

[Fourth Reprint]

SENATE, No. 3110

STATE OF NEW JERSEY
220th LEGISLATURE

INTRODUCED SEPTEMBER 29, 2022

Sponsored by:

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Senator RICHARD J. CODEY

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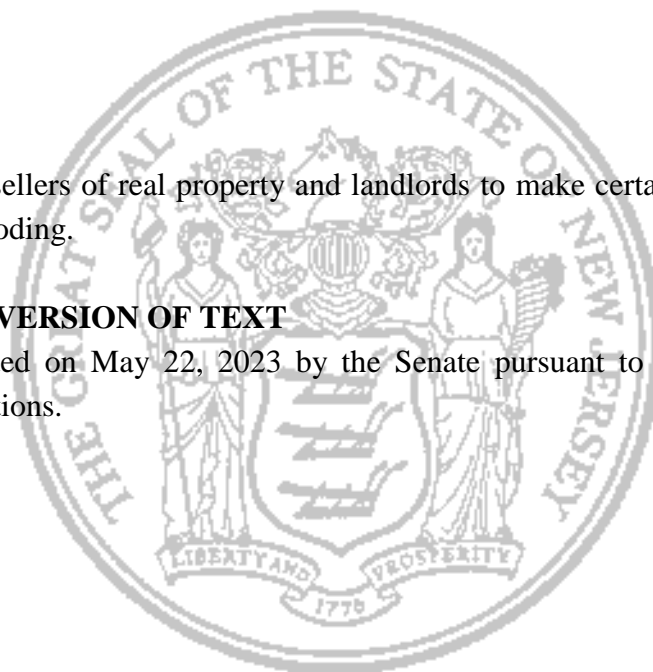
**Senators Cruz-Perez, Pou, Turner, Assemblyman Danielsen,
Assemblywoman Reynolds-Jackson, Assemblymen Verrelli, Stanley,
Assemblywoman Park and Senator Greenstein**

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended on May 22, 2023 by the Senate pursuant to the Governor's recommendations.



(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. ²If 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 ⁴, in the case of a residential lease,⁴ the
 28 notice is a separate rider, individually signed or otherwise
 29 acknowledged by the tenant, and written in not less than 12-point
 30 typeface.²

31 b. The Department of Community Affairs ³, in consultation
 32 with the Department of Environmental Protection,³ shall
 33 ³**[promulgate]** develop³ ⁴and published on its website and in the
 34 New Jersey Register⁴ a ²**[form]** model notice² to be used by
 35 landlords pursuant to this section. The ²**[form]** model notice² shall
 36 contain the heading “Flood Risk” and contain questions, and space
 37 for landlords to answer yes, no, or unknown ², based upon the
 38 landlord’s actual knowledge. The questions regarding the property
 39 being located in a FEMA Special or Moderate Risk Flood Hazard
 40 Area shall not contain the option for unknown². The ²**[form]**
 41 model notice² ¹**[provide]** shall include¹ the following information
 42 in substantially similar language:

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.

⁴Senate amendments adopted in accordance with Governor's recommendations May 22, 2023.

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

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

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

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

18 c. Every residential lease shall also contain the following
19 notice to tenants: "Flood insurance ⁴[is] may be⁴ available to
20 renters through FEMA's National Flood Insurance Program to
21 cover your personal property and contents in the event of a flood.
22 A standard renter's insurance policy does not typically cover flood
23 damage. You are encouraged to examine your policy to determine
24 whether you are covered."

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

41 e. If a landlord violates this section ⁴by failing to disclose that
42 the property is located in the FEMA Special or Moderate Risk
43 Flood Hazard Area⁴ and a tenant ⁴[suffers a substantial loss or
44 damage to the tenant's personal property as a result of flooding]
45 subsequently becomes aware that the property is located in the
46 FEMA Special or Moderate Risk Flood Hazard Area⁴ , the tenant

1 may terminate the lease by giving a written notice of termination to
2 the landlord ⁴[not later than the 30th day after the date the loss or
3 damage occurred and] . If a landlord violates this section and
4 flooding occurs that results in damage to a tenant's personal
5 property, affects the habitability of the leased premises, or affects
6 the tenant's access to the leased premises, the tenant⁴ may pursue
7 all legal remedies under the law to recover damages recognizing the
8 landlord's failure to disclose critical information. ⁴[For purposes
9 of this subsection, a tenant suffers a substantial loss or damage to
10 personal property if the total cost of repairs to or replacement of the
11 personal property ²[is 50 percent or more of the personal property's
12 market value] exceeds five times the monthly rent² on the date the
13 flooding occurred.]⁴ Termination of a lease under this subsection is
14 effective when the tenant surrenders possession of the dwelling.

