FREQUENTLY ASKED QUESTIONS

Q: How do I know whether I need flood insurance and how much should I purchase?

A: Consult your insurance agent with the following in mind. When most people ask their insurance agent whether they “need” flood insurance, the agent construes this to mean whether you are legally required to have flood insurance. As previously noted, if your property is located in an SFHA (Flood Zones beginning with “A” and “V”), federal law requires you to purchase flood insurance if you have a mortgage on the property. This law requires you to purchase flood insurance in the amount of the outstanding balance of the loan or the maximum limit of coverage available under the NFIA, whichever is least. However, the amount you are “required” to have under the law may not be the amount you “need” to purchase.

This is especially true if you owe less than eighty percent of the value of your property. First, if you only purchase an amount equal to the outstanding balance of the loan, you are not purchasing coverage for any equity you have in the structure. Second, if you purchase less than eighty percent of the replacement cost of your property, as indicated herein, the SFIP will not pay “replacement” cost and will pay only actual cash value (ACV). ACV is the value of the property at the time of the loss less accumulated depreciation. For older buildings, there is substantial depreciation, and the ACV of the property is considerably less than the replacement cost. In most cases, the “required” amount will not be the amount you “need”. Therefore, be sure to discuss the realistic replacement cost of your property with the agent in deciding on the amount to purchase. Be sure to protect your equity in the property and also purchase a sufficient amount to obtain the greatest benefit under the SFIP.

If you are not in an SFHA, your agent may tell you that you do not “need” flood insurance because you are not in a flood zone which “requires” you to buy flood insurance. However, this does not necessarily mean that you do not “need” flood insurance. While a majority of properties outside of SFHAs may have no real risk of flooding, many properties do. In fact, over the history of the NFIP, over one third of all flood claims have been paid on properties located outside the SFHA even though only one percent of insurable homes in non-SFHAs have flood insurance. To encourage persons located outside an SFHA to purchase flood insurance, the Preferred Risk Policy (PRP) is available in moderate-risk flood zones B, C, and X. The PRP offers low cost flood coverage to owners and tenants of eligible buildings located in these flood zones.

1 42 U.S.C. § 4012a (b) (1)


3 Id.
Formerly, only single family and 2-4 family dwellings were eligible for coverage but other residential and non-residential buildings became eligible effective May 1, 2004 and coverage options were further expanded on May 1, 2008. If your property is located in an area with exposure to seasonal flooding or tidal surge associated with hurricanes, even though you may not be located in an SFHA, you should seriously consider purchasing flood insurance, especially since low cost insurance is available. Keep in mind that FIRMs are continuously changing, some may have been wrong at the outset, and new development continues to change the natural landscape making more properties prone to flooding.

Q: **Where do I buy flood insurance and does it matter who I buy it from?**

A: Most of the large property and casualty companies write flood insurance under the Write-Your-Own (WYO) program with the NFIP. Although the flood policy is written in the name of the private insurance carrier, it is actually a Federal-backed policy and losses are paid from U.S. Treasury funds. You can also buy flood insurance directly from the NFIP. However, all of the policies are the same, the cost is the same and all of the coverages are the same no matter who you purchase the flood policy from. You should purchase coverage from the company you feel most comfortable with in regard to their claims and settlement practices. Companies will tend to investigate, adjust and settle flood claims in the same manner as they handle other casualty claims.

Q: **Once I submit an application for flood insurance and pay my premium, when does it go into effect?**

A: There is a 30-day waiting period and coverage begins at 12:01 a.m. on the 30th day after the date of your application if your application is received within 10 days from the date on the application or mailed, by certified mail, within four (4) days after the date on the application. If not, the 30-day period does not begin to run until the application and premium are received. Consequently, you should always request that your agent send your application and initial premium payment by certified mail. If flood insurance is purchased in connection with a loan and the premium for coverage is collected at closing, the policy goes into effect at the time of closing with no waiting period.

