



FEDERAL GRANT'S "OBTAIN AND MAINTAIN" INSURANCE REQUIREMENTS

BY:

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Hypothetical

Consider the following hypothetical:

Property owner John Doe owns a house located next to the bayou. The house is in Flood Zone A according to the recently revised "Flood Map." Unfortunately Doe's house floods after the bayou overflows its banks. Doe does not have flood insurance and makes a claim with The Federal Emergency Management Agency (FEMA) for repair of his house. FEMA provides aid to Doe in the amount of \$20,000.00 to rebuild his house (the "Grant"). The house is now beautiful and Doe decides to sell. Jane Anders buys the house paying cash. Although Doe disclosed the flood of the house to Anders, he did not disclose the FEMA requirement to obtain and maintain flood insurance on the house. The house floods again six months after Jane buys it. Jane does not have flood insurance and files a request with FEMA for aid. FEMA denies the request because Jane failed to obtain flood insurance.

Doe receives a request from FEMA for return of the Grant money. Does Doe have any potential liability? The short answer is "yes".

FEMA Requirements

FEMA provides aid to replace, restore, repair, reconstruct or mitigate damaged property. This aid after a disaster however imposes perpetual requirements on the homeowner. FEMA expects the property owner receiving aid to protect their investment in the local community against future disasters generally by obtaining insurance if possible¹. The recipient of disaster relief funding who fails to obtain flood insurance and thereafter maintain flood insurance on the property ("obtain and maintain") may be ineligible for future disaster relief.

¹ 42 U.S.C. § 5154(b).

To determine if these "Obtain and Maintain" requirements apply, a property owner should ask the following questions:

1. ***Have the owners of the property received Federal disaster assistance?***

FEMA, SBA, and HUD offer programs which provide individuals, households, businesses, and private nonprofits financial assistance after a disaster. These programs may include residential and commercial property.

2. ***Is the property being sold or rented located in a Special Flood Hazard Area?***

FEMA defines "Special Flood Hazard Area" as "The land area covered by the floodwaters of the base flood is the Special Flood Hazard Area (SFHA) on NFIP maps. The SFHA is the area where the National Flood Insurance Program's (NFIP's) floodplain management regulations must be enforced and the area where the mandatory purchase of flood insurance applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, V1-30, VE, and V."²

If the answer is "YES" to both of these questions, the property is subject to the "obtain and maintain" requirements.

The "Obtain" Requirement. The National Flood Insurance Program (NFIP) allows Federal agencies to only provide financial assistance (including disaster assistance loans³) for acquisition or construction purposes in an SFHA where NFIP insurance is available, if the property for which assistance is being provided is covered by flood insurance. The amount of flood insurance must be the lesser of the following: (1) the maximum limit of coverage available under NFIP; or (2) the development or project cost (less estimated land cost).⁴ If the disaster assistance is in the form of a loan, the amount of insurance need not exceed the outstanding principal balance of the loan.

The "Maintain" Requirement. The insurance must be continuously maintained regardless of a change in ownership. For owners, this requirement runs with the property address and applies to subsequent owners. For renters, this requirement only applies for as long as the applicant for disaster assistance or the insured contents remains at the flood-damaged rental property. For loans, the insurance must be maintained during the life of the loan.

Failure to "obtain and maintain" flood insurance results in ineligibility for future disaster assistance for flood-damaged items.⁵

² "Special Flood Hazard Area", FEMA, available at <https://www.fema.gov/special-flood-hazard-area>.

³ The requirement does not apply to "small loans," defined as having (1) an original outstanding principal balance of \$5,000 or less and a repayment term of one year or less, or (2) "detached structures" that are not part of the primary residential structure on residential property. 42 U.S.C.A. § 4012a(c)(2)-(3).

⁴ 42 U.S.C.A. § 4012a.

⁵ Under the FEMA Public Assistance Program (applicable to state, local, tribal governments, and eligible private non-profits), the "obtain and maintain" requirement applies more broadly. Applicants are required to obtain and

The Notice Requirement Under § 582 of the National Flood Insurance Reform Act of 1994

Notification to Subsequent Owners Required. There is a duty to notify the next owner of the "obtain and maintain" requirement in writing on or before the date the property is transferred. The notification requirement applies to personal, commercial, or residential property. The Stafford Act specifically provides notification should appear in the document transferring ownership, such as the Act of Sale, as well as the Purchase Agreement.⁶

Failure to Notify Could be Costly. If the following events occur: (1) the seller fails to provide this notice and the buyer does not obtain and maintain flood insurance as required; (2) the property is damaged by a flood disaster; and (3) Federal disaster assistance is provided to repair, replace, or restore the damage, *then the seller may be required to reimburse the Federal government for the amount of the assistance previously received by the seller or, even if no new damage occurs but the file is flagged during closeout as lacking a policy, the homeowner may be required to reimburse the state for the entire amount of assistance provided.* The failure to provide the notice could be a very costly error to the former owner of the property.

There is no escape: Federal Government Review for Obtain and Maintain at Grant Closeout

Another opportunity for enforcement of the "obtain and maintain" obligation is when the federal government completes the final accounting of how grant money was spent at the state level. Many people do not realize these Federal grants do not close the grant file for sometimes many years after construction. For example, the FEMA Hazard Mitigation Grant used to elevate thousands of homes after Hurricane Katrina is still open at the state and federal level and under audit. In order to close the grant, FEMA and other federal agencies requires each house's file to include a current proof of flood insurance. If the state cannot produce this document, FEMA may require return of the total amount of assistance provided to that home and subsequently the state will have the option to collect those funds from the homeowner.

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maintain insurance for any hazard that results in FEMA-funded assistance and the failure to do so renders the applicant ineligible for any future disaster assistance, regardless of the type hazard.

⁶ 42 U.S.C.A. § 5154a.

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