



Risky Renting: Renters Should Have the Right to Know their Flood Risk

MAY 26, 2022 – DAN MATHIS

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“Would you rent a house if you knew it was haunted?”

That was the question posed by one renter from Brownsville, a neighborhood in the eastern part of Brooklyn in New York City. She asked the question while reflecting on the impact on her apartment of Hurricane Ida, the Category 4 hurricane that hit Louisiana on August 29, 2021 and, days later, inundated parts of New Jersey, New York, and other Northeastern states. The storm caused flash floods that damaged homes, disrupted lives, and killed more than forty people, many of whom died while in their basement apartments.

Ida, for her, was a callback to similar terrors she faced when she and her family had to flee their apartment during Hurricane Sandy in 2012. She recalled watching television in her fourth-floor walk-up apartment in Bedford-Stuyvesant, another Brooklyn neighborhood, when she heard a cracking noise before witnessing the ceiling of her apartment collapse on top of one of her daughter’s beds. Her family fled the apartment, running down the stairs with water coming down behind them, leaving behind their home and belongings and unknowingly running towards what would become a year-long journey through New York City’s shelter system. “I lost everything through Sandy,” she says.

Accounts like hers are, unfortunately, becoming increasingly common. As climate change increases the frequency and severity of disasters, more and more lives are disrupted every year; and, while one New York family’s struggle is not representative of lives across the United States, it does reflect a broader need for us to collectively prepare for and respond to the inevitable disasters to come.

As it turns out, New York State law actually requires disclosure of haunted properties to potential homebuyers in particular instances. The same cannot be said for renters and flood risk: New York does not require renters to be notified if their home is at risk of flooding. Neither do forty-two other states.

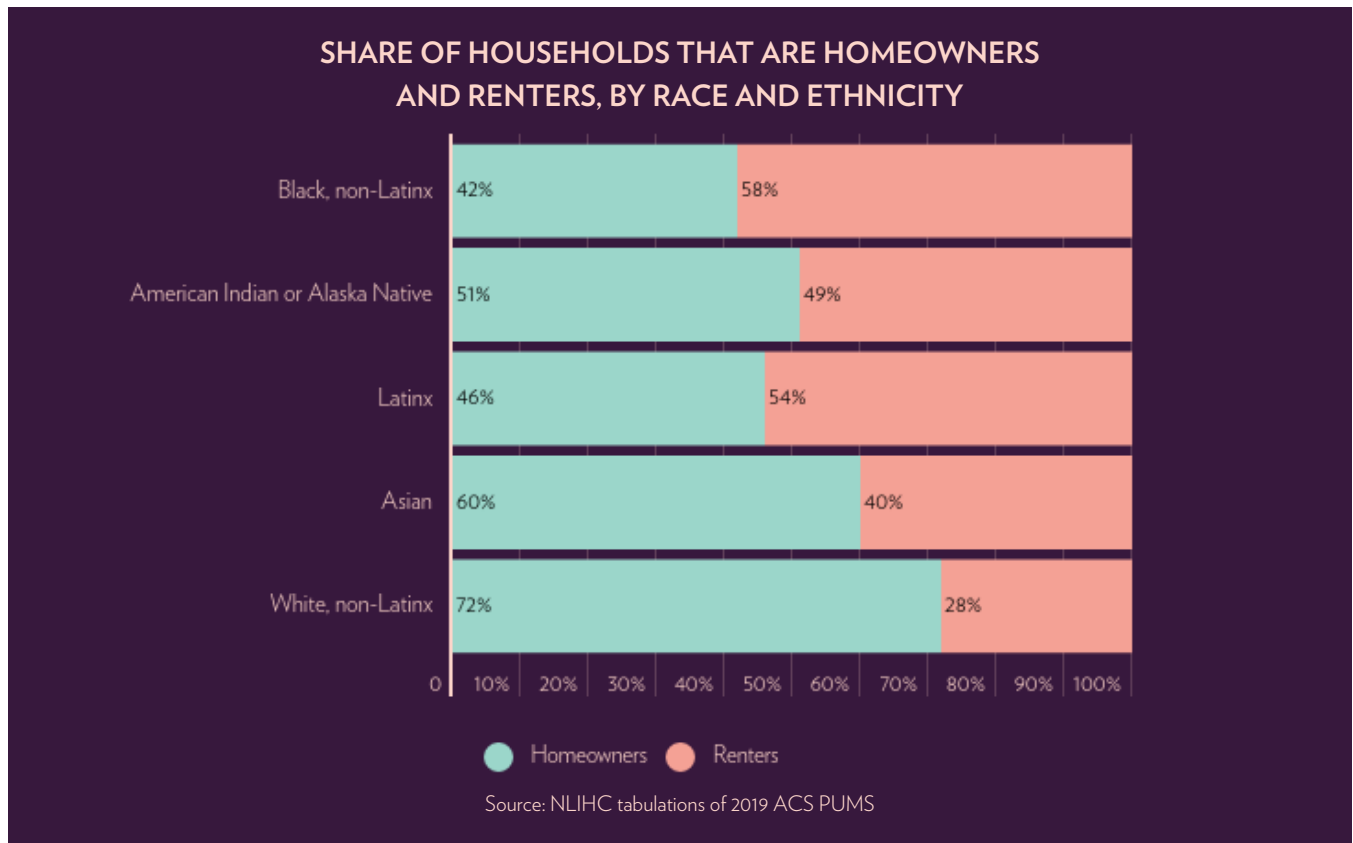
This report summarizes the state of flood disclosure laws for renters in the seven states that have them, and, building on these laws as well as other renter disclosure laws in other contexts, puts forth recommendations for states to adopt strong, protective, laws to ensure renters are made aware of potential flood risks to apartments before it is too late.¹

