

Flood risk – the basics



Flood risk has become a major concern both to home owners and businesses. Such is the concern about the issues flowing from the increased risk of flooding that in May 2013 the Law Society issued a flood practice note.

This is updated from time to time and the current version is dated January 2020. This Information Note is designed to take you through the requirements of the practice note and provide suggested wording for your Client Care letter.

Flood Practice Note

The Law Society appreciated that flood risk was a major issue for millions of home and commercial property owners and that it was important for buyers to be aware if any flood risk before committing to buy a property.

At the same time the Law Society appreciated that solicitors could not be expected to provide technical advice on what to do if a property was at risk of flooding.

The balance that the Law Society has struck is that solicitors should have a conversation with clients about flood risk and especially to make clients aware of the insurance implications.

The practice note makes it clear that solicitors should do all of the following:

Mention the issue of flood risk to their clients (whether the property is residential or commercial, and whether they are acting for buyer, tenant or lender).

- If appropriate, make further investigations into that flood risk (if the client is not making their own)
- Consider whether to advise the clients to establish the likely terms of buildings insurance (including flood cover) for the target property
- Consider whether to advise the client to discuss the risk with their surveyor or a flood risk assessment consultant
- Consider recording the outcome of these discussions and the client's decisions

When discussing flood risk with your clients it is important to make them aware of the following facts:

General Information

1. Clients cannot get all the information they need on flooding from what the practice note calls 'screening reports' such as the Environment Agency flood risk assessment. This is partly because it does not provide any information on groundwater flooding. If the client wishes to know the risk from groundwater flooding they can only do so if they commission a comprehensive flood risk report. It is also important to get an overall assessment of the flood risk.
2. If they do decide to rely only on the Environment Agency flood map (despite its severe limitations) there is no come back if the information is later shown to be inaccurate. The Environment Agency will accept no liability.

3. Flood Re is a re-insurance scheme which helps homeowners whose properties are at high flood risk obtain affordable flood insurance with cover at a set price. It became operational in April 2016 and will end in 2039, after which there will be a free market for flood risk insurance. There are a number of exclusions where residential properties will not be covered by Flood Re. For example, it will not cover residential properties built after 31 December 2008. Flood Re only covers residential properties- it does not cover commercial properties.
4. In a 'worst case scenario' if building insurance is not available because of the flood risk, then it will not normally be possible to obtain a Building Society Mortgage.
5. Surveyors currently do not factor in flood risk as standard when valuing a property. It is unlikely that this will change in the near future.
6. It is accepted by scientists and meteorologists that the climate is changing and that extreme weather events such as flooding are becoming more frequent and resulting in increasing property damage
5. With the benefit of a flood search and a quote for flood protection measures your client may be able to negotiate a price reduction.
6. Alternatively, if flood protection measures are installed by a reputable company it may be possible to negotiate a lower flood insurance premium and/or excess.
7. It is wrong to think there is nothing to worry about if your client is buying an upper floor flat. If the ground floor is flooded your client may not be able to gain entry to the building during the flood or any subsequent repair works.
8. Clients buying basement flats need to be particularly wary as these may be at increased risk and susceptible to smaller depths of flooding and so it is particularly important to consider flood prevention measures
9. It is very important to shop around for insurance quotes. Even if your client can find insurance at a substantially lower premium than the norm, you may like to remind them that insurers' practice does change, and that, by the time they come to sell their property, it is possible that that insurer will have brought its premium into line with other insurers. An insurer who takes on high risk properties for low premiums is unlikely to stay in business for long.

Anybody seeking to take out or renew their insurance policy is under a legal duty to disclose all material information to the insurer. "Material information" is information which a prudent insurer would consider relevant to deciding whether to insure the risk, and on what terms.

