Condominium Associations Beware of the New NFIP Legislation and FEMA Remapping Programs!

by Dan Freudenthal

For more than ten years, I have served as the voice of commercial and residential property owners across the nation with respect to National Flood Insurance Program (NFIP) legislation and FEMA's flood remapping programs. Whether working with Congress, FEMA, or flood insurance carriers to get them to understand the NFIP-related needs and concerns of commercial and residential property owners, we have worked hard to protect property owners from insurance industry-driven or government-driven decisions and mandates that either make no sense or unnecessarily increase costs for all of us.

Unfortunately, some very powerful members of Congress want the NFIP to either become profitable or go away. Everyone knows that the NFIP cannot go away because the private insurance market will not step in to provide flood insurance at similar rates nor offer flood insurance to owners of high risk homes and buildings. Therefore, in July of 2012, Congress passed new NFIP legislation and President Obama signed it into law, which is designed to make the NFIP profitable at the expense of all of us. This article provides a summary of the key mandates included in the legislation, which may detrimentally affect your condominium association's bottom line and property values.

A large percentage of all NFIP policies take advantage of FEMA's "grandfathering" rules, which allow condominium associations to pay flood insurance rates that are substantially lower than the rates the associations would pay if their policies were rated with the current FEMA flood map. One form of grandfathering applies to buildings constructed prior to December 31, 1974, which allows associations to pay "pre-FIRM" flood insurance rates. This means that FEMA charges a subsidized rate for these old buildings that were built prior to the creation of the NFIP and its floodplain construction standards, so these associations are safeguarded from being penalized for their buildings not being built to NFIP flood protection standards.

One key mandate in the new NFIP legislation is the elimination of pre-FIRM rates for all building classes, except for single-family homes that are the primary residence of the policyholder. Even though many condominium units are the primary residence of the unit owner, the NFIP will be eliminating pre-FIRM rates for condominium associations in 2013. This means that all of these associations will experience significant flood insurance premium increases for many years to come because FEMA will start increasing the annual flood premium by about 20 percent each year until the associations' annual premium reaches the full actuarial premium based on the zone shown on the current FEMA flood map. Be prepared to increase the flood insurance expense line item in your budget for many years to come, since most of these pre-FIRM buildings are the highest risk buildings insured through the NFIP that will justify some of the highest premiums out of all condominium buildings.

Another form of grandfathering is called "grandfathering with continuous coverage." This form of grandfathering applies to buildings that were built after December 31, 1974. These buildings were constructed to the NFIP floodplain building standard that existed at the time of construction based on the version of the FEMA flood map in effect at

that time. For example, perhaps your condominium building was constructed at a time when the flood zone classification was AE based on the first version of the FEMA flood map for your community, but now we are up to the third version of the FEMA flood map, which shows your building to be in a VE zone. Both the AE and VE zones are high-risk flood zone classifications, but the VE zone rates are much higher than AE zone rates. If the association bought a policy at the AE zone rate, the association is able to maintain that rate as long as they have no lapse in coverage, even though the current FEMA flood map would have the association paying a much higher rate. This allows associations to continue paying the rate that corresponds to floodplain construction standards in effect at the time of construction, rather than penalizing the associations for being built at a lower standard than the current floodplain construction standard. The new legislation eliminates this form of grandfathering and instead mandates that as FEMA issues a new map for a community, associations will lose their right to maintain the grandfathered rate and instead will be required to pay a higher rate based on the zone shown on the new FEMA flood map. After the new FEMA flood map takes effect, as an association's policy renews, the premium will be increased by about 20 percent per year until it reaches the full actuarial rate associated with the zone on the new flood map.

A third form of grandfathering involves allowing an association to use the FEMA flood map that was in effect at the time of construction regardless of when the association purchases a flood policy. For example, let us assume a condominium building was constructed 20 years ago in an X zone, which is a low risk flood zone classification where most associations would not purchase NFIP flood insurance. Then, five years ago, FEMA issued a new flood map making the area an AE zone, which is a high risk flood zone classification where an association would purchase NFIP insurance to satisfy flood insurance requirements imposed by residential mortgage companies on their unit owners. In these situations, the grandfathering rule enabled associations to pay X zone rates instead of AE zone rates, so they were not penalized for being built to a lower standard. The new legislation eliminates this form of grandfathering and instead mandates that if a new FEMA flood map places a building in the high-risk flood zone, which includes any zone beginning with the letters A or V, the association must pay the new high risk zone rates.

Be wary of hiring a firm with only one type of expertise, like a surveyor firm, or engineering firm, or insurance agency because those single-discipline organizations most likely will not have professionals representing all of the different disciplines required to effectively deliver the best solution.

Presently, FEMA has two different national remapping programs underway. The first program has been underway since 2005, and the second program began in 2012. The goal of the first program is to change the nation's inventory of flood maps from paper maps to digital maps to allow for efficient updating, distribution, and use of flood maps. This program involves issuing new flood maps on a county-by-county basis—with some counties including technical updates during the process while other counties simply digitizing the old maps and old technical data. The goal of the second program is to perform significant technical updates to the new digital flood maps on a watershed-by-watershed basis. The second program will focus on updating maps to reflect changes to the floodplain that result from such things as development, levee decertification, improvement of flood control systems, and to reflect damage caused by very significant storms that set a new 100-year storm precedent that have occurred since the last flood map was updated for an area. These two remapping programs are causing havoc for mortgage companies, insurance agents, and property owners.

To sum it up, the new legislation combined with the two flood remapping programs will substantially increase flood premiums or create a new flood insurance expense for an enormous number of condominium associations over the next five years. At this point, there is nothing to be done to prevent the impact of the new legislation. However, there are steps that we can take to protect ourselves as much as possible from future premium increases. For example, coastal condominiums, who will soon be forced to pay V zone flood insurance premiums, which can be 10 to 30 times higher than B, C, X, or A zone premiums, can retain specialized coastal engineering firms to perform complicated flood studies to determine if the zones for your parcel of land should be changed to enable you to maintain your current, relatively low B, C, X, or A zone premiums. There are similar opportunities for non-coastal condominiums.

Dealing with FEMA and the NFIP is a highly specialized area that requires a combination of insurance, engineering, surveying, construction, floodplain management, and regulatory expertise. As your association looks for a third party vendor to help you with the issues described in this article, be sure that vendor has a multi-discipline team whose collective expertise can help deliver appropriate solutions. Be wary of hiring a firm with only one type of expertise, like a surveyor firm, or engineering firm, or insurance agency because those single-discipline organizations most likely will not have professionals representing all of the different disciplines required to effectively deliver the best solution.

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