



# NY Rising Housing Recovery Program

## Flood Insurance Restrictive Covenant FAQ

July 21, 2014

### **WHAT IS A RESTRICTIVE COVENANT?**

Any type of agreement that requires any subsequent buyer 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.

### **WHY IS IT BEING RECORDED ON MY PROPERTY?**

Under the NY Rising Program requirements and in the terms that you agreed to in your grant agreement, if your property is in the 100-year floodplain, you are required to keep the property covered by flood insurance. Furthermore, you are required to notify **ALL** subsequent buyers of the requirement to maintain flood insurance. The best and required way for you to notify anyone who you sell the property to, or anyone they sell the property to in the future, is to record a Covenant that runs with the land forever. This restriction is being recorded against your property so that all subsequent owners are placed on notice that there is a requirement that will stay with the land forever that anyone who buys this property must keep the property insured by a flood insurance policy.

### **WHAT DOES THE RESTRICTION SAY?**

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 and 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 applicable Federal law. This requirement must be contained 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.

### **DO I HAVE TO SIGN THIS DOCUMENT?**

Yes, this is required under the terms of the Grant Agreement that you signed and is required by Federal law.

### **IF THIS INFORMATION IS ALREADY IN THE GRANT AGREEMENT I SIGNED, WHY DO I HAVE TO SIGN AN ADDITIONAL DOCUMENT?**

The Grant Agreement notified you of the obligation. Recording the covenant meets the obligation, so you do not have to remember to meet the obligation when you sell the property; neither will subsequent sellers.



### **WHAT IF I DO NOT SIGN THIS DOCUMENT?**

If you do not sign this document, the funds you have received will be subject to recapture. In addition, if you do not meet the obligation and a subsequent buyer does not receive the notice to maintain flood insurance and they later receive disaster recovery funds, then you can be held responsible to repay those funds to the government.

### **WHAT DOES 42 U.S.C. 5154 a (d), 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

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.