I. There will be floods.

Flooding, in particular, is damaging an increasing number of homes and families every year. It is the most common and

This report can be found online at: <https://thenext100.org/risky-renting-renters-should-have-the-right-to-know-their-flood-risk/>

FIGURE 1



costliest type of disaster in the United States: just one inch of water can cause \$25,000 of damage. This, paired with the fact that more than 80 percent of presidential disaster declarations between 1980 and 2017 were for events that included flooding, indicates a pressing need for us to address not just climate disasters broadly, but flooding in particular. Between 2010 and 2018, floods caused a total of \$17 billion of damage in the United States, and extreme flooding is likely to increase. The prospect of more flooding is made worse because the impact of floods aren't equally felt across communities. Black communities and communities of color are disproportionately impacted by flooding. According to an analysis of flood risk by redlining grade in thirty-eight metropolitan areas, formerly redlined areas have \$107 billion worth of homes facing high flood risk—25 percent more than non-redlined areas, which are often much whiter and wealthier.

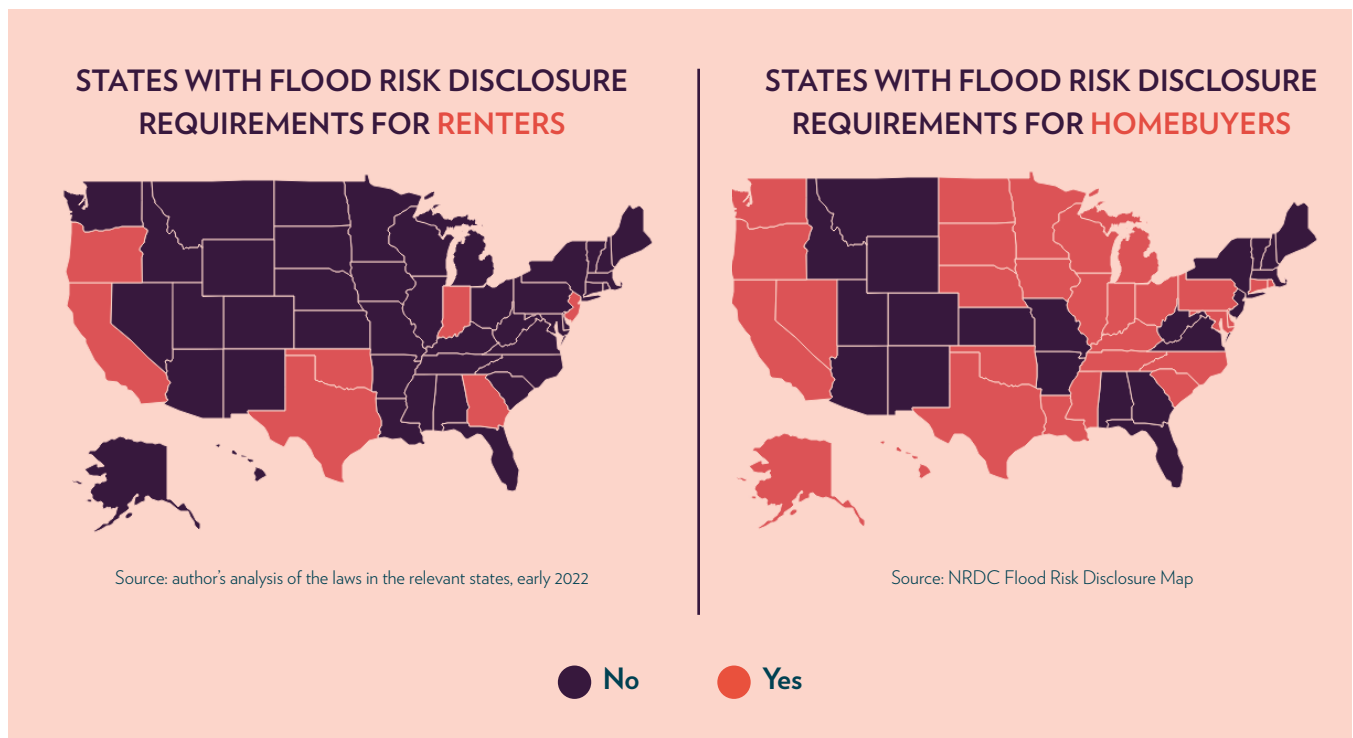
We know that Black households' exposure to flood risk is compounded by historic underinvestments in water management infrastructure and other systemic factors. There

