Disputing Flood Zones

What do you do if a lender and an agent have different determinations of the flood risk for a building?

The Flood Disaster Protection Act of 1973 (1973 Act) required the mandatory purchase of flood insurance for properties at high risk of being flooded. The National Flood Insurance Reform Act of 1994 (1994 Act) strengthened that requirement, imposing tighter requirements on federally regulated lenders with loans on properties located in Special Flood Hazard Areas (SFHAs). Thus, a property owner may be required by his or her lender to obtain flood insurance if the lender finds that the building is located in an SFHA. What is the agent's role in determining the risk? What if the flood insurance agent believes the property is not in an SFHA? How do you, as the agent, assist the customer? Let us see if we can offer information to make the situation understandable, and offer some solutions.

Documenting the Flood Zone

As an agent, you must document the flood zone on the flood insurance application to assist in the rating of the flood risk for any policy you sell. If you are an agent, you may make the flood zone determination through one of several processes. Your flood insurance Write Your Own (WYO) Company—or its flood insurance vender(s)—may supply you with rating software that uses the property address (and other information about the building) to determine the risk zone and the insurance rating for that property. You may hire one of the many available flood zone determination (FZD) companies to fill out a Standard Flood Hazard Determination Form (SFHDF) to do the determination for you. You may use an Elevation Certificate (EC) for Flood Insurance. You may receive zone determinations from local community officials, or you might consult the actual Flood Insurance Rate Map (FIRM) published by FEMA, and made available online in the form a FIRMette through the FEMA Map Store at the link below.

The lender is also required to determine the flood zone. Federal law says that it is the responsibility of federally regulated private lenders to ensure that any building used to secure a loan in the SFHA is protected by flood insurance. The lender must make certain that the property is covered by adequate flood insurance for the term of the loan. Most lenders make this determination by using FZD companies to fill out an SFHDF. If the lender determines that the building is in a high flood risk area, they notify the borrower that he or she must obtain sufficient insurance for that building. While FEMA is responsible for administering the National Flood Insurance Program (NFIP), it is not a regulatory entity for the supervision of mortgage lending institutions. That means that FEMA has no regulatory authority over lending institutions and does not enforce the mandatory purchase provisions of the law—other Federal agencies are responsible for regulating lenders.

Within the 45-day period after the property owner receives notice from their lender telling them they must obtain flood insurance, the owner will have to meet that lender requirement, or the lender will have to place coverage for them. Lender-placed coverage can be more expensive than the NFIP coverage you provide.

Who Is Responsible for Determining the Risk?

FEMA maintains and works with states and communities to update the nation's FIRMs, which are used to determine whether a property is at risk of flooding. The community adopts those maps as part of their local building requirements. However, specific addresses are not printed on the FIRM, and the scale of a FIRM does not lend itself to the display of individual buildings. As noted above, FEMA does not require that anyone purchase flood insurance. The legal requirement to obtain flood insurance was imposed on federally backed or regulated lenders by 1973 and 1994 Acts. The law requires the lender to determine whether a building used to secure a loan is located within an SFHA on the FIRMs maintained by FEMA. Federal regulatory agencies ensure that lenders comply with the law. Lenders must meet their regulator's requirement to demonstrate that their determinations are valid, or face penalties. Most lenders outsource flood zone determinations to an FZD provider. Yet, it is the lender that will ultimately require flood insurance based on the lender's determination that the building is within an SFHA. If flood insurance is required by a property owner's lender, FEMA makes the flood insurance available through the administration of the NFIP.

If the lender's FZD company has a different finding than the insurance agent, an agent may need to assist their client when they try to negotiate with the lender about that difference. A regulatory entity may deem a flood zone discrepancy as a violation of the Act and impose a fine on the lender. What can an agent do to assist his or her client in this situation, while still making sure the homeowner meets the lender's requirement for coverage?

Prior to resolution, the more hazardous zone must be used. When presented with two zones for rating, the NFIP requires that all Write Your Own (WYO) Companies or the NFIP Direct and their agents use the more hazardous zone, unless and until the resolution is resolved by FEMA through a Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), or Letter of Determination Review (LODR).

What if there is a dispute between an agent and a lender regarding the current zone? Some lenders will be willing to review an agent's documentation to reevaluate their own zone determination. Most lenders will not accept any evidence that their SFHDF is incorrect other than a LOMA, LOMR, or LODR issued by FEMA. In these instances, the rules of the NFIP require that the agent and insurer use the more hazardous zone.

The lender is required to make sure the building is covered for the insurable value of that building. So, keep in mind that if the bank determines that a property is located inside the SFHA, triggering their requirement for flood insurance, they need to make sure the property owner has a policy for the proper insurable value to be in compliance with the requirements of the Flood Disaster Protection Act of 1973, as amended by the National Flood Insurance Reform Act of 1994. The bank should document the zone discrepancy in their file and forward a copy of the determination to the insurance company for resolution.

What Can Be Done When a Lender and an Insurance Agent Have Differing Flood Zone Documentation?

A lender has determined that a building is located in an SFHA, and the rules of the NFIP require the use of the more hazardous zone determination. Yet, you know that the lender's determination is incorrect. How can you help your customer? First, you need to try to find out why the lender's determination differs from yours. Below are some possible reasons for a difference in the zone determinations, and ways to resolve the differences.