Residential Buyers

1. Floodwaters are often contaminated with sewage. Almost everything the flood water touches will have to be disposed of. Many personal possessions will be lost.
2. The average insurance claim for a residential property is £20,000- £30,000. In areas at greater risk of flooding the level of excess on flood insurance policies could be higher than this.
3. Homeowners who must evacuate their homes whilst it is dried out and repaired are often out of their homes for up to eight months or longer. This is likely to put severe stress on individuals and families.
4. A good commercial search which has been specifically designed for residential properties will indicate which types of flooding may affect the property. It may well then be possible to install flood protection measures (such as door covers and non-return valves) that will either prevent flood water entering the property or reduce the level of flooding in the property. Compared with the damage flooding can cause the average cost for installing effective flood protection measures for a residential property is proportionally low. Argyll can put you or the client in contact with a specialist company to provide a quotation.
10. Clients should obtain a copy of the Defra publication 'Obtaining flood insurance in high risk areas.'

Commercial Buyers

1. Many businesses affected by flooding never recover. The consequences of flooding can last a long time. Research suggests that the majority of businesses that are affected by severe flooding go out of business within 2 years. This is largely because most business interruption insurance covers losses arising from a maximum period of 3 months, which is far shorter than the time needed to recover from a major flood.
2. The average insurance claim for a commercial property is over £75,000. There is usually an excess level.
3. It is, therefore, important that commercial property owners review their current insurance policies to ensure that they have adequate cover in case of flooding.
4. A flood search will indicate which types of flooding may affect the property. It may well then be possible to install flood defence measures (such as flood baffles or self-raising barriers) that will stop the flood water entering the property. Argyll can put you or the client in contact with a specialist company to provide a quotation.

5. With the benefit of a flood search and a quote for flood defence work you may be able to negotiate a price reduction for your client.
6. If flood defence measures are installed by a reputable company it may be possible to negotiate a lower flood insurance premium and/or excess.

Advice to Clients

The practice note says that you should liaise with your client as to which, if any, flood search should be carried out. Clients may not be aware of the serious implications of buying a property which has a high flood risk including high annual insurance costs even if no flooding arises during their ownership. Therefore we recommend that you provide clear advice to your client on the benefits of carrying out a commercial flood search. Most law firms advising on flood risk have either of the following policies:

Option 1 – raise the matter with your client and explain that your firm carries out a commercial flood search as standard, or

Option 2 – as required by the practice note, raise the matter with the client and take their instruction on whether they wish you to commission a commercial flood search. If they do not, it is strongly recommended that this is recorded in writing to show that you have complied with the flood practice note.

Client care letter

Landmark has prepared the following for insertion into your client care letter:

Option 1 – Policy of the practice

For your protection, and the protection of your lender, it is our policy to undertake a commercial flood search as part of our standard package of searches. This assesses whether the property is situated on or near land which may be susceptible to flooding. The report also assesses whether you should be able to obtain insurance cover at standard rates.

I attach an Information Note 'Flood Risk Searches' prepared by Landmark who provide our firm with these searches.

It may be necessary to disclose the results of this search to your prospective insurer.

For more information please see the enclosed Information Note on 'Flood Risk Searches: Disclosure to Insurers' also prepared by Landmark.

Option 2 – Recommendation

Flooding can present considerable risks to property, people living there and businesses trading from it. We enclose an Information Note 'Flood Risk Searches' prepared by Landmark which gives more information.

We recommend that you consider whether you would like to know more about the potential risk of flooding to the property. If so, we can undertake a desktop flood search which will assess whether the property is situated on or near land which may be susceptible to flooding and whether you should be able to obtain insurance cover at standard rates.

If you do not want us to undertake such a search, please confirm this in writing by return. In such circumstances please note that my firm will not provide advice on any issues arising from flood risk.

If you do commission a flood search it may be necessary to disclose the results to your prospective insurer.

For more information please see the enclosed Information Note 'Flood Risk Searches: Disclosure to Insurers' also prepared by Landmark.

Landmark's environmental consultancy, Argyll, provide the expertise in assessing flood risk.