is also research that suggests that Latinx households may be at greater risk as well, including one study in Washington State that found that Latinx residents comprise 8 percent of the state's population, but 16 percent of residents in flood zones. Climate vulnerability varies by geography, but renters across the board are at-risk: 10.5 million renter households live in neighborhoods that suffered at least \$1 million in disaster-related losses between 2008 and 2018; and about 40 percent of the nation's occupied rentals, representing 17.6 million units, are located in areas exposed to environmental hazards such as flooding, wildfires, and hurricanes. Many of the families impacted in New York City during Hurricane Ida and those that stand to be most impacted by future floods are at this critical intersection of vulnerability: renters of color.

II. Why think about renters?

Even a glance at relevant data shows why equity-driven policy on this issue needs to take renters into account. Renters are increasingly likely to be older, people of color, and living in nontraditional households, and the majority of the Black

FIGURE 2



and Latinx population are renters. According to the Joint Center for Housing Studies, 58 percent of Black households rented their housing in 2019, along with 52 percent of Latinx households, 43 percent of Native American households, and 39 percent of Asian households. Recent immigrants have especially high rentership rates, including 83 percent of households that have been in the country for five years or less. And, even after having lived in the United States for several years, immigrants still tend to rent their housing. These numbers are situated in context by the low rentership rate among white households, which sits at just 28 percent.

These disparities in rental rates across demographics illustrate the importance of intentionally developing policies that protect renters in housing policy interventions broadly, but especially as they relate to the climate crisis, which is disproportionately hitting vulnerable communities and communities of color in so many ways. And yet, many climate and disaster recovery policies overwhelmingly favor homeowners, and—to a great degree—white homeowners, notwithstanding the persistent homeownership gap that exists by race.

III. Both homeowners and renters often lack information about flood risk—but renters especially do.

The distinction between renters and homeowners is relevant in terms of current awareness about a home's flood risk. It can be difficult to find out about a home's flood risk and history as a homeowner, but most renters get no information about flooding at all.

People in the United States generally lack awareness about their home's risk of flooding. There is no federal requirement for home sellers to disclose information about a property's flood risk or previous flood damage to prospective buyers or renters, a gaping hole in federal flood policy that many advocates are asking the Federal Emergency Management Administration (FEMA) to address. Federal law does currently mandate that lenders require flood insurance on federally backed mortgage loans for properties that are in "Special Flood Hazard Areas" (SFHAs)—those in a 100-year floodplain, according to FEMA, which means that the area has a 1 percent annual chance of flooding. But this still leaves millions of homebuyers, not to mention renters, with

homes outside of any designated SFHA but which are still at risk, without any sort of flood risk information at all.

In the absence of federal law, some states have stepped up to develop policies to ensure homebuyers are aware of the flood risk of their potential homes. Twenty-nine states require some disclosure of flood risk to buyers during home purchases. These laws vary considerably, ranging from reasonably robust requirements in some of the states along the Gulf Coast (Texas, Mississippi, Louisiana), to a largely ineffective property condition disclosure statement in New York State that sellers can circumvent by paying \$500 to the buyer.

However, far fewer states protect renters in the same way. A review of state laws indicates that just seven states affirmatively require landlords to disclose an apartment's flood history or risk to prospective tenants. This lack of information is particularly concerning when taking into account the impact of the climate crisis on our changing environs.