Has the lender properly plotted the building on the FIRM? Two different entities may read a map differently; there may be a mistake or simply a difference plotting where the actual building lies on the lot, or in relation to the map line between the SFHA and the non-SFHA. Your customer, the homeowner, needs to be in discussion with his or her lender about how their determination was made. The homeowner needs to let the lender know that he or she has received a different determination from you. Your customer can ask the lender to let their determination company know of this and request that they obtain clarification from that company. Perhaps your customer has an EC, a plat survey, a building permit, or a letter from a community official that would prompt the lender to reevaluate their determination.

If no agreement can be reached, and it is early enough in the loan cycle, the property owner may suggest to the lender that a request be made to FEMA to make a final determination through a process called a Letter of Determination Review (LODR). A LODR request can be made to FEMA, jointly by the lender and borrower, within 45 days of notice of SFHA by the lender. The LODR review process enables FEMA to verify whether the building's location was correctly identified on the applicable FIRM. A successful LODR releases the lender from the obligation to require the purchase of flood insurance and identifies the building in a low-to-moderate flood risk area.

If it is after the 45-day period, the property owner and the lender may jointly request a FEMA Out-As-Shown LOMA, which applies when the building is not located in the actual position the lender believe it is located in. This and other FEMA map change letters are processed through the FEMA Map Service Center. Contact information is listed at the end of this article.

Are you looking at the current FIRM? Is it that a FIRM has been updated, and one of the determinations is from an older, out-of-date map? The NFIP Map Service Center offers various map products, including current and historic maps; with those tools you can look at a property address and find which map is correct at the website listed below.

Is the property a candidate for a FEMA Letter of Map Change (LOMC)? Perhaps a property owner provides the lender with documentation, such as an Elevation Certificate or a letter from a community official, to challenge the flood zone designation on the basis that the property should not be mapped in the SFHA since it is well above FEMA's established BFE. The lender will typically not accept such documentation as proof that the property is not in the SFHA, since the FIRM may actually reflect that the property is part of the SFHA. However, FEMA recognizes that due to limitations in scale, the FIRM cannot reflect every rise in terrain. Thus, the LOMC processes provide official determinations from FEMA that a specific building is not to be included in the SFHA.

Lenders and their regulators often accept an LOMC issued by FEMA as proof that the mandatory purchase requirements of the law do not apply, though the lender retains the right to require flood insurance in such instances as part of their own risk management strategy. During loan origination, the lender is required to make sure that if there is an LOMC for that property address, it is noted on their SFHDF. Often, but not always, if there is an LOMC, a lender will not require coverage, but the FEMA letter must still be coordinated with the lender. There are two types of LOMCs available:

- The FEMA Letter of Map Amendment (LOMA), which applies when a borrower can provide an Elevation Certificate to show that the building's natural lowest adjacent grade in immediate contact with the building is at or above the BFE. The LOMA suits a situation where the building is within the boundaries of an SFHA, but is on natural high ground.

- The Letter of Map Revision based on Fill (LOMR-F) applies when the community has permitted the use of fill to raise the ground beneath the building and requires the community's assistance to apply for a LOMR-F. A successful LOMR-F releases the lender from the obligation to require the purchase of flood insurance and identifies the building in a low-to-moderate flood risk area.

Some lenders may not accept an LOMC, being unwilling to remove the flood insurance requirement, so we recommend that the property owner make sure the lender will accept an LOMC before going through this process.

The Risk of Flooding Is Reduced, but Not Removed.

Remember, an LOMC does not remove the risk of flooding—it simply documents that the risk may be reduced due to map change, elevation, or location. So, if you assist your customer with this process, remember to make sure your customer knows the risk of flooding remains. The cost of coverage may be lower. Keep in mind that more than 20 percent of paid NFIP claims come from low-to-moderate-risk areas—the B, C, or X Zones.

Remember, if the lender disagrees with your finding, or is not willing to go through the LOMC process, the property owner will need to get the required insurance, and you can help him or her by providing a policy that meets the lender's requirements.

For further information:

Federal Register link to Interagency Questions and Answers Regarding Flood Insurance Loans in Areas Having Special Flood Hazards – http://www.gpo.gov/fdsys/pkg/FR-2009-07-21/pdf/E9-17129.pdf.

The *NFIP Flood Insurance Manual* – http://www.fema.gov/flood-insurance-manual.

The *Mandatory Purchase of Flood Insurance Guidelines* – http://www.fema.gov/library/viewRecord.do?id=2954.

The FEMA LOMC Page – http://www.fema.gov/national-flood-insurance-program-0/letter-map-change-lomc.

The Standard Flood Hazard Determination Form (SFHDF) – http://www.fema.gov/library/viewRecord.do?id=1394.

List of Flood Zone Determination Companies (FEMA does not endorse any private companies; we offer this information as a courtesy only) – http://www.fema.gov/national-flood-insurance-program/flood-zone-determination-companies.

Insurance Outreach Toolkit for Flood Map Updates – http://www.fema.gov/national-flood-insurance-program/insurance-outreach-toolkit-flood-map-updates.

The FEMA Map Service Center – https://msc.fema.gov/webapp/wcs/stores/servlet/FemaWelcomeView?storeId=10001&catalogId=10001&langId=-1.

- Property owners and others with questions about FIRMs and LOMAs can call a FEMA Mapping Specialist at (877) 336-2627 for information.

- Map Service Center Product Catalog (historic and current maps can be found here) – https://msc.fema.gov/webapp/wcs/stores/servlet/StoreCatalogDisplay?storeId=10001&catalogId=10001&langId=-1&userType=G.

- Letters of Map Change can be found here – https://msc.fema.gov/webapp/wcs/stores/servlet/CategoryDisplay?catalogId=10001&storeId=10001&categoryId=12006&lan

gId=-1&userType=G&type=5.