

Flood Insurance for Homeowners

The Texas Homeowners Policy affords no protection from flooding. Only homeowners who have National Flood Insurance may recover for damages caused by rising waters. This federally subsidized insurance is available under specific conditions in qualifying communities.

By Judon Fambrough

Most of Texas recorded unprecedented rainfall during 1991 and early 1992. Along the Trinity River in East Texas, some places have flooded five times in the past three years.

Three factors contribute to the problem. Obviously, the amount of rainfall is one. Urbanization is another. The amount of land and development subject to flooding is the third.

Estimates place 20 million acres of the state's 171 million in flood-prone areas—more than any other state. Eleven percent of this acreage lies in special flood hazard areas, better known as the 100-year floodplain. An area in a 100-year floodplain has a 1 percent chance of flooding each year and is subject to federal regulation in participating communities. The Federal Emergency Management Agency (FEMA) estimates that roughly 675,000 Texas households reside in the 100-year floodplain.

Property damage has been staggering. The December 1991 floods along the Colorado, Brazos and Trinity rivers cost an estimated \$100 million. Losses from the March 3, 1992, Houston downpour were \$50 million.

Only homeowners who have National Flood Insurance (NFI) may recover for flood damage. Owners of all flood-damaged homes may be eligible to claim certain flood-related deductions on income taxes.

The basic Texas Homeowners Policy covers only damages caused by wind-driven rain. Damages caused by rising waters are excluded. Coverage for flooding is limited to Texans who have NFI. FEMA, the agency administering the NFI program, estimates only 33 percent of the households at risk in Texas have NFI.

In 1968, Congress enacted the National Flood Insurance Program Act (NFIP), 42 U.S.C.A., Section 4001 *et seq.* The program was designed to provide federally subsidized flood insurance at a reasonable cost to homeowners. Congress determined that those who build in floodplains should bear the potential effects of that risk by purchasing flood insurance rather than relying on federal disaster relief. In return for the availability of the federally subsidized flood insurance, local communities must actively participate in flood management.

The NFIP regulations are directed at states and local governments wishing to qualify for the insurance. Political subdivisions in Texas are authorized to participate in the program through the Flood

Control and Insurance Act passed in 1969 (amended in 1977), Texas Water Code, Section 16.311 *et seq.* Each participating community must regulate all development within the designated 100-year floodplain. The NFIP broadly defines development to include "any man-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations."

The NFIP requires a building-permit program for all structures and virtually any alteration of terrain within participating communities. The permits are required until a flood-hazard boundary map has been issued for the area. Afterwards, the permitting program applies only to construction within designated flood-hazard areas (44 C.F.R. 60.3 [1987]).

All proposed construction (or reconstruction after the property is more than 50 percent damaged) within the flood-hazard areas either must be flood-proofed or have the slab elevated above the base flood level—i.e., the elevation of the 100-year floodplain. The failure of the local community to enforce the floodplain development can lead to suits against the community for a recovery of flood damage insurance expended by the federal government.

If a proposed development is located both in a participating community and in a designated flood-hazard area, a developer needs a permit to proceed. A list of participating communities is published periodically in the *Federal Register*. However, a call to the local political subdivision is an easier and quicker means of ascertaining participation.

If the community participates in the program, a map of the designated flood-hazard areas must be maintained at one or more official locations for public inspection (44 C.F.R., Section 64.3[c][2]). Otherwise, maps promulgated by FEMA of the designated flood-hazard areas may be obtained from the National Flood Insurance Program, P.O. Box 499, Laham, Maryland 20706 or by calling 301-731-5300 or 800-638-6620.

In the summer of 1990, flooding along the Trinity River damaged approximately 6,000 homes in 68 Texas counties. Half of the counties did not participate in federal floodplain management, making the respective residents ineligible for NFI.

The maximum amount of flood insurance available for a single-family home through NFI is \$185,000 for a dwelling and \$60,000 for the contents. Available coverage may be less depending on location. Premiums range from \$150 to more than \$1,000 a year, depending on the home's value and flood risk. The average annual premium is about \$350.

The NFI policy is similar to a Texas homeowner's insurance policy. The insured has a choice of deductibles and the proof of loss is the same. However, major differences include no available options (or riders), only losses from rising waters are insured and special request must be made to insure the contents of a building.

For those not in the 100-year floodplain, a preferred risk option is available. The maximum coverage under this program is \$50,000 for the dwelling and \$12,000 for the contents at an annual premium of \$125. To qualify for the preferred risk program, the dwelling must be located in Zones B, C or X of the floodplain maps and must have had no previous flood loss.

Homeowners not located in a flood zone may wish to consider flood insurance for extra security. If the property is later rezoned as a flood-hazard area, the premiums will not increase.

Since 1983, private insurance companies have been eligible to issue and service federally backed flood insurance. Local insurance agents have details for a particular area.

By law, property owners in flood-prone areas are required to purchase flood insurance as a condition for obtaining or renewing a mortgage from a federally regulated lender. A federally regulated lender is any federal agency responsible for the supervision, approval, regulation or insurance of banks, savings and loan

associations or similar institutions. The mandate applies both to loans secured by either improved real property or a mobile home.

The borrower must purchase flood insurance in an amount equal to the value of the improvements or the mobile home, or the maximum amount available under the NFIP, whichever is less. If the community does not participate in the NFI program, no federally regulated lender may finance the loan.

