

WAS NOAH IN A FLOOD ZONE?

By Judith I. Johannsen

You're a purchaser of property at your closing and your attorney is reviewing with you the various fees on the settlement statement. You're familiar with most of the fees, but question two items - the flood zone determination fee (what is this?) and flood insurance - especially since this property sits on a small rise and is nowhere near a river or the sea. Your attorney tells you that a lender will require flood insurance if the property you purchase lies within a flood plain or a flood prone area (a flood zone). The flood zone determination fee is the fee paid to the lender for researching whether or not this property lies within a flood plain or flood prone area.

Before a lender commits to lending its funds on a property, it wants assurance that not only can the purchaser repay the loan, but also that the property is not exposed to a risk that could jeopardize its investment. A lender who doesn't require a purchaser to have flood insurance on a property that lies in a flood zone may have little recourse when the property is carried away or destroyed by rushing waters.

Lenders will review Flood Hazard Boundary Maps which are official maps created by the Federal Emergency Management Agency (FEMA) that designate those land areas within a community that are subject to mudslide, erosion, and a one percent or greater chance of flooding in any given year.

Sometimes, however, determining whether or not a particular property is within a flood zone can be tricky – some flood maps are old, flood zones can change, and some maps are created with more of a broad stroke, making it difficult to determine whether or not a specific property lies in a flood plain. To address these issues, Congress provided FEMA with approximately \$350 million to modernize its flood hazard maps and approximately \$200 million to continue the mapping program.

How do you know if the water streaming into your property is a flood or just a heavy rainfall? For instance, suppose you were Noah, would you have thought you were in a flood on day 2 or 3 of the rainfall? Flooding is defined in the Code of Federal Regulations as “[a] general and temporary condition of partial or complete inundation of normally dry land areas from ... the overflow of inland or tidal waters and/or the unusual and rapid accumulation or runoff of surface waters from any source”. The floods in the arid plains of Texas a few years ago where horses and cattle were stranded on small islands of pasture surrounded by rising waters demonstrated unusual and rapid accumulation of water that almost completely inundated normally dry areas.

Buyers want to know how they can know, before they become obligated to purchase, if a property they're interested in lies in a flood zone. This very issue has been discussed by the legislature, resulted in Public Act 04-144, An Act Concerning Floodplain Management and Hazard Mitigation, approved on May 21, 2004. This Act requires that the Residential Property Condition Disclosure Report, which statutorily requires sellers of residential property to disclose certain information to prospective purchasers, be amended to include flood hazard information.

Until such time as the Residential Property Condition Disclosure Report form is amended, the prudent purchaser should ask the seller, or the seller's agent, if the property has been in or currently lies within a flood zone so as not to be surprised by fees associated with flood zone determination and flood insurance.

The bottom line on flood insurance is that lenders review flood hazard boundary maps to determine if a property lies within a flood zone, and, if it does, will require flood insurance to protect their interest in the property, and the fee for this determination is reflected on the settlement statement at closing.

Judith I. Johannsen is Assistant Counsel for the Connecticut Association of Realtors®, Inc.

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