Q: **What do I do if my policy is issued for less than the amount I applied for?**

A: Sometimes, for several reasons, the premium will not be properly calculated and the flood policy is issued for less than the amount requested. Unlike private insurance policies, flood insurance policies are governed by Federal law and there is no discretion in regard to the interpretation and enforcement of the policy provisions. The regulations require that the amount of insurance be reduced immediately if insufficient premium is paid. However, you will receive notice of the reduction and the coverage will be increased, effective from the policy date, if you send in the required premium within 30 days after the notice. If the additional premium is not timely submitted, the 30 day waiting period applies and if a loss occurs during the waiting period, the claim is settled based on the
reduced coverage. The policyholder should be aggressive in making sure that the SFIP is issued in the amount requested. Review your Declarations Page, which describes the types and amounts of coverage you have. A copy of your Declarations Page can be obtained from your agent.

Q: If I am required to purchase flood insurance by my bank or mortgage company, are the premiums paid from my escrow account the same as my homeowners insurance and property taxes.

A: Yes, if your bank or mortgage company requires the escrowing of taxes, insurance premiums or any other charges for a loan secured by real estate, the premium for flood insurance shall be paid to the lending institution. The lending institution will deposit the money in an escrow account and pay the premium when due. In most cases, flood insurance is purchased at closing as a requirement of the loan. If so, the premium is collected at closing and an amount is determined for you to pay each month to accumulate sufficient funds in your escrow account to pay the premium when due. In other cases, you may receive a notice from your lending institution advising you that your property has been identified as being in a SFHA and notifying you that you should obtain flood insurance. In such case, you are required to purchase flood insurance within 45 days. After the flood insurance is purchased, your lending institution will usually increase your escrow payments sufficient to pay the next annual premium payment when due. If you do not purchase flood insurance within 45 days, the lending institution will purchase flood insurance for you and bill you accordingly. You should not rely on the lending institution to purchase flood insurance for you under these circumstances. Most lending institutions participate in an NFIP program, referred to as the Mortgage Portfolio Protection Program (MPPP) which offers force-placed policies available through WYO companies. This policy will be much more expensive than a regular SFIP that you can purchase and will probably be for a lesser amount than you would have selected.

Q: How do I make a claim?

A: You should notify your insurance company immediately after you sustain a flood loss. An adjuster will be assigned to investigate your claim. You should take pictures of all damage, separate the damaged from the undamaged property, and make an inventory of all the damaged or destroyed personal property. You are required to file a Proof of Loss in order to receive payment. This is a standard form issued by the NFIP. The adjuster will probably furnish this form to you, but he is not required to do so. Many times, the adjuster will complete the Proof of Loss form with the amounts contained on his or her Repair Estimate. Payment can not be made on a flood claim until a Proof of Loss has been received. This Proof of Loss should be submitted within 60 days after the date of the flood loss. It is the sole responsibility of the policyholder to file the Proof of Loss within the deadline.

Q: Does the 60-day deadline always apply to the filing of a Proof of Loss?
A: Yes, in most cases. However, after hurricanes or wide-spread losses, the Federal Insurance Administrator (FIA) has the authority to extend the deadline for the filing of Proofs of Loss. Commonly, when an extension is granted, it is extended for an additional 60 days. In some cases, the extension is for a longer period of time such as the extension granted for the summer flooding which occurred in the Midwest in 2008, and for flood losses caused by Hurricanes Gustav and Ike. However, regardless of the time period, it is always necessary to file a proof of loss. This requirement cannot be waived except by the Director of FEMA. Historically, the Proof of Loss requirement has never been totally waived. After the Florida hurricanes in 2004 and again after Hurricanes Katrina and Rita in 2005, the proof of loss requirement was waived under limited circumstances. Under a Waiver issued by the Director, claims were paid based on the adjuster’s report. If the policyholder agreed with the amount in the report, it was not necessary to file a Proof of loss. However, if the policyholder disagreed with the amount in the adjuster’s report, a Proof of Loss was required to be filed within 1 year from the date of the loss. Many claims were and still are being denied for losses resulting from these hurricanes simply because a timely Proof of Loss was not filed. There are no exceptions to the Proof of Loss requirement.

Q: Is it necessary for me to file the Proof of Loss form published by the NFIP or can I satisfy the requirement by filing a letter or a repair estimate or other documents which support my claim?

