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Dis-Closing Time: NJ Landlords and Sellers of Real Estate Now Required to Disclose Flood Risks

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To our clients and colleagues:

It is news to no one that the frequency and severity of storm events in New Jersey has been on the rise. In response, the State has enacted a new law requiring residential landlords and sellers of residential properties to disclose flood hazards. The Law, P.L. 2023, c.93, requires the sellers of real property and residential landlords (upon the signing of a lease) to disclose the following information:

- Whether the property is in an area designated as a FEMA Special Flood Hazard Area (more commonly known as the 100-year flood plain) or Moderate Risk Flood Hazard Area (i.e., the 500-year flood plain);
- Any flood damage suffered by the property in the past that the disclosing party is aware of;
- The availability of flood insurance for the property via the National Flood Insurance Program; and
- Any other information related to the property's flood insurance and flood damage history that the disclosing party is aware of.

A landlord's duty to disclose applies only to a party who rents or leases an eligible property for more than 120 days. However, there is no limit to a seller's obligation to disclose under the Law.

The Law directs the Department of Community Affairs ("DCA") to develop a model rental flood disclosure form and to revise the property condition disclosure statement form that is currently used by sellers of real property to include the required flood risk questions. The Department of Environmental Protection ("DEP"), meanwhile, is tasked with developing a user-friendly look-up tool on the DEP website that will allow users to identify whether a property is located in a flood plain.

The Law provides, in the event of noncompliance by a landlord, that a tenant may terminate a lease upon written notice, if they discover that the property in question is situated in a flood hazard area, and can recover damages from the landlord for any flood damage to the tenant's personal property and/or a flood's impact on the habitability of, or access to, the leased property. Notably, the law does not identify any penalties for sellers who engage in similar violations, but it will likely bolster suits brought by affected buyers against sellers who fail to disclose flood risks moving forward.

If you have any questions concerning the potential impacts of NJ's new flood disclosure law, feel free to contact Neil Yoskin (**NYoskin@cullenllp.com**) or Amie C. Kalac (**AKalac@cullenllp.com**).

Please note that this is a general overview of the law and no content within this excerpt constitutes legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

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