

340 HAZARD DISCLOSURE—Summary

Maximum credit: 80 points

342 Elements

- a. **Disclosure of the flood hazard (DFH):** Up to 25 points if real estate agents notify those interested in purchasing properties located in the Special Flood Hazard Area (SFHA) about the flood hazard and the flood insurance purchase requirement. An additional 10 points are provided if the disclosure program is part of a Program for Public Information credited under Activity 330 (Outreach Projects).
- b. **Other disclosure requirements (ODR):** Up to 5 points for each other method of flood hazard disclosure required by law, up to a maximum of 25 points.
- c. **Real estate agents' brochure (REB):** Up to 8 points if real estate agents are providing brochures or handouts that advise potential buyers to investigate the flood hazard for a property. An additional 4 points are provided if the disclosure program is part of a Program for Public Information credited in Activity 330 (Outreach Projects).
- d. **Disclosure of other hazards (DOH):** Up to 8 points if the notification to prospective buyers includes disclosure of other flood-related hazards, such as erosion, subsidence, or wetlands.

Credit Criteria

Each element has a separate section discussing credit criteria.

Impact Adjustment

There is no impact adjustment for this activity.

Documentation Provided by the Community

Each element has a separate section describing needed documentation.

340 HAZARD DISCLOSURE

The OBJECTIVE of this activity is to disclose a property's potential flood hazard to prospective buyers before the lender notifies them of the need for flood insurance.

341 Background

Most prospective buyers do not take the time (or know how) to investigate whether a property is subject to a hazard. In many cases a property may not be near a stream or shoreline, past flooding may have been minor, or there may be no history of flooding since the area was developed. As a result, many people are caught by surprise when their properties are flooded. One of the best times to advise someone of a flood hazard is when he or she is considering the purchase of property.

Federal regulations enacted pursuant to the Flood Disaster Protection Act of 1973 (as amended by the National Flood Insurance Reform Act of 1994) require only that a lender advise a person of the flood hazard before closing on the loan. This could be well after the buyer has put down earnest money, has lost interest in other properties, or has become committed to purchasing the property without knowing all the facts. In many states a buyer has recourse under consumer protection laws.

Many real estate organizations have disclosure practices. A community should check with its ISO/CRS Specialist to see if neighboring communities are receiving this Community Rating System (CRS) credit. They may already have submitted the needed documentation for real estate agencies that serve the area.

341.a. Activity Description

The maximum credit for Activity 340 is 80 points.

Credit is provided if a community's real estate agents advise prospective floodplain occupants about the flood hazard and the flood insurance purchase requirement. Other disclosure methods may also be credited.

This activity should

- Encourage the purchase of flood insurance,
- Encourage implementation of flood protection measures,
- Prevent victimization of unwary buyers,
- Encourage appropriate use of vacant land,
- Prevent the troubles that can arise from failing to advise potential purchasers of a flood hazard, and
- Protect the real estate agents and sellers from lawsuits.

341.b. Impact Adjustment

There is no impact adjustment for Activity 340. Each element must be implemented throughout the community.

342 Elements

342.a. Disclosure of the flood hazard (DFH)

The maximum credit for this element is 35 points. There are 25 points for DFH, and an additional 10 points are provided if the disclosure program is part of a Program for Public Information, credited under Activity 330 (Outreach Projects).

Credit for DFH relies on real estate agents to inform a potential purchaser whether a property is in a Special Flood Hazard Area (SFHA). A statutory or other legal mandate that real estate agents disclose the hazard is not needed to obtain credit for DFH. The credit is based on documentation that real estate agents **ARE** disclosing the hazard, not on **WHY** they are doing it. The best way to implement this activity is with a written notification to potential purchasers. This provides the purchaser with the correct information and provides documentation for the real estate agent and the ISO/CRS Specialist. Notations can be provided on property summary sheets, offer-to-purchase forms, Multiple Listing Service (MLS) forms, or other media. The most common approach is to have a box on the MLS form.

This element can be implemented in conjunction with Activity 320 (Map Information Service). Real estate agents may request that the community assist them with a determination of the flood risk of properties being advertised for sale; however, the real estate agent must be informing people whether a property is in an SFHA. No credit is provided if prospective buyers are sent to the community to find out about a property's potential flood risk.