15 f. Not later than the 30th day after the effective date of the
16 termination of a lease under subsection f. of this section, the
17 landlord shall refund to the tenant all rent or other amounts paid in
18 advance under the lease for any period after the effective date of the
19 termination of the lease.

20 g. For the purposes of this section, "landlord" means any
21 person who rents or leases, for a term of at least one month,
22 commercial space or residential dwelling units other than dwelling
23 units in a premises containing not more than two such units, or in an
24 owner-occupied premises of not more than three dwelling units, or
25 in hotels, motels, or other guest houses serving transient or seasonal
26 guests defined as those who rent a property for a period of less than
27 120 days.

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

29

30 2. (New section) a. A seller of real property located in this
31 State shall disclose, on the property condition disclosure statement,
32 ²whether the property is located in the FEMA Special or Moderate
33 Risk Flood Hazard Area and² any actual knowledge of the seller
34 concerning flood risks of the property, as required pursuant to this
35 section, to the purchaser before the purchaser becomes obligated
36 under any contract for the purchase of the property.

37 b. The Division of Consumer Affairs, in consultation with the
38 ³Department of Environmental Protection,³ Department of
39 Community Affairs and New Jersey Real Estate Commission, in
40 addition to any other question as the director deems necessary, shall
41 add the following specific questions and information to the property
42 condition disclosure statement concerning certain flood risks to a
43 property being sold. ⁴The division shall revise the regulations
44 promulgated pursuant to subsection c. of section 1 of P.L.1999, c.76
45 (C.56:8-19.1) with which the form of the property condition
46 disclosure statement must comply to incorporate the requirements
47 of this subsection, but in advance of such rulemaking the division

1 shall make the revised form which includes the specific questions
2 and information required by this subsection and subsection c. of this
3 section, if applicable, available for use by publishing the revised
4 form on the division's website. A seller of real property shall be
5 required to use the revised form beginning on the 90th day
6 following its publication on the division's website.⁴ The additions
7 to the property condition disclosure statement shall contain the
8 heading "Flood Risk" and contain questions, and space for sellers to
9 answer yes, no, or unknown. If a seller answers yes to any
10 question, the disclosure statement shall require the seller to explain
11 the answer. The disclosure statement shall contain the following
12 questions and explanatory language:

13 (1) ²**[(1)]** ²Is any or all of the property located in a Federal
14 Emergency Management Agency (FEMA) designated floodplain?

15 (2) ²**[(2)]** ²Is any or all of the property located wholly or partially in
16 the Special Flood Hazard Area ("100-year floodplain") according to
17 FEMA's current flood insurance rate maps for your area?

18 ²**[(3)]** ²(2) ²Is any or all of the property located wholly or
19 partially in a Moderate Risk Flood Hazard Area ("500-year
20 floodplain") according to FEMA's current flood insurance rate maps
21 for your area?

22 ²**[(4)]** ²(3) ²Is the property subject to any requirement under
23 federal law to obtain and maintain flood insurance on the property?
24 Properties in the special flood hazard area, also known as high risk
25 flood zones, on FEMA's flood insurance rate maps with mortgages
26 from federally regulated or insured lenders are required to obtain
27 and maintain flood insurance. Even when not required, FEMA
28 encourages property owners in high risk, moderate risk, and low
29 risk flood zones to purchase flood insurance that covers the
30 structure and the personal property within the structure. Also note
31 that properties in coastal and riverine areas may be subject to
32 increased risk of flooding over time due to projected sea level rise
33 and increased extreme storms caused by climate change which may
34 not be reflected in current flood insurance rate maps.