A: The requirements of the SFIP specify that certain information must be provided in the Proof of Loss and these requirements are strictly enforced. The Proof of Loss must also be sworn. It is recommended that the NFIP Proof of Loss form be used. Technically, it may be possible to satisfy the Proof of Loss requirements without using the form, but it is unlikely and should not be attempted. Even though the NFIP carrier may accept any documents you provide and negotiate with you on your claim and even offer a payment, this does not mean that a Proof of Loss is not required nor does it mean that the deadline for filing has been or will be waived. Even though you may be dealing with a WYO carrier and it is adjusting and paying your claim, it does not have the authority to waive any requirement of the SFIP, including the requirements pertaining to the Proof of Loss.

Q: What should I expect from the adjuster?

A: You should expect the adjuster to be courteous and helpful, as well as prompt. Flood adjusters are required to have special training. An adjuster should notify you, after you have filed a notice of your claim, and provide you with contact information. He or she will generally attempt to inspect your property within a week after receiving the claim, but this is not always possible, especially if there has been widespread losses. However, you should maintain constant contact with the adjuster until he or she has prepared a repair estimate for your house and a personal property Inventory has been prepared. Remember that the 60 day deadline for filing a Proof of Loss starts on the date of the loss. The more time the adjuster takes to finish the inspection and report, the less time you have to review or challenge his estimate.
Q: Am I entitled to any payments before my claim is settled, such as for living expenses, if I am unable to return to my home?

A: You are not entitled to living expenses under the SFIP, but you are entitled to partial payments. You should discuss this with the adjuster. Usually, partial payments are made if requested and are initially applied toward the contents coverage. Appropriate adjustments are made when a final settlement is made.

Q: Should I make temporary repairs?

A: It is best if no repairs are made before the adjuster inspects the property. However, you are required to mitigate your damages. This means that you are required to protect your property and to minimize the damage. If you throw away any damaged personal property or make any repairs or demolish any part of the structure before it is inspected by the adjuster, you should make sure that you have documented everything and pictures will be especially helpful to do this.

Q: Am I required to accept the adjuster’s repair estimate?

A: No. If you disagree with the adjuster’s repair estimate, you have the right to obtain your own repair estimate. Or, you can submit additional information to the adjuster for his or her consideration. However, remember that you must comply with the 60 day deadline for filing a Proof of Loss. Sometimes, after widespread losses, it takes longer for the adjuster to complete his report. Most of the time, policyholders will wait to receive the adjuster’s repair estimate before seeking their own estimate. Contractors are also busy and obtaining estimates, on a timely basis, can be difficult, if not impossible. If you suffer a substantial loss, you should attempt to obtain an independent estimate immediately after the loss. If you wait on the adjuster’s estimate, you may not have time to effectively challenge items in his estimate you disagree with.

Q: If the adjuster fails to provide me a Proof of Loss form, is it necessary for me to file one?

A: Yes. It is the duty and responsibility of the insured to complete and file a Proof of Loss whether it is furnished to you by the adjuster or not.

Q: Am I required to send any documents or information with my Proof of Loss?

A: Yes. You must provide sufficient documentation to support the amount requested in your Proof of Loss. Obviously, if you agree with the adjuster’s repair estimate, it will be sufficient to include the repair estimate with your Proof of Loss. If you do not agree with the adjuster’s repair estimate, you should submit your own documentation. The submission of only a Proof of Loss, without supporting documentation, is not sufficient.

Q: If my claim is not handled properly and it results in additional losses to me, can I
recover these losses?

A: No. These losses are called “extra-contractual” and are not recoverable. If your claim pertains to procurement of a policy, such as the failure of your agent to obtain adequate insurance for you, you may have a claim, but it would be a State law claim separate and apart from your flood claim.

Q: Do State laws apply to my flood claim?

A: No. The interpretation and enforcement of the flood policy is governed by Federal law and State laws do not apply.

Q: When should I expect to receive payment on my claim?

A: If you agree with the adjuster’s repair estimate or otherwise reach an agreement with the NFIP carrier, and file a proper and timely Proof of Loss, payment should be made within 60 days after the submission of your Proof of Loss.

Q: What if I need flood insurance in an amount which exceeds the limits provided by the NFIA?