Credit Criteria for DFH

- (1) The notice must clearly state whether the property is in the floodplain and, if so, that flood insurance is required. If the notice states that a property is in a floodplain or in the SFHA, it must also tell the inquirer that federal law requires the purchase of flood insurance as a condition of acquiring a federally backed mortgage. If the notice states "Flood Insurance Required," the notation that the property is in a floodplain is not needed.
- (2) A property notice that is difficult to interpret, such as "FP: Y/N," or a general statement on all properties, such as "Flood insurance may be required," or "Flood Zone," is not acceptable. The form must clearly state, "Flood insurance is required."

- (3) If the property is in an area designated under the Coastal Barrier Resources Act, the notice must advise that National Flood Insurance Program (NFIP) flood insurance is not available.
- (4) The disclosure must be volunteered by the real estate office. There is no DFH credit if the disclosure is made only in response to someone's inquiry about whether the property is in a floodplain.
- (5) Credit for DFH cannot be based on real estate agents' use of a seller's statement or certificate. The information that is required is notification of whether the property is in an SFHA, not whether the sellers experienced a flood while they owned the property.
- (6) Additional credit is provided if the disclosure program is described in the community's Program for Public Information document credited in element PPI under Activity 330 (Outreach Projects). The document must include a discussion of the disclosure program and have recommendations on how it should be conducted. Continuing to receive this additional PPI-related credit is dependent upon receiving continued credit for the P Program for Public Information under Activity 330. In lieu of PPI credit, the extra 10 points can be provided if community staff worked with local real estate agents to develop the disclosure program and the staff meet with real estate agents annually to evaluate and improve the program.

Credit points are provided under ODR, below, for a state or local legal requirement that potential purchasers be advised about the property's known flood history.

Credit is also available under Section 342.c (REB) if real estate agents provide a brochure that advises potential property purchasers to investigate the flood hazard.

Credit Points for DFH

DFH = EITHER

25 points, if real estate agents notify those interested in purchasing properties located in the SFHA about the flood hazard and the flood insurance purchase requirement,

OR

35 points, if the real estate agents disclosure program credited above is described in the community's PPI

Example 342.a-1.

On their property summaries, real estate agents include a notice of flood hazard and whether flood insurance is required. When a seller contracts with a real estate agent, the latter requests map information from the community. The cost is paid by the real estate agent. The Board of Realtors® has provided the community with a description of this procedure.

DFH = 25

Documentation for DFH Provided by the Community

(1) At each verification visit,

- (a) At least one copy of a disclosure notice from at least five real estate agencies that serve the community. If there are fewer than five agencies that serve the community, then at least one notice from each agency must be submitted.

This documentation can be copies of the notations on property summary sheets, offer-to-purchase forms, MLS forms, or other media. If the MLS form is used, a photocopy of a completed MLS form must be submitted as documentation.

Seller's disclosure forms may be sufficient documentation if they clearly state that the property is or is not in the SFHA. Statements that "to the best of the seller's knowledge," or statements regarding whether the property has been flooded are not creditable. However, such statements may be eligible for credit under Section 342.b, (ODR) if they are required by law. Statements that advise the buyer to determine if the property is flood-prone are not creditable, although they may be eligible for credit under Section 342.c (REB).

Blank forms are not acceptable documentation. Copies of actual information shown to prospective buyers are required. Names may be blacked out to preserve confidentiality.

(2) With the annual recertification,

- (a) [Required only for the extra PPI credit] A copy of the annual report prepared by the PPI committee or by the community after meeting with real estate agents.

The report must identify how the credited element worked, how effective it was estimated to be, and what changes were recommended for improving its effectiveness. If the extra credit is based on a credited Program for Public Information, a separate submittal is not needed for this credit.

342.b. Other disclosure requirements (ODR)

The maximum credit for this element is 25 points (5 points per requirement).

The objective of the ODR credit is to provide information to people before they are committed to owning or occupying a piece of property that is subject to a flood hazard.

Credit Criteria for ODR

Credit can be requested for up to five state or local laws or ordinances that require disclosure of a property's exposure to flooding, including but not limited to

- (1) Requiring all sellers to disclose the flood hazard in those cases where a real estate agent is not involved.
- (2) Requiring real estate agents and sellers to advise potential purchasers whether "to the best of their knowledge and belief" the property has ever been flooded.
- (3) Requiring landlords to advise potential renters about the flood hazard.
- (4) Requiring final recorded subdivision plats to display the flood hazard area (see Figure 340-1).
- (5) Requiring that the flood hazard area be shown on individual lot surveys prepared for deed records, property transactions, or mortgages.
- (6) Requiring titles or deed records to show zoning or building permit conditions related to floodplain or drainage regulations, such as a notice about the substantial improvement or substantial damage requirement for floodplain properties.
- (7) Requiring signs posted in subdivisions to advise visitors of the flood hazard.
- (8) Requiring that deeds show the lot or building elevation in relation to sea level and the base or historical flood elevation.
- (9) Requiring all sellers to disclose whether the property is subject to a special flood-related hazard.