IV. Why is disclosure so important?

Renters deserve a right to know their home's flood risk. Risk disclosure laws are the most efficient way of delivering this right: they require landlords to make tenants aware of flood hazards and provide them with information that they need to live safely and make informed decisions.

Research has found that many people underestimate their home's flood risk. Flood disclosure is aimed at providing prospective buyers and renters with full transparency and awareness about flood history and risk. These laws, beyond giving renters more information, also serve to expand broader public awareness about exposure to climate risks and help to make real the potential impact of climate change. This may, in turn, help to reduce collective costs down the line in response to floods, since we know that every \$1 invested in disaster mitigation saves \$6 dollars in recovery funds.

Information disclosure already plays a significant role in real estate transactions between buyers and sellers and

in landlord-tenant relationships. Federal law requires landlords of most buildings built before 1978 to issue tenants information about lead paint, including a lead warning statement and informational pamphlets. Similar laws also exist at the state and local level, as can be seen in Washington State's requirement that landlords provide tenants with information about mold problems, New York City's bedbug disclosure laws, and—as noted above—disclosure of paranormal activity and haunted homes to homebuyers. These disclosure requirements on landlords are not perfect, but provide a critical baseline of information necessary for tenants to make decisions and take precautionary measures related to risks associated with their living situations.

Flood risk disclosure requirements follow a similar logic by providing individuals and families with information about their home's risk of flooding. History shows that state-level flood risk disclosure requirements are often enacted in the wake of disasters, apparently as a political response to the devastation caused by these major climatic events.

The oldest state-level, flood-related disclosure requirement targeting renters is found in Oklahoma, and became effective after major floods happened in 1985 and 1986. Georgia's law came in 1995 after Tropical Storm Alberto caused major flooding in 1994. Twenty-five years after those flooding events, U.S. Representative Sanford Bishop (D-GA) reflected back on "...the devastating flood of 1994 that took 31 lives, evacuated more than 40,000 people and destroyed countless homes and communities." Fifty-five counties were declared disaster areas, and the disaster ignited governmental action throughout the state of Georgia. The Texas law, which took effect January 1, 2021, is the most recent state-level law to be enacted, and it gained momentum after Hurricane Harvey struck the state, causing \$125 billion in damage, according to the National Hurricane Center (more than any other disaster in U.S. history except Hurricane Katrina). Given this historical political and legislative response in several states and the increased likelihood of flooding events across the country, the question then becomes: why wait for the next disaster to enact legislation that informs residents about their home's risk—particularly in states prone to flooding?

There is already momentum in some areas: In addition to the seven states discussed above, some cities and localities also already require landlords to disclose flood risk information to tenants. Baltimore, Maryland, where 52 percent of residential properties are rentals; Manhattan, Kansas, where 60 percent of residential properties are rentals; and Boone, North Carolina, where 76 percent of residents are renters, are all cities that moved to require flood risk disclosure for all renters. There have been efforts at the county-level as well, with Leon County, Florida, the seat of Florida's state government, requiring disclosure of known flood conditions on residential properties to prospective buyers or tenants. However, the state of Florida currently has no state-mandated flood risk disclosure requirements whatsoever, despite having close to 2 million properties at risk of flooding.

When considering flood risk disclosure requirements, the legislative impetus is pretty clear: residents deserve to know of their risk to the damages and disruption that result from the flooding of one's home.

Despite the presence of flood risk disclosure requirements in several states for a number of years, there are concerns that risk disclosure may have negative or unintended consequences for the very populations that they often aim to protect. There is concern that greater public awareness of flood risk will affect land and property values in a way that will negatively impact low-income renters and renters of color. That is, places with high flooding risk may be cheaper because of that risk and, in turn, attract more renters looking for more affordable housing. The extent to which markets actually price these risks, however, remains poorly understood, and, even in the absence of disclosure, the real estate market is likely to face challenges as the threat of climate-related disasters becomes more salient.

There is also worry that disclosing flood risk could not only undermine property values, but also lead to prohibitively high flood insurance premiums. But FEMA, through its Risk Rating 2.0 methodology, is already undertaking an effort to more accurately price flood insurance premiums by incorporating more flood risk variables.

Or, as some advocates fear, more information about climate risks may lead to a rush to areas that are more climatically desirable, leading to displacement of communities currently living in those areas. These concerns are currently playing out in Miami, where fears of climate gentrification have plagued the predominantly Black—and higher elevated—community of Little Haiti: A 2018 study found that real estate sitting on higher elevation in Miami had appreciated at a faster rate than anywhere else in the country.

