Landmark Flood Disclosure Bill Now Law in New Jersey, Applies to Both Commercial and Residential Property

Aug 09, 2023

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On June 30, 2023, the New Jersey General Assembly unanimously passed Bill S3110/A4783, which will require sellers of real property and landlords to make specific disclosures regarding a commercial or residential property's flood risk. The bill was amended to concur with the recommendations of Governor Murphy's May 8, 2023, Conditional Veto Statement and was enacted into law upon passage. New Jersey was previously one of less than half of the states in the country that did not require any flood disclosures for real estate transactions.

Landlord & Seller Flood Disclosure Requirements

Specifically, Senate Bill No. 3110 requires landlords and sellers of commercial or residential real property to disclose to prospective tenants and buyers if a property is located in an area designated by the Federal Emergency Management Agency (FEMA) as a Special Flood Hazard Area (known as the 100-year flood plain) or Moderate Risk Flood Hazard Area (known as the 500-year flood plain), and if the property has suffered flood damage in the past to the owner's knowledge. Sellers are also required to disclose additional facts related to the property's flood insurance and flood damage history. Additionally, landlords are required to notify tenants of the possible availability of flood insurance via the National Flood Insurance Program.

The New Jersey Department of Community Affairs (NJDCA) is required to develop a model rental flood disclosure form and revise the property condition disclosure statement form used by sellers of real property to include the required flood risk questions. The New Jersey Department of Environmental Protection (NJDEP) is required to prepare information about statewide flood risks to be included in the disclosure forms, as well as a user-friendly look-up tool to identify whether a property is located in a flood plain. The bill takes effect on the 90th day after the promulgation of NJDCA and NJDEP implementing regulations in the New Jersey Register, which is required to occur by October 21, 2023. A seller of real property shall be required to use the revised property condition disclosure statement form beginning on the 90th day following its publication online by NJDCA.

Consequences for Landlords & Sellers for Failure to Disclose

All required seller and landlord notifications required by the bill must be provided to a buyer or tenant *before* the prospective buyer or tenant becomes obligated under any contract for the purchase or lease of the property.

Specifically, the bill provides that if a landlord fails to disclose to a tenant that the leased property is within a FEMA Special or Moderate Risk Flood Hazard Area and a tenant subsequently becomes aware that the property is located within these types of flood hazard areas, a tenant may terminate the lease upon written notice. Further, recognizing the landlord's failure to disclose that the leased property is located within FEMA Special or Moderate Risk Flood Hazard Areas, a tenant can also recover damages from a landlord for any flood damage to the tenant's personal property and for a flood's impact on the habitability of or access to the leased property. "Landlord" is defined as any person who rents or leases, for a term of at least one month, commercial space or residential dwelling units other than dwelling units in a premises containing not more than two such units, or in an owner-occupied premises of not more than three dwelling units, or in hotels, motels, or other guest houses serving transient or seasonal guests defined as those who rent a property for a period of less than 120 days.

While the bill does not spell out any specific consequences to sellers who fail to disclose the required flood risk information, the new law may nonetheless provide aggrieved buyers with a basis to pursue an action for damages and possibly even equitable relief in such circumstances.

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