This list is not meant to be all-inclusive.

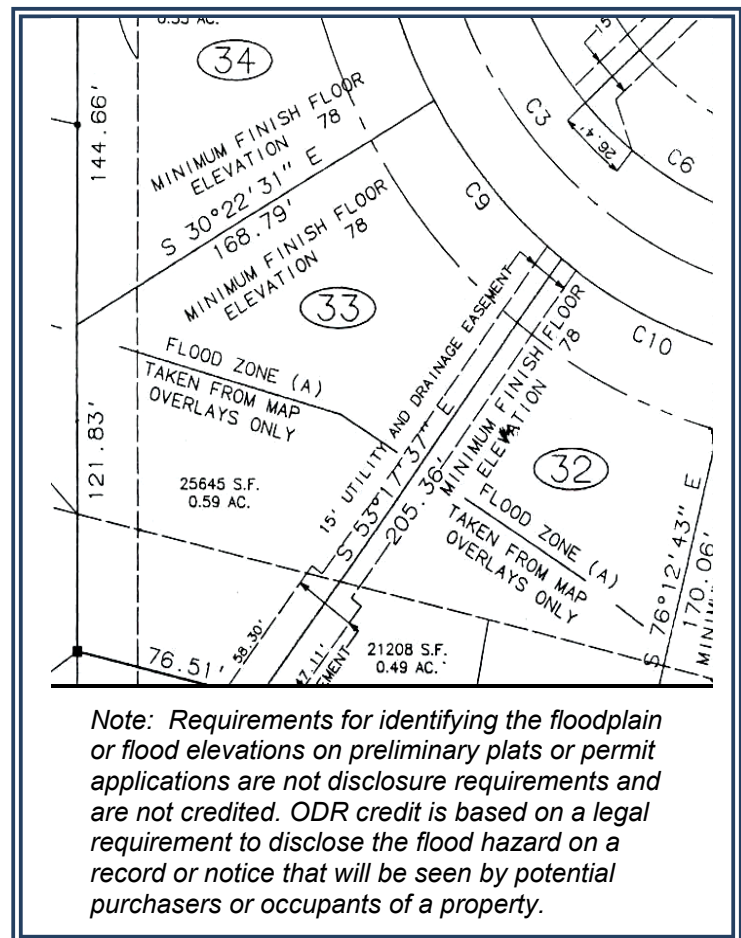


Figure 340-1. An example of hazard disclosure on a final subdivision plat.

Credit Points for ODR

ODR = 5 points for each other method of disclosure required by law or ordinance

Documentation for ODR Provided by the Community

(1) At each verification visit,

- (a) A copy of the law or ordinance language that requires one or more disclosure methods prior to the time of sale or rental of a property. See also Sections 231.b and 231.c on documenting regulatory language.

Example 342.b-1.

A community can receive credit for a state law that requires that, before they are recorded, all subdivision plats are to “include an engineer’s or surveyor’s statement as to which lots, if any, are partially or completely located in an area of special flood hazard identified pursuant to the National Flood Insurance Act of 1968.” [5 points]

A community’s zoning and building codes require that property records show all special requirements that have been imposed as a condition of building in a floodplain: “A record of each variance, special use permit, and conditional use permit, and all conditions and stipulations attached thereto, shall be provided to the County Recorder of Deeds to be filed with the record of the property.” [5 points]

The community’s application includes a photocopy of these two quoted legal requirements with “ODR” marked in the margin.

ODR = 5 + 5 = 10

342.c. Real estate agents’ brochure (REB)

The maximum credit for this element is 12 points. There are 8 points for REB, and an additional 4 points are provided if the brochure is described in the community’s Program for Public Information credited under Activity 330 (Outreach Projects).

REB credit is provided if real estate agents give a brochure to all clients that are looking to purchase a property. The brochure does not need to identify which properties are flood-prone, but it must advise the reader to check to see if a property is in a floodplain or has a history of flooding.