Renters' right to information should prevail even in the face of these arguable downsides of additional climate risk disclosures. More awareness may indeed impact property values, but maybe that is the risk that we take to adapt to our changing climate and make millions of people more cognizant of the risks facing their homes and families. And more readily available risk information might, in turn, reduce the incentive to develop in flood-prone locations to begin with.

V. Policy Recommendations: Building Off Existing Laws and Lessons Learned

As more states begin to consider state-level flood risk disclosure requirements targeting renters, the laws should seek to cover several areas that reflect lessons learned from existing policies, best practices, and community concerns. Of greatest importance is that disclosure laws facilitate the delivery of information at an appropriate point in time, in a form that is accessible and useful to renters, with meaningful consequences for landlords who do not comply. The recommendations below consider the triggering requirements for disclosure, including an apartment or building's flood risk and flood history; format requirements for the notice itself, that is, the form the notice takes on when delivered to renters; the qualifying properties that should fall under the purview of the law; and remedies for tenants or penalties for landlords that fail to disclose.

1. Notice format requirements: Disclosures should be in writing, accessible to those who do not speak English, and hard for prospective tenants to miss.

The disclosure notice should be in writing.

A written, typed, or printed disclosure serves the dual purpose of providing the tenant with an unambiguous document of the property’s flood risk, as well as providing a clear record to support any potential enforcement or remedial actions.

Every state with a flood risk disclosure mandate currently requires the disclosure to be in writing. California goes a step further, and requires a minimum eight-point type for disclosure provisions to be included in lease agreements, but this formatting requirement—apparently to prevent the notice from becoming literal fineprint—could be made more comprehensive by requiring the disclosure notice to be presented in a separate document that is clear, legible, and easy to read.

Of the current state laws that require flood disclosure to renters, all require the notice to be in writing.

The disclosure notice should be provided in a separate document and referenced in the lease agreement.

A flood disclosure, like any disclosure, can either be included in a lease document or as a separate document, and eventually attached as an addendum to the lease. A separate written document is preferable, as it allows for the disclosure to be presented ahead of lease signing (as recommended above, and discussed below) and may better highlight to the prospective renter the importance of the flood risk information. Referencing the separate disclosure in the lease then reinforces the information included therein, assures its enforceability as a term of the lease agreements, and serves as a point of reference for tenants. States should avoid lengthy general disclosure forms (for example, New Jersey’s seller disclosure form for buyers consists of 107 questions), which make it difficult to home in specifically on

flood risk.

Most tenants rely primarily on their leases to determine their rights and obligations as renters (according to one study, more than 90 percent of renters surveyed reported looking at their leases either at time of signing or after incurring a rental problem to determine their rights), but a separate written document may increase awareness of the flood risk disclosure with renters that may not fully read the lease agreement before issues arise or treat it as a form contract.

Of the current state laws that require flood disclosure to renters, only Texas mandates that flood risk disclosure notices be included in a separate written document. Other states require the risk disclosure to be included in the lease document.

The disclosure notice should be accessible to renters who do not speak English.

Flood risk disclosure laws should be crafted with a diverse renter population in mind. Nearly 67 million Americans do not speak English at home, according to the U.S. Census Bureau. Based on the disproportionate percentage of immigrants who are renters, it is likely that renters are more likely than the population at large to not speak English at home, making language accessibility for flood disclosures—and rental leases generally—even more critical. California’s Translation Act (Civil Code § 1632), for example, provides increased consumer information and protections for the state’s population of non-English-speaking residents. The statute applies to leases and rental agreements for a period longer than one month and, therefore, applies to flood risk disclosure notices, requiring translation into the language used to negotiate the lease.

The disclosure should necessarily follow the translation and language accessibility requirements of the jurisdiction as pertaining to lease agreements, but where a state does not have a strong pre-existing law governing language accessibility and translation in rental negotiations and leases, disclosure requirements should account for a diverse population.

Of the current state laws that require flood disclosure to renters, no state law has distinct language accessibility requirements.

2. Timing requirements: disclosure should be provided early in the apartment rental process in order to give renters time to make informed decisions.

Disclosure should be provided at time of application.

Disclosure should be provided well before lease execution so that renters can make informed decisions throughout their housing search and negotiation of a lease agreement. With notice required at the time of application, tenants would be presented with the rental unit's flood risk information prior to lease signing. This earlier notice would provide prospective renters with information at a point in time when it can still be used to inform decision-making.