To comply with the law, the federally regulated lender is required to give written notification to a purchaser that the improved real estate or mobile home is located in a special flood-hazard area. The notice must be given a reasonable period in advance of the execution of the transaction (42 U.S.C.A., Section 4104[a]). Also, the same lender must notify the purchaser whether federal disaster relief assistance will be available in the event of a flood (42 U.S.C.A., Section 4106[b]). However, there is no liability for the lender's failure to give notice in either instance.

Uninsured homeowners who experience flood damage in a declared disaster area may be eligible to receive two month's rent from FEMA. After that, they may apply for additional rent assistance on a month-to-month basis. Low-interest loans through the Small Business Administration are available to replace or repair damaged property, homes, furnishings, clothes, vehicles or small businesses.

The Texas Department of Human Services also administers grants of up to \$11,500 for flood victims whose needs are not met by other programs. A toll-free number (800-462-9029) links victims to sources of any state and federal aid for which they may be eligible.

Whether the affected property owner has NFI, all or a part of the loss may be deductible on the homeowner's income taxes.

Deductions for casualty losses—i.e., losses caused by a sudden or unexpected event or accident—are permitted by the Internal Revenue Code, Section 165-7. Generally, the losses are attributed to fire, storm or shipwreck. However, the cause may be from theft. The losses are deductible regardless of how the property is used.

To date, the regulations have held the following to be deductible: damages from unusual drought (but not from a normal dry spell); damage to a residence resulting from subsoil shrinkage that weakened the foundation and that was caused by an unusually severe drought; and flood, freeze or quarry blast damage to a residence.

Also deductible are storm damage from wind and waves (but not from gradual erosion and inundation); mine cave-in damage to residence; sonic boom damage; vandalism; damage to exterior house paint from sudden and severe smog with high chemical fume concentration; attorney's fees and costs paid from amount awarded in suit for casualty losses, provided court finds the casualty deductible; and losses from deposits or accounts in certain insolvent financial institutions.

However, the regulations have found the following to be nondeductible as casualty losses: termite damage (unless sudden and unexpected); trees and shrubs damaged on residential property by disease or insects (although freeze damage and mass attack of southern pine beetles are deductible); and loss on and sale of residence as a result of property condemnation as part of a site for flood-prevention construction.

The amount of damages incurred from a casualty loss to a primary residence not used as income producing property is determined either by an appraisal or by the cost of repairs. If an appraisal is used, the fair market value of the property immediately before and after the casualty must be ascertained by a competent appraiser. The appraisal must recognize the effects of any general market decline affecting undamaged as well as damaged property occurring simultaneously with the casualty.

If the damages are determined by the cost-of-repairs method, the amount of the repairs must meet the following criteria.

- The repairs are necessary to restore the property to the condition immediately before the casualty.
- The amount spent for such repairs is not excessive.
- The repairs do not cure more than the damage suffered.
- The value of the property after the repairs does not exceed, as a result of the repairs, the value of the property immediately before the casualty.

Note: The method for determining the casualty loss to business property or income-producing property is different and not discussed in this article.

Once the amount of casualty loss is determined, the resulting figure must be reduced by the following: (1) \$100, (2) any insurance proceeds received, (3) any amount received from an employer or disaster relief agency to restore damaged property and (4) any other compensation received for the lost property.

After the reductions have been applied to the loss for each casualty, the amount derived is known as the *net casualty loss*. Only the amount of the net casualty loss exceeding 10 percent of the homeowner's Adjusted Gross Income (AGI from line 32, Form 1040) is deductible as an itemized deduction on Schedule A.

There are, however, some special rules. For instance, the \$100 reduction applies only to property not used as a business or as income producing property. Also, the \$100 applies to all losses from a particular casualty, not to each loss caused by the casualty. For instance, if a flood or freeze damages buildings, ornamental trees and shrubbery, this is viewed as a loss from a single cause. All damages are combined, and the \$100 is deducted once.

Finally, the \$100 reduction applies to each person having an interest in the damaged property. If two sisters jointly own a flood-damaged house, the \$100 deduction applies separately to each sister. If the house were owned by a husband and wife, however, only one \$100 reduction is required if the couple files a joint return for federal income taxes.

No reductions from the damages are required for food, medical supplies or other forms of subsistence that are not for the replacement of lost property, or that are received as unrestricted cash gifts. If a taxpayer is deprived of the use of the principal dwelling, any portion of the insurance proceeds received for living expenses incurred while away from the home are excluded to the extent the proceeds do not exceed normal living expenses. The same rule applies to reimbursements for living expenses from governmental authorities.

Flooding in some parts of Texas has become commonplace. Given the number of acres in flood-prone areas plus more extensive urbanization, flooding will continue.

Only homeowners who have NFI are protected to some extent from loss. No protection from flooding is afforded under the Texas Homeowners Policy. To be eligible for NFI, the home must be located in a designated flood-hazard area where the local community or political subdivision actively participates in flood management.

Regardless of the insurance protection, homeowners may qualify to deduct a part of the loss on their income taxes. However, only that portion of the unreimbursed loss, with adjustments, exceeding 10 percent of the homeowner's AGI may be used as an itemized deduction. ☐

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