Figure 340-2 has language that communities can use to develop their own locally tailored brochure. Sellers, in particular, may appreciate as complete a description as possible, especially if the flooding is shallow and slow-moving and retrofitting or other protective measures would be appropriate and inexpensive. Purchasers of vacant land should be well aware of factors such as the depth, velocity, and warning time of the base flood.

It is recommended that real estate agents or communities provide the brochures to lenders, because they would be valuable to people seeking pre-approval for a mortgage before they start house hunting.

Credit Criteria for REB

- (1) The real estate agents' brochure must advise the reader to check to see if a property is in a floodplain or has a history of flooding.
- (2) Additional credit is provided if the brochure is described in the community's Program for Public Information document credited in element PPI under Activity 330 (Outreach Projects). The PPI document must include a discussion of the brochure. Continued credit for the extra PPI points under this activity is dependent upon receiving continued credit for the Program for Public Information under Activity 330. If the community does not have a credited Program for Public Information, the extra 4 points can be provided if community staff worked with local real estate agents to develop the brochure and the staff meet with real estate agents annually to evaluate and improve it.
- (3) This credit is available even if the community receives no DFH credit in Section 342.a.

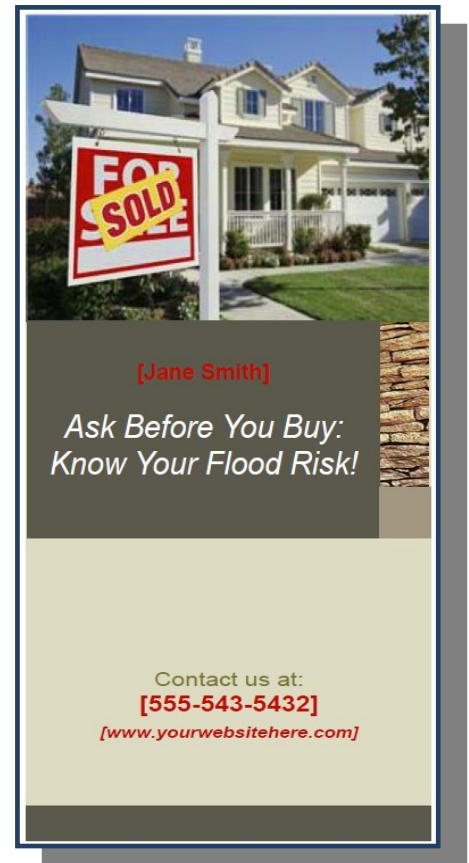
Credit Points for REB

REB = EITHER

8 points, if real estate agents are providing brochures or handouts that advise potential buyers to investigate the flood hazard for a property

OR

12 points, if the credited brochure or handout is described in the community's PPI



Flood Hazard: Check Before You Buy

Most everyone knows that coastal properties are subject to flooding and wind damage from hurricanes. There are maps that show areas predicted to flood. To find out more about flood-prone area maps, check with

_____ *[office that administers the map information service credited under Activity 320]*

However, flooding and other surface drainage problems can occur well away from the coast. If you're looking at a property, it's a good idea to check out the possible flood hazard before you buy. Here's why:

- The force of moving water or waves can destroy a building.
- Slow-moving floodwaters can knock people off their feet or float a car.
- Even standing water can float a building, collapse basement walls, or buckle a concrete floor.
- Water-soaked contents, such as carpeting, clothing, upholstered furniture, and mattresses, may have to be thrown away after a flood.
- Some items, such as photographs and heirlooms, may never be restored to their original condition.
- Floodwaters are not clean: floods carry mud, farm chemicals, road oil, and other noxious substances that cause health hazards.
- Flooded buildings breed mold and other problems if they are not repaired quickly and properly.
- The impact of a flood—cleaning up, making repairs, and the personal losses—can cause great stress to you, your family, and your finances.

Floodplain Regulations: _____ *[name of community]* regulates construction and development in the floodplain to ensure that buildings will be protected from flood damage. Filling and similar projects are prohibited in certain areas. Houses substantially damaged by fire, flood, or any other cause must be elevated to or above the regulatory flood level when they are repaired. More information can be obtained from _____ *[name, phone number of permit office]*

Check for a Flood Hazard: Before you commit yourself to buying property, do the following:

- Ask the _____ *[name, phone number of permit office]* if the property is in a floodplain; if it has ever been flooded; what the flood depth, velocity, and warning time are; if it is subject to any other hazards; and what building or zoning regulations are in effect.
- Ask the real estate agent if the property is in a floodplain, if it has ever been flooded, and if it is subject to any other hazards, such as sewer backup or subsidence.
- Ask the seller and the neighbors if the property is in a floodplain, how long they have lived there, if the property has ever been flooded, and if it is subject to any other hazards.