If the disclosure occurs too late into the rental transaction process, the prospective renter/tenant may have already invested considerable time and resources in their apartment search, and their ultimate renting decisions may be swayed by these practical concerns.

Of the current state laws that require flood disclosure to renters, no state requires disclosure at the time of application, with most giving the option for landlords to disclose to tenants at or before execution of lease, or at some point prior to occupancy.

3. Basis for disclosure: disclosure should be based on the previous flood history and current flood risk of the leased property.

Disclosure should be required if: (1) the property is located in a 100-year or 500-year floodplain (a 1-percent chance or 0.2-percent chance of flooding per year based on FEMA standards); (2) the building has experienced any flood damage in (at least) the preceding five-year

period; or (3) the landlord/property owner is required to and/or chooses to pay for flood insurance, with any of the three sufficient to trigger the disclosure requirement.

1. *Disclosure should be required if the property is located in or near a FEMA-designated flood hazard zone.* The "Special Flood Hazard Area" designation refers to a 100-year floodplain, where properties have a 1-percent annual chance of flooding. Federal floodplain management regulations and mandatory flood insurance purchase requirements for homeowners already apply in these zones; disclosure to potential renters would ensure they are also aware of this risk. The 500-year floodplain refers to areas where properties have a 0.2-percent annual chance of flooding. These areas, considered "Moderate Risk Flood Hazard Areas," have a lower chance of flooding, but Texas had three 500-year storms over a period of three years.

2. *Disclosure should be required if any flooding or damage from water accumulation has occurred to the building, including the nature and frequency of the damage during (at least) the past five years.* Many states already require disclosure to buyers of structural damage from water. Sellers often disclose past or present leaks or water damage, including evidence of water in basements or crawl spaces, leaks, known plumbing problems, and damage from flooding. Prior flooding or water damage should trigger landlord disclosure to renters as well. A disclosure period inclusive of the past five years is consistent with some existing state policies: **Of the current state laws that require flood disclosure to renters,** Texas and Oklahoma require disclosure if the rental has flooded at any point in the past five years; whereas Georgia requires it only if the property flooded three times in the past five years.

3. *Disclosure should be required if flood insurance is currently required on the property, or if claims were filed with a flood insurance carrier or FEMA.* If a property is required to carry flood insurance, the landlord

should inform the tenant. The tenant should also be made aware of any prior insurance claims for loss covered under the NFIP or private insurance with respect to the property and flooding. Additionally, if the landlord has chosen to obtain flood insurance on a property, the landlord should disclose whether the renter's personal property is covered.

If a flood insurance claim was filed—which we can presume to be indicative of flood damage—renters should be alerted of the claim, as well as the amount of damage cited in the claim.

Of the current state laws that require flood disclosure to renters:

- California, New Jersey, Oregon, and Texas use location in a 100-year floodplain as the basis for disclosure; and
- Texas is the only state that lists both a property's location in a 100-year floodplain or previous flood history as the potential basis for disclosure requirements; moreover,
- California is the only state that requires disclosure if the property owner currently carries flood insurance.

4. Qualifying properties: disclosure should apply to all rental properties, regardless of building size or type.

The disclosure requirement should apply to all rental properties.

While some residential property requirements, such as the federal Fair Housing Act, exclude smaller unit buildings, flood risk disclosure should be required for all rental properties regardless of the number of units.

An example of a comprehensive requirement that equally protects tenants across building types can be found in the federal lead-based paint disclosure rule (Section 1018 of

Title X), which requires the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978. Most private housing (regardless of number of units), public housing, federally-owned housing, and housing receiving federal assistance are affected by this rule.

A disclosure requirement that includes a broader range of residential property types would more adequately cover single-family rentals and manufactured rentals (e.g., mobile homes and trailers), which are the most likely to be exposed to natural hazards. 6.6 million single-family rentals and 2.6 million units in two-to-four-unit multifamily buildings are at risk—comprising a larger share than large multifamily buildings with twenty or more units. Single-family homes represent the largest share of units located in high-risk areas, and manufactured housing units are the most likely of any structure type to be at risk, due to both location in higher risk areas and the increased likelihood of structural inadequacies.

Of the current state laws that require flood disclosure to renters, New Jersey exempts one and two-unit residential buildings or owner-occupied three-family dwellings from disclosure, shielding landlords of these properties from requirements that may be deemed onerous or create burdens for smaller “mom-and-pop” landlords that may suffer greater challenges meeting the requirements. This exemption, however, leaves many renters in vulnerable properties without flood risk information. The flood risk disclosure laws in the remainder of the states apply to all rental units.

