



## Floodplain Manager's Notebook

**By Leigh Chapman, CFM, and Rebecca Quinn, CFM**

For this month's column I invited my friend and colleague Leigh Chapman to share her observations about disclosure of flood hazards. Leigh and I have worked together since...well, since a long time ago when I was the Maryland state coordinator. I hired her out of college and helped her "catch the bug" about floodplain management. Take it away, Leigh!



As floodplain managers, we wear so many hats. One such chapeau—that I have rarely had to don, but sympathize with those who do—involves enforcement of all the provisions that our elected officials put into floodplain ordinances. In fact, I think enforcement might just be the hardest part of administering regulations! It certainly helps to have ordinance requirements that are well thought out, written in clear, concise and enforceable language, and backed up by statutory authority and legislative findings that express the relevant need and intent.

Having worked with Rebecca for a really long time, she and I tend to think alike on a few things. We recently talked about a disclosure provision we've seen in a couple of local ordinances and practically hollered at each other on the phone: "How in the world is that even enforced?"

What had us asking the question? These local ordinances require contracts for sales of properties with buildings in the SFHA to contain very specific disclosure language about flood hazards and past flooding history. Full disclosure of my own here: neither of us are attorneys. But we've reviewed and helped write, amend and interpret a LOT of ordinances over the years.

The scope of ordinances covers any development that takes place in a community's SFHA. And yes, the NFIP definition of "development" is very broad. But we were hard pressed to see how that definition could be interpreted to include a real estate transaction as a "man-made change to improved or unimproved real estate."

No one selling property is required to get a permit, so what action on the part of the property owner (past or future) could trigger compliance with a disclosure requirement adopted in a floodplain management ordinance? How would the floodplain manager ever know if the requirement was in the contract? How would real estate agents know the requirement exists? How could implementation be enforced?

Please don't get me wrong: I believe effective disclosure provisions are valuable for buyers, especially in expansive, low-lying flood prone areas and heavily developed floodplains, where the source of flooding is nowhere to be seen. I'm a huge proponent of any measure that informs buyers up front what they're getting into. But inserting unenforceable disclosure requirements in a land use regulation could be misleading or confusing. I, for one, dislike unenforceable provisions because they appear as excessive regulation and, dare I say, overreach—that's rarely a good thing!

I decided to look into this some more by first checking the [Community Rating System Coordinator's Manual](#) to see what sorts of disclosure requirements are creditable in that program. The activity "disclosure of the flood hazard" (DFH) looked promising, but it provides credit when real estate agents inform potential purchasers whether a property is in the SFHA. The manual states "a statutory or other legal mandate that real estate agents disclose the hazard is not needed to obtain credit for DFH."

Then I looked into "other disclosure requirements" (ODR). As of October 2018, ISO reports that 1,185 out of 1,502 CRS communities receive ODR credit. As the millennials say, "Mind blown!" That's 79% of all CRS communities getting an average of 12 out of the maximum 25 points available.

I decided to look at the ODR examples of creditable activities and who is supposed to take the described action (see text box below). Notably, how does a community impose requirements on the identified (or implied) person or entity that must take the action? They include sellers, real estate agents, landlords, surveyors, title companies and attorneys.

Not to completely punt the question, but in my limited experience, the authority to regulate most of those entities and actions typically rests at the state level and many states do not permit communities to impose additional requirements. The exception? I think most communities have the authority to specify what is shown on subdivision plats. And they may be able to require subdivision developers to post flood hazard warning signs and specify the requirement conveys to neighborhood associations.

But of the nine examples listed, which are the ones most likely to actually make a difference in terms of educating the public? Numbers 4, 5, 6 and 8 deal with plats, lot surveys, deeds and titles—but who actually reads those details when shopping for a home? Numbers 1, 2 and 9 are about informing buyers and I think hold the most promise. [FYI, I live in Tidewater, Virginia, "ground zero" for sea level rise and monthly flooding by high-high tides, and I know more and more homebuyers are paying attention to flood risk. Indeed, I'm starting to see sales ads using come-ons like no flood insurance required, never flooded or elevated above flood level.]

According to a 2014 memo from the [Virginia Coastal Policy Clinic at the William & Mary Law School](#), some states have passed statutes that supersede the common-law "buyer beware" doctrine and burden the seller with disclosure of flood hazard information. At the time, the following states were identified: California, Illinois, Iowa, New York, Maryland, Delaware and Florida. Since then, we've learned Texas requires disclosure as to whether property is in the 100-year floodplain, and just the other day the [ASFPM Facebook page](#) shared an article that [Texas is considering an even more detailed flood disclosure requirement in the aftermath of Hurricane Harvey](#). And this year, the Virginia General Assembly is considering a disclosure bill. Rebecca wrote about Maryland's flood disclosure notice in the [January 2018 Insider \(p. 10\)](#).

I'll end by using one of Rebecca's sign-offs—and invite you to share your thoughts about how communities in your neck of the woods implement or enforce disclosure requirements to broaden public awareness of flood hazards. I look forward to hearing from you!

**Other Disclosure Requirements (ODR) Examples** [identifying who, stated or implied, is supposed to take action]:

- (1) Requiring all sellers to disclose the flood hazard in those cases where a real estate agent is not involved.
- (2) Requiring real estate agents and sellers to advise potential purchasers whether “to the best of their knowledge and belief” the property has ever been flooded.
- (3) Requiring landlords to advise potential renters about the flood hazard.
- (4) Requiring final recorded subdivision plats [prepared by surveyors] to display the flood hazard area.
- (5) Requiring that the flood hazard area be shown on individual lot surveys prepared [by surveyors] for deed records, property transactions, or mortgages.
- (6) Requiring titles or deed records [prepared by title companies/attorneys] to show zoning or building permit conditions related to floodplain or drainage regulations, such as a notice about the substantial improvement or substantial damage requirement for floodplain properties.
- (7) Requiring signs posted in subdivisions [by communities or neighborhood associations] to advise visitors of the flood hazard.
- (8) Requiring that deeds [prepared by title companies/attorneys] show the lot or building elevation in relation to sea level and the base or historical flood elevation.
- (9) Requiring all sellers to disclose whether the property is subject to a special flood-related hazard.

*Respond to Leigh's invitation by contacting her at [leigh.morgan2@verizon.net](mailto:leigh.morgan2@verizon.net). Submit your own items or suggestions for future topics to column editor Rebecca Quinn, CFM, at [rcquinn@earthlink.net](mailto:rcquinn@earthlink.net). Comments welcomed! Explore back issues of the [Floodplain Manager's Notebook](#).*

## Grant Opportunities...

Just a reminder to bookmark the Florida Climate Institute's website for a comprehensive list of [funding opportunities](#). It's a fabulous resource.