A: There are private insurance companies who write flood insurance independent of the NFIP. However, in most cases, these companies require that you purchase the maximum amount under the NFIP. This additional coverage issued by the private carriers is called “excess coverage” and usually pays only after you collect the maximum limits under the NFIP policy.

Q: If I disagree with the amount allowed on my claim, should I file an appeal?

A: You have the right to appeal if you disagree with the denial of your claim, in whole or in part. However, this does not extend any time period applicable to your claim. Your Proof of Loss must still be timely filed and, if you choose to file a lawsuit, it must also be timely filed, whether there has been a final decision on your appeal or not.

Q: What if I agree with the adjuster concerning which items were damaged, but cannot agree on the monetary amount of the damages?

A: If the only dispute is the monetary amount of damages or the method of repair, you can request an appraisal. However, if there is a disagreement regarding what was damaged or there are any questions concerning coverage, appraisal is not available. Appraisal is a process where you choose an appraiser and the insurance carrier chooses an appraiser and the two appraisers attempt to reach an agreement concerning the true amount of the loss. If they are unable to agree, they select an umpire and the decision of any two determines the amount of the loss. You cannot request an appraisal if you have previously filed an appeal. However, a request for an appraisal can usually be made after a lawsuit is filed.
Q: If the damage to my building is such that I cannot repair it in compliance with flood plain requirements or it would be more economically feasible to demolish it and rebuild it to comply with code requirements, am I entitled to be paid for a total loss since it will be necessary for me to demolish my building?

A: No. A flood policy is not a valued policy. Even though most states have a “valued policy” statute, state law does not apply to a SFIP. You are only paid for the damage sustained directly as a result of flooding. You are not entitled to the value of any undamaged or repairable portion of your building, even though you may be required to tear it down. This is sometimes referred to as a “constructive total loss”. The NFIP does not pay for a constructive total loss.

Q: What does it mean if my house is determined to be “substantially damaged”?

A: If your property sustains damages as a result of a flood, the local Building Inspection Department or other appropriate governmental office or official, will inspect your building to determine if it has been substantially damaged. Substantial damage means that your structure has sustained damage in an amount which exceeds 50% of its pre-damaged value. If your structure has sustained substantial damage, you must repair or reconstruct it in compliance with current flood-plain requirements. If your property has been substantially damaged, you are entitled to ICC (Increased Cost of Compliance) benefits.

Q: If it is necessary to file a lawsuit on my flood insurance claim, can I collect interest and attorney’s fees?

A: No. Since the losses are paid from U.S. Treasury funds, neither interest nor attorney’s fees are payable under the National Flood Insurance Act. However, you may be entitled to attorney’s fees under the Equal Access to Judgment Act (EAJA), although this issue is in litigation at this time.

Q: If I am entitled to ICC payments, are there any time periods which apply?

A: Yes. The SFIP requires that the policyholder must complete mitigation activity, such as demolition and elevation, within two years from the date of determination of substantial damage. However, this time period has been extended for an additional two years (for a total of four years) for all claims on or after June 1, 2005.  

Q: Can I recover for damage to my cars, boats or other vehicles which were located near my structure when damaged by flood?

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4 In a Memorandum from David Maurstad, dated March 14, 2006, No. W-06019, this waiver was granted in anticipation of an increased number of claims, and the intention of FEMA to increase the two year time frame to four years in an upcoming revision of the SFIP.
A: No. These items are not covered by the flood policy, but there may be coverage under other policies.

Q: Can I recover for damages to my swimming pool and swimming pool enclosure?
A: No. These damages are not recoverable under the flood policy. There may be coverage under other policies.

Q: Can I recover overhead and profit as a part of my repair costs?
A: Yes. If a contractor is hired to perform the work, overhead and profit are recoverable. Overhead and profit are usually calculated as a percentage of the repair costs. The customary percentage is twenty percent. However, overhead and profit is not applied to: carpeting; outside service charges, such as plumber, electrician or appliance service calls; or, repairs made by the insured (except an allowance can be made for the insured’s time and expense in purchasing materials, not to exceed 10 percent). Also, appropriate sales taxes are recoverable.