5. Remedies for tenants and penalties for landlords: Tenants should have access to enforceable civil actions against landlords that violate the flood risk disclosure law. But civil litigation, while a valid remedial action, may not wholly address the hurdles renters face in taking landlords to court for lease violations. Tenants should have access to a more immediate remedy.

If there is a failure to disclose, tenants should have access to remedies and enforcement mechanisms against the landlord, including all of the following:

1. *The tenant should be able to terminate the lease following a flooding event by giving a notice of written termination.* At minimum, the tenant should be able to terminate the lease agreement following a flooding event. This frees the tenant from prolonged financial burden related to a flooded unit that may no longer be habitable. **Of the current state laws that require flood disclosure to renters**, only Texas allows tenants to break the lease with written notice.
2. *The landlord should be held responsible for any loss or damages to the tenant's personal property as a result of flooding.* **Of the current state laws that require flood disclosure to renters**, Oklahoma and Georgia laws hold landlords that fail to disclose liable in tort to tenants for damages to the personal property. Oregon allows tenants to recover from the landlord the lesser of the actual damages for the uninsured loss from flooding or two months' rent.
3. *Landlords who fraudulently, purposefully, or willfully fail to disclose should face associated penalties.*

If a landlord is aware of the property's flood risk and fails to disclose, penalties (e.g., punitive damages; fines) for the failure to disclose should be assessed in addition to the compensatory damages to the tenant. These actions, however, may necessarily require proof that the landlord deliberately concealed the unit's flood risk. Fines should be carefully considered as penal deterrents against landlords, because they may be easily absorbed by more well-resourced landlords and, in turn, disproportionately burden smaller and lower-income landlords. For example, New York State imposes a \$500 fee for home sellers who do not disclose flood risk to prospective buyers, but many sellers simply pay to circumvent the disclosure requirements.

In the absence of a flooding event, landlords who fail to disclose should still be held responsible. Reasonable remedies should be crafted to incentivize landlords to comply with the law and discourage breaches of the duty to disclose—for example, the equivalent of one month's rent paid or returned to the tenant.

Of the current state laws that require flood disclosure to renters, all but New Jersey and Texas allow for tenants to seek damages from the landlord. New Jersey law requires violating landlords to pay a \$100 fine and Texas, as mentioned above, allows for tenants to terminate the rental agreement.

6. Informational resources for prospective and current tenants about the risk of floods from FEMA and states: disclosure laws should require landlords to provide tenants with pertinent information about flood-related resources available to them.

FEMA should provide risk information that is accessible and reliable.

A disclosure policy mechanism serves no purpose if the data it distributes isn't accessible or reliable. Flood risk disclosure requirements are based on flood risk data. Policymakers must ensure that accurate and up-to-date flood risk information is readily available to communities, in a format that is digestible and accessible, and set disclosure requirements in line with these risk assessment resources.

FEMA is responsible for mapping the nation's flood areas, but many FEMA flood maps have been called out by researchers as being inaccurate or out of date. Furthermore, renters are unlikely to look at FEMA data or relevant state or city flood maps on their own, and should not be expected to do so. Flood disclosure allows all renters, irrespective of their climate knowledge, to understand flood risks.

FEMA should provide accurate and current mapping and risk awareness resources that are readily available, accessible, and reliable for public use.

Disclosure notices should direct renters and tenants to government-maintained or endorsed websites that provide accurate information of a property's flood risk and access to relevant resources.

Flood disclosure notices should include information about how renters can access risk information on their own by listing websites that provide flood risk information. In

addition to FEMA's federal flood map portal, state and local government-maintained websites provide comprehensive overviews of flood hazards and risk and are used to help residents and property and business owners to understand their risks and make informed decisions. California maintains the state-level MyHazards website and, at the municipal level, New York City has created the Flood Hazard Mapper, a product of the New York City Department of City Planning.

Mapping databases from private organizations such as Flood Factor, from the First Street Foundation, are also useful resources to help understand present and future flood risks related to extreme rainfall events, sea level rise, and other conditions.

Disclosure notices should alert renters of government and other financial assistance, such as flood insurance and emergency assistance programs.

Disclosure notices should provide tenants with reliable information that can be used to help them prepare for and respond to a flooding emergency, including guidance to explore renter flood insurance policies and identification of existing state and federal programs that help residents in the wake of such events. Many renters may not be aware that they are eligible to purchase policies through the National Flood Insurance Program.

