

Policy Recommendations:

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

MAY 26, 2022 – DAN MATHIS

Flooding is damaging an increasing number of homes and families every year. It is the [most common](#) and costliest type of disaster in the United States.

Renters deserve a right to know their home's flood risk. Nearly [17.6 million rental units](#) are located in areas exposed to environmental hazards such as flooding, wildfires, and hurricanes.

Flood risk disclosure laws bridge the disconnect between renters and landlords, by requiring landlords to make tenants aware of flood hazards and provide them with information that they need to live safely and make informed decisions. As more states begin to consider how best to protect renters and homeowners from floods, it's critical that they develop laws 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.

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.

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

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.

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