July, 21, 2023

Time for a Rain Check: New Jersey's Stricter Flood Notification Obligations

On July 3, New Jersey Gov. Phil Murphy signed into law Bill S3110/A4783 to amend the Truth-in-Renting Act, N.J.S.A. 46:8 43 through 51. The new law, P.L.2023, c.93, expands property owners' flood notification obligations when renting or selling their properties and ensures that prospective tenants and buyers are provided with critical information about flood risks associated with properties. Under this law, sellers of real property and landlords must disclose knowledge of a property's history of flooding, flood risk and location in a Federal Emergency Management Agency Special Flood Hazard Area or Moderate Risk Flood Area (Flood Hazard Area). Additionally, the law requires landlords to notify tenants of the availability of insurance for renters through the National Flood Insurance program. The law applies to residential and commercial properties (including lease renewals) except for short-term leases that are less than one month in term or guesthouse leases serving transient or seasonal guests.

Notably, the bill received a conditional veto from the governor on May 8, following its approval by the Senate on December 19, 2022, and the General Assembly on February 27. In his conditional veto letter, Murphy voiced his strong support for the objectives of this legislation and proposed more stringent consequences for landlords who fail to comply with the bill.

Most significantly, under his recommendation, a tenant whose landlord fails to provide necessary notifications after the effective date of the bill can terminate the lease without penalty at any time after the tenant becomes aware that the property is located in a Flood Hazard Area; the Department of Community Affairs will create a user-friendly website to identify whether a property is located in a Flood Hazard Area. This contrasts with the original bill, which only allowed tenants who suffered damage to their personal property amounting to five times their monthly rent to terminate a lease based on a landlord's failure to make required disclosures. The proposed changes provide greater protection for the tenant, as the bill allows preventive action to be taken as soon as the tenant becomes aware of the risk rather than waiting for substantial damage to occur. If flooding occurs that does result in damage to a tenant's personal property or that affects the habitability of leased premises or a tenant's access to leased premises and the landlord has failed to make the necessary disclosures under the bill, the bill allows tenants to pursue all remedies under the law to recover damages.

In addition, the governor also recommended changes to the bill aimed at improving clarity and eliminating unnecessary duplications. These include amending the bill's requirement of providing disclosure in a separate rider to apply only to residential leases, because commercial leases typically include all notifications within the lease agreement itself; modifying the wording requirement in residential leases regarding federally backed flood insurance, stating such insurance "may" be available to renters instead of affirmatively declaring its availability under the original bill; and removing a certain question about the presence of wetlands on a property from the list of questions required in the disclosure statement, because a similar question had already been included in the property condition disclosure statement.

The bill was revised in accordance with the governor's recommendation and passed by the Senate on June 20, and by the General Assembly on June 30. For more information about the original bill, please refer to the Day Pitney Legislation Alert "NJ Senate Passes Bill Expanding Flood Notice Obligations for Landlords and Sellers."

If you have any questions concerning this legislation or land use matters in general, please contact the authors of this alert or any of the Day Pitney real estate team.

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