Of the current state laws that require flood disclosure to renters, Texas's disclosure law requires the inclusion of language noting that most tenant insurance policies do not cover flood damage, and that encourages tenants to seek insurance coverage that would cover losses covered by a flood. California similarly recommends that the tenant consider purchasing renter's insurance and flood insurance to insure their possessions from loss due to fire, flood, or other risk of loss.

In addition to information about acquiring flood insurance, disclosure laws can go a step further and require the inclusion of language that identifies the federal and state agencies that respond to flood events and provide assistance to individuals and families. Disclosure notices can and should also point to

flood safety plans that may be in existence for the renter's building, similar to New York's landlord requirement related to sprinkler systems and fire safety plans.

Above all, disclosure laws should require information that is useful, accessible, and reliable; the disclosure policy mechanism doesn't work otherwise. It should be noted that it also relies on accurate risk projections and regular updating of FEMA maps, which are currently far from guaranteed: 32 percent of state resilience plans currently rely on historical climate and disaster data without incorporating projections for the future. The impetus behind flood risk disclosure notices is to provide renters/tenants (and landlords) with more information about a rental unit's risk, but policymakers must first ensure that accurate risk information is readily available to communities and then set disclosure requirements in line with these risk assessment resources.

VI. A Comparison of Existing State-Level Flood Risk Disclosure Laws That Protect Renters

States have varying degrees of flood risk disclosure requirements, especially among those laws targeting homebuyers and sellers. The NRDC Scorecard measures how these state requirements for homebuyers stack up against each other, using a ranking system ranging from "inadequate" to "best." Since most states have no regulatory or statutory provision in place that requires landlords to inform potential tenants of flood risk or previous flood damage to a property, there is only a limited set to compare, and among that set, there is significant variation. However, each of these states with flood risk disclosure laws targeting renters is still ahead of the remaining forty-three states.

A general grouping of states allows us to investigate the strength of the disclosure requirements, using the policy recommendations above as a guide.

According to our rubric, stronger, more comprehensive state laws are in place in **Texas, California, and Oregon**, with Texas being the first state to require landlords to disclose

both the flood history of a rental unit and whether it's in an area that has a significant risk of flooding.

Less comprehensive, or moderate, disclosure requirements are in place in **Oklahoma and Indiana**. Oklahoma requires disclosure only if a rental unit has a previous flood history and if the fact is known to the landlord; and an Indiana landlord's duty to disclose is based solely on the unit's elevation.

Relatively weak disclosure requirements are found in **Georgia and New Jersey**. In Georgia, disclosure duties are triggered only after multiple flooding events (three in a five-year period). New Jersey's disclosure requirement lacks a strong enforcement mechanism: a landlord who violates any provisions of the Truth In Renting Act (the source of the disclosure requirement) is liable for a penalty of not more than \$100.00 per offense (N.J.S.A. 46:8-47).

While none of these laws are perfect, pieces of them can be used as models for what states should seek to accomplish through comprehensive flood risk disclosure mandates: providing renters with useful information about their flood risk and valid recourse that avoids loopholes for landlords.

VII. Conclusion

On an otherwise beautiful day in Miami, recurring sunny day flooding is more a nuisance than a life-changing event. A Miami Beach resident interviewed for this piece mentioned that she "couldn't leave [her] neighborhood, but chose an apartment on a higher floor" because she knew about the regular occurrence of such flooding. Would she have made a different choice had she not known about the flooding? This type of seemingly small decision can completely change the trajectory of someone's life: Do you take the fourth floor walk-up in Brooklyn or the basement apartment in Queens? Would flood risk information change that?

Not all flooding happens on "sunny days" and, if the increasing frequency and severity of billion-dollar flooding disasters is evidence, we need to collectively get better at preparing for and mitigating the fallout from the biggest potential floods. State legislative responses in the wake of major floods in

Texas, Oklahoma, and elsewhere have illuminated the path forward on this: requiring flood risk information for the many renters that call those places home. Of course, risk disclosure alone will not alleviate the climate crisis or solve our growing flooding problems, but, at the very least, it will provide renters with a basis to make individual informed decisions and, in aggregate, may change the way that we live with climate risk. That may look like renting on a higher floor, or heeding evacuation and other emergency announcements; it may extend to purchasing a renters policy through the National Flood Insurance Program; or it might simply be avoiding a house that we know is haunted.

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Notes

1. The information on existing state laws and legal precedent is based on the author's review of the relevant states' laws in early 2022.