

The New Flood Rules



California Bankers Association
October 2017

Flood Insurance-What it's Supposed to Do

- When real estate is used as collateral for a loan, a flood determination must be completed
- If the real estate is in a flood zone, then the customer must be notified
- Flood insurance must be purchased
- The amount of flood insurance is the LESSOR of:
 - The loan amount
 - The value of the improvements
 - The maximum available

Vexation!

- When is a structure a structure?
- ***When, Exactly-*** is a customer supposed to be notified?
- How do you calculate the value of the improvements?
- What happens when the policy expires?
- What happens if the loan is modified, increased, renewed or extended?
- Why are there ALWAYS flood violations?

Biggert –Waters & The HFIAA

- Biggert-Waters reduced subsidies on insurance policies
- Increased costs associated with areas that have repeated floods
- Started a flood mapping project
- HFIAA- reduced the rate of premium increases
- Flood Insurance Advocate
- Reduced the effects of re-mapping
- Increased deductibles

New Rules - Detached Structures

- Detached structures NO LONGER require flood insurance!
- The purpose of the loan does not Matter-the collateral must be a “residence”
- Residence Defined:
- The term *residential property* means that if a structure is used as a residence, it must have flood insurance.
- A garage that has been converted into a living unit would fit this definition.

New Rules - Detached Structures

- The purpose of the loan does not Matter-the collateral must be a “residence”
- If you know that the structure is being used as a residence- then it is a residence
- This exemption does NOT APPLY to commercial structures
- Commercial AND Residence- must be more than 50 % residential
- YOU Decide

New Rules - Escrow

- *A regulated lending institution, or a servicer acting on behalf of a regulated lending institution, [is required] to escrow all premiums and fees for flood insurance required for loans secured by residential improved real estate or a mobile home unless the loan or the lending institution qualifies for one of the statutory exceptions*
- The rule applies for all consumer loans that are made, increased, renewed or extended starting in 2016, the fees for flood insurance must be included in escrow

New Rules – Escrow Exceptions

- The rule applies only to consumer purpose loans
- Loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided.
- Loans secured by residential improved real estate or a mobile home that is part of a condominium or cooperative,
- Loans that are secured by residential improved real estate or a mobile home that is used as collateral for a business purpose.
- Home equity lines of credit.
- Nonperforming loans.
- Loans with terms not longer than 12 months. For example, a construction loan that gets extended.

New Rules – If Escrow applies

- First, when setting up escrow payments for flood insurance, the timing of the flood insurance payments should match the taxes and hazard insurance
- Also, when the escrow rule applies and a loan is made, increased, renewed or extended, a notice of the escrow requirements should be sent as early on in the loan process as practicable.
- Finally, if the escrow rule applies to your bank, there is a requirement, that escrow should be offered to all borrowers for whom there is not an exception. Your bank would be required to notify flood insurance customers of the option to include payments in escrow. This notice would be required even for borrowers who had previously waived escrow.

New Rules - Forced Placed

- When a policy lapses, the customer is supposed to be notified and given a chance to renewed
- When does the policy lapse?
- The date of expiration or cancellation
- The 15 day gap still exists, but....
- You can charge the customer back to the first day of expiration
- You can force place on the FIRST day of expiration...but

New Rules - Other

- **You have a policy when**..... Sufficient documentation consists of an insurance policy declarations page that includes the existing flood insurance policy number and the identity of and contact information for the insurance company or its agent
- **RESPA is amended:** each home buying information booklet to include a statement that: (1) a mortgage lender may require a mortgagee to maintain flood insurance on all structures to protect the collateral securing the mortgage, and (2) a mortgagee that chooses not to maintain flood insurance is responsible for all flood losses relating to that structure.

New Rules - Other

- **Policy Effective Date:** A record that the borrower received the notice must be retained by the lender. If improved real property securing a **loan** is located in a SFHA and **flood insurance** is available, then the lender must require the borrower to obtain the proper amount of **flood insurance** before **closing** the **loan**
- **House Passes Bill to Assure Private Policies Satisfy Flood Insurance Requirement:** There is a move to allow private insurance to be accepted.....but.....

Watch Out!

- The escrow require can sneak up on you!
- The exemption for detached structures can still be a UDAAP or safety and soundness consideration.
- Detached structures with significant value
- Early forced placed may result in reimbursement
- The “Over-Insured” Conundrum

The Take Away

- No more “three sides and a roof”
- No longer have to wait to force place
- Must inform customers when RESPA applies
- Customers who buy excess insurance should be notified

Questions?