Flood Protection: A building can be protected from most flood hazards, sometimes at a relatively low cost. New buildings and additions can be elevated above flood levels. Existing buildings can be protected from shallow floodwaters by regrading, berms, or floodwalls. There are other retrofitting techniques that can protect a building from surface or subsurface water.

Flood Insurance: Homeowners insurance usually does not include coverage for a flood. One of the best protection measures for a building with a flood problem is a flood insurance policy under the National Flood Insurance Program, which can be purchased through any licensed property insurance agent. If the building is located in a floodplain, flood insurance will be required by most federally backed mortgage lenders. Ask an insurance agent how much a flood insurance policy would cost.

Figure 340-2. A template for a real estate agents' brochure

Documentation for REB Provided by the Community

(1) At each verification visit,

- (a) A copy of the brochure or other document that real estate agents make available to interested parties.

(2) With the annual recertification,

- (a) [Required only for the extra PPI credit] A copy of the annual report prepared by the Program for Public Information committee or by the community after meeting with real estate agents. The report must identify how the credited element worked, how effective it was estimated to be, and what changes were recommended for improving its effectiveness. If the extra credit is based on a credited Program for Public Information, a separate submittal is not needed.

Example 342.c-1.

The California Department of Water Resources has produced a model brochure for prospective purchasers of flood-prone property that provides them with information about flood hazards. California communities that adapt the brochure for their local flood conditions can receive 8 points, provided it is distributed by local real estate agents. It is available as a template at http://www.water.ca.gov/floodmgmt/lrafmo/fmb/fas/nfip/crs/300series_publicinformation.cfm.

342.d. Disclosure of other hazards (DOH)

The maximum credit for this element is 8 points.

DOH provides credit for providing information to inquirers about other flood-related hazards. Potential property purchasers should be advised of other hazards that have been identified for specific sites. These include

- Coastal wave hazards (as mapped as V Zones, Limit of Moderate Wave Action (LiMWA), or coastal A Zones);
- Coastal and channel erosion;
- Subsidence;
- Dam failure and levee failure;
- Areas subject to increased flooding due to climate change or sea level rise; and
- Tsunamis and the other special flood-related hazards listed in Section 401.

Disclosing areas subject to non-flood-related hazards, such as volcanoes, landslides, and wildfire, is encouraged, but not credited by the CRS.

Credit Criteria for DOH

DFH credit is a prerequisite to receiving DOH credit. The disclosure of other hazards must be included in the materials used for DFH credit.

Credit Points for DOH

DOH = 8 points, if the notification to prospective buyers credited in Section 342.a includes disclosure of other flood-related hazards

Documentation for DOH Provided by the Community

(1) At each verification visit,

- (a) The documentation submitted for credit under Section 342.a (DFH), marked to show how the other flood-related hazards are disclosed.

343 Impact Adjustment

There is no impact adjustment for this activity.

344 Credit Calculation

$c340 = DFH + ODR + REB + DOH$

345 For More Information

- a. Additional information, reference materials, and examples can be found at www.CRSresources.org/300.
- b. Copies of the following booklet are available free, singly or in quantity (see Appendix C or www.CRSresources.org).

Answers to Questions about the National Flood Insurance Program, FEMA F-084, Federal Emergency Management Agency (2011). This is also available from FEMA's website at www.fema.gov/th/media-library/assets/documents/272.

346 Related Activities under the Community Rating System

- Some communities' map information services (credited under Activity 320 (Map Information Service)) help real estate agents determine the flood hazard for a property. Having an objective source of this information can help overcome some agencies' reluctance to disclose the flood hazard and can help the community receive credit under this activity.
- The Program for Public Information credited under Activity 330 (Outreach Projects) can be an effective way to start involving real estate staff in community public information activities. Their participation in the Program for Public Information can result in more points for DFH and REB under Activity 340.
- Some credited regulations require filing a provision with the property records. For example, subdivision plat limitations credited by open space incentives (OSI) in Activity 420 (Open Space Preservation) and nonconversion agreements credited under ENL in Activity 430 (Higher Regulatory Standards) are filed with the recorder of property records so future owners are made aware of the restrictions. Such regulations are also eligible for credit under ODR in this activity.