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**THE "OBTAIN AND MAINTAIN" INSURANCE REQUIREMENTS
UNDER THE FLOOD DISASTER PROTECTION ACT OF 1973**

By:

*Patricia B. McMurray and Michelle Zaltsberg
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
450 Laurel Street, Chase Tower North, 20th Floor
Baton Rouge, LA 70801*

Property owners or renters who receive Federal financial flood disaster assistance after a Presidentially declared disaster may be required to obtain and maintain flood insurance on the property. The recipient of disaster relief funding who fails to "obtain and maintain" flood insurance may be ineligible for future disaster assistance as well as be required to repay disaster assistance previously received.

To determine if these "Obtain and Maintain" requirements apply, a property owner or renter 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."¹

¹ "Special Flood Hazard Area", FEMA, available at <https://www.fema.gov/special-flood-hazard-area>.



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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 loans²) 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).³ 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.⁴

The Notice Requirement Under § 582 of the National Flood Insurance Reform Act of 1994⁵

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 notification should appear in the document transferring ownership, such as the Act of Sale, as well as the Purchase Agreement. A sample of an addendum to the "Louisiana Agreement to Buy and Sell" is attached.

² 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).

³ 42 U.S.C.A. § 4012a.

⁴ 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 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.

⁵ 42 U.S.C.A. § 5154a.



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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.* The failure to provide the notice could be a very costly error to the former owner of the property.

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FLOOD INSURANCE PURCHASE REQUIREMENT ADDENDUM

This addendum is made part of the attached Louisiana Residential Agreement to Buy or Sell.

The Property is located in a Special Flood Hazard Area as delineated on a map prepared by the Federal Emergency Management Agency.

The Seller or a former owner of the Property has previously received Federal financial assistance for acquisition or construction purposes (as defined in 42 U.S.C.§4003) in the amount of \$_____ for flood-related damage. This assistance was conditioned upon obtaining and maintaining flood insurance on the Property (42 U.S.C.§4012a). The requirement of maintaining flood insurance applies to all owners of the Property, regardless of transfer of ownership.

Federal law (42 U.S.C.§5154a) requires that buyer/transferor of the property be notified in writing of the requirement to obtain flood insurance and maintain flood insurance in accordance with Federal law. The Buyer must maintain flood insurance coverage on the Property and contents in at least the amount of the disaster assistance previously received, \$_____ and provide notice of this requirement to any party to whom he/she sells the Property.

Failure to obtain or maintain flood insurance as required may result in the property owner's ineligibility for Federal disaster assistance. Failure to comply with the notice requirement to subsequent Buyers/transferees may create an obligation on the Buyer (as a subsequent transferor) to reimburse the Federal government for disaster assistance provided to a subsequent Buyers/transferor.

All other terms and conditions contained within the Agreement remain unchanged.

Buyer Signature Date

Seller Signature Date

Buyer Signature Date

Seller Signature Date

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