

Nadeau Land Surveys

Professional Land Surveyors
Certified Floodplain Managers

Written Testimony Before the
131st Maine Legislature Judiciary Committee
December 20, 2023

by
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Testimony in Support of

LD 2035 - An Act Regarding Disclosure of Flood Risk by Sellers of Real Estate

Sen. Carney, Rep. Moonen, and Members of the Judiciary Committee,

Thank you for the opportunity to testify in support of LD 2035. I am a Realtor, Professional Land Surveyor, and flood consultant with the three National Flood Insurance Program designations of Certified Flood Floodplain Manager, Certified Floodplain Surveyor, and Associate in National Flood Insurance. My experience is further supported by having served as the national land surveyor representative on the Technical Mapping Advisory Committee, a federal advisory committee established to review and make recommendations to FEMA on matters related to the national flood mapping program.

In February 2020, the National Association of REALTORS® published a mandated property disclosure survey prepared by Legal Research Center, Inc., which determined Maine Statutes make no mention of flood-