35 ²**[(5)]** ²(4) ²Have you ever received assistance, or are you aware
36 of any previous owners receiving assistance, from FEMA, the U.S.
37 Small Business Administration, or any other federal disaster flood
38 assistance for flood damage to the property? For properties that
39 have received federal disaster assistance, the requirement to obtain
40 flood insurance passes down to all future owners. Failure to obtain
41 and maintain flood insurance can result in an individual being
42 ineligible for future assistance.

43 ²**[(6)]** ²(5) ²Is there flood insurance on the property? A standard
44 homeowner's insurance policy typically does not cover flood
45 damage. You are encouraged to examine your policy to determine
46 whether you are covered.

1 ²[(7)] (6)² Is there a FEMA elevation certificate available for
2 the property? If so, the elevation certificate must be shared with the
3 buyer. An elevation certificate is a FEMA form, completed by a
4 licensed surveyor or engineer. The form provides critical
5 information about the flood risk of the property and is used by flood
6 insurance providers under the National Flood Insurance Program to
7 help determine the appropriate flood insurance rating for the
8 property. A buyer may be able to use the elevation certificate from
9 a previous owner for their flood insurance policy.

10 ²[(8)] (7)² Have you ever filed a claim for flood damage to the
11 property with any insurance provider, including the National Flood
12 Insurance Program? If the claim was approved, what was the
13 amount received?

14 ²[(9)] (8)² ⁴[Is any or all of the property located in a designated
15 wetland?

16 ²[(10)] (9)²⁴ Has the property experienced any flood damage,
17 water seepage, or pooled water due to a natural flood event, such as
18 heavy rainfall, costal storm surge, tidal inundation, or river
19 overflow? If so, how many times?

20 c. The ³[Department of Community Affairs] Division of
21 Consumer Affairs³, in consultation with the Department of
22 Environmental Protection, shall include in the disclosure
23 requirements and form to be distributed to purchasers of real
24 property before the purchaser becomes obligated under any contract
25 for the purchase of the property, that Statewide flood risks are
26 increasing and that the purchaser may review these risks by going to
27 the website that the Department of Environmental Protection shall
28 create and ensure is managed with current and scientifically-
29 supported information, and linked to and published on the website
30 of the Department of Community Affairs. The Department of
31 Environmental Protection's website shall at a minimum include
32 information that helps property owners provide the disclosures
33 enumerated in this statute. ²The website shall include access to a
34 user-friendly look-up tool searchable by mailing address that
35 identifies if a property is in the FEMA Special or Moderate Risk
36 Flood Hazard Area. The requirement to disclose if the property is in
37 the FEMA Special or Moderate Risk Flood Hazard Area, beyond
38 actual knowledge, shall take effect after the website look-up tool is
39 in place.²

40
41 ¹3. (New section) ⁴[No later than 90 days after the date of
42 enactment of this act, the] The⁴ Department of Community Affairs
43 ⁴[shall] , the Department of Environmental Protection, and the
44 Division of Consumer Affairs may⁴ adopt, pursuant to the
45 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
46 seq.), ⁴such⁴ rules and regulations ⁴as may be⁴ necessary to
47 implement this act.¹

1 ¹~~3.~~ ⁴ This act shall take effect ⁴~~on~~ immediately, but
2 section 1 of this act shall only be applicable to the signing or
3 renewal of leases of rental property occurring on or after⁴ the 90th
4 day next following the ⁴~~promulgation of regulations implementing~~
5 the requirements of this ¹~~law~~ act¹ and ¹~~the~~ preparation of forms
6 required to implement ¹~~the law. The appropriate State entity shall~~
7 have 90 days to publish regulations following enactment¹ this act,
8 except that the Department of Community Affairs may take
9 anticipatory administrative action, in advance thereof, as may be
10 necessary for the implementation of this act¹. ¹ publication of the
11 model notice by the Department of Community Affairs pursuant to
12 subsection b. of section 1, and section 2 of this act shall only be
13 applicable to sales and exchanges of real property occurring on or
14 after the 90th day next following the publication of the amended
15 property condition disclosure statement by the Division of
16 Consumer Affairs pursuant to subsection b. of section 2.⁴