

WAIVING THE MANDATORY FLOOD INSURANCE REQUIREMENT

Floodplain maps are compiled using the best information available at the time of their publication, consistent with agency resources. But all maps contain some errors and not every property or parcel was surveyed to obtain site-specific data. Therefore, some properties are inadvertently included in the Special Flood Hazard Area (SFHA) which should not be shown as being in the floodplain, and others which should be, are excluded. But since local communities legally adopt these maps as the basis for their floodplain regulations, and federal banking rules require the use of these maps until they are officially changed by this agency, lenders must rely solely on the currently effective published map until it is changed by FEMA.

Lenders may not accept a letter or survey from the community engineer, zoning officer, building inspector, a consulting engineer, land surveyor, Realtor, insurance agent, or anyone else stating the property is not in the floodplain in lieu of an official map change from FEMA as the basis of waiving the flood insurance requirement if the lender's current floodplain appraisal determines the improved real estate (the building) is in the SFHA. However, such a letter and/or survey can be part of the documentation sent to FEMA along with several other items as the basis for a Letter of Map Amendment (LOMA), physical map revision (a new map) or a redetermination by the lender or their appraiser may be accepted by the lender as the basis of waiving the flood insurance requirement if the current appraisal determines that the building securing the loan is in the SFHA.

In order to process the LOMA request, the following information is essential: 1) a signed and dated LOMA application; 2) a photocopy of the currently effective Flood Insurance Rate Map or Flood Hazard Boundary Map used by the lender to make the floodplain appraisal, with the location of the property shown; 3) a photocopy of the recorded Deed or Title, with property description, owner's name, book and liber page, and any stamp, legible; 4) a photocopy of a current Plat of Survey or other map showing the location of the structure relative to the lot lines and adjacent properties, prepared by a registered professional engineer or land surveyor. Any additional supporting information such as a final subdivision plat, final grading plan, record drawings, street map, etc. is useful but not required. Once all the information has been received by FEMA's LOMA review contractor (the application will be forwarded by the FEMA Regional Office), allow 60 to 90 days for processing.

Some Hints:

- Be sure the application is complete and keep copies of everything you send.
- If the lender demands flood insurance, buy it now, from your own insurance agent, or the lender will likely “force place” it on you at greater cost. If you are successful in obtaining the LOMA, give it to the lender and they will usually waive the flood insurance requirement by making a “redetermination” or simply writing you a letter. Give the lender’s letter or form to your insurance agent and ask for a cancellation of your policy. If there has been no claim against the policy, you will get one year’s premium and fees refunded in full.
- Record the LOMA letter on your title. That way, if you sell your property in the future and the same map is in effect and has not been republished, your buyer’s title search will discover the LOMA and flood insurance probably will not be required by their lender.
- Remember, unless and until the Flood Insurance Rate Map or Flood Hazard Boundary Maps (the only legal maps with which to make floodplain determinations) are officially changed by FEMA, the lender must rely on the currently effective published map. Lenders, appraisers or third-party flood map “determination companies” may charge a fee for their work; and that may be passed on to the borrower. If a third party firm is used, they must guarantee the accuracy of their work. Floodplain map determinations should only be made using two-dimensions (scaling off the map with a ruler), disregarding any contradicting topographic information. Any such topographic data will be utilized by FEMA in making the LOMA determination, however.
- Federal law and regulation only require the purchase of flood insurance if the insurable interest securing the loan is in the SFHA; that means the building ‘footprint’ itself, not the backyard, parkway, driveway, boat dock, etc. However, nothing says water stops when it gets to a line on a map, so the lender may, on its own, require flood insurance if any part of the property is in the SFHA, or even if none of the property is in the SFHA, as long as the community in which the property is located participates in the National Flood Insurance Program. The amount of insurance required by law is the outstanding principal balance or the maximum amount available, whichever is less.