Q: My condominium association has an SFIP on the condominium building. I also purchased a separate flood dwelling policy. What does my individual policy pay?
A: In regard to contents coverage (Coverage B), your individual policy pays for all losses to your personal property up to the contents limits of your policy. In regard to building coverage (Coverage A), the RCBAP and your individual Dwelling Policy cover the same property. Some states have statutes which specify which building items are to be insured by the condominium association and which items are to be insured by the owner. In the event of loss, each policy pays the damage it is responsible for under the statute. Such state laws are not applicable to an SFIP. The two policies cover the identical property and the RCBAP is deemed “primary”. In other words, the RCBAP pays first before any money is due under the individual unit policy. The NFIP generally takes the position that the maximum limits of liability under the RCBAP must be paid before any losses are payable under the unit policy. Therefore, if your condominium association settles for less than the full limits of liability of the RCBAP, you will not be entitled to any payments under your individual unit policy, regardless of whether you have been fully compensated for your losses.

Also, if your condominium association fails to adequately insure the condominium building, you also may not be entitled to any payments under your unit policy. Although the unit policy usually pays for assessments made by the condominium association as a result of flood damage, it does not pay if the assessment results from a loss sustained by the condominium association which was not reimbursed under the RCBAP because the building was not insured for eighty percent of its replacement cost or the maximum amount of insurance permitted by the NFIA.

The best protection for the individual unit owner is to make sure that the RCBAP is
issued for the full replacement value of the building or the maximum limits permitted by
the NFIA. Also, the unit owner should make sure that the condominium association does
not settle for less than the full policy limits of the RCBAP, especially if the limits are
less than the full replacement cost. For example, assume a four unit complex has a
replacement cost value of one million dollars ($250,000 per unit) but is insured for only
$800,000. This meets the eighty percent requirement for replacement coverage under the
RCBAP but if the condominium association settles the RCBAP claim for $795,000, or
any amount less than the policy limits, the NFIP will take the position that no payment is
due under the dwelling unit policy because the RCBAP limits were not exhausted. The
unit owner will be unable to collect the remaining replacement value of his unit under his
individual dwelling policy. Therefore, the unit owner, even though an individual policy
may be purchased, must take an active role is making sure that adequate flood insurance
is purchased by the condominium association and that no claim is settled for less than the
policy limits if the settlement is not sufficient to reimburse each unit owner for his full
damages.

Finally, the unit owner must timely file a Proof of Loss before the expiration of the 60
day deadline even if he is unsure whether he will be entitled to any benefits under the
policy. The proof of loss should reflect the full replacement cost of the repairs. If the unit
owner waits until the RCBAP claim has been resolved before filing a proof of loss, it will
probably be untimely and the claim will be barred.

Q: Can I recover for losses sustained as a result of mold and mildew?

A: Yes. This is an important issue because buildings which have been inundated with flood
waters often sustain mold damage. The SFIP covers reasonable costs for remediation of
mold damage, except when the damage results from a condition confined to the insured
building or is within the insureds control, such as the insured’s failure to inspect and
maintain the property after the flood recedes. Obviously, if water remains in the building
for several days or the insured is not allowed to return to the building for an extended
period of time, this should be taken into consideration.

If a building was inundated, but not evacuated, the SFIP will pay reasonable expenses for
water extraction, dehumidifier and fan rental, and mildicide and anti-microbial
application. If, after these steps have been taken, mold reappears and causes damage to
the upper portions of walls and ceilings, the NFIP will honor such claims if the insured
can show that mitigation attempts were made. If local officials require testing for mold
and have the legal authority to require testing, the SFIP will pay reasonable costs for the
test; other testing will not be covered. If, during the inspection for mold damage, the
adjuster believes that such damage was not the result of the flood, but is long-term, a
testing report may be obtained to determine whether the mold is a recent problem or a
long-term problem. Mold and mildew can constitute a significant health hazard and you
should give this condition your close attention. The SFIP will not pay for any health care
costs associated with health conditions caused by mold or mildew.
Q: Can I recover damages to my deck?

A: No. The SFIP only allows payment for steps and a landing which can not exceed 16 square feet.