respect to the property.

(3) Property described

For purposes of paragraph (1), a property is described in this paragraph if it is personal, commercial, or residential property for which Federal disaster relief assistance made available in a flood disaster area has been provided, prior to the date on which the property is transferred, for repair, replacement, or restoration of the property, if such assistance was conditioned upon obtaining flood insurance in accordance with applicable Federal law with respect to such property.

(c) Omitted

(d) "Flood disaster area" defined



Governor's Office of Storm Recovery

ANDREW M. CUOMO
Governor

For purposes of this section, the term “flood disaster area” means an area with respect to which—

- (1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 1961 (a) of title 7; or
 - (2) The President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), as a result of flood conditions existing in or affecting that area.
- (e) Effective date
This section and the amendments made by this section shall apply to disasters declared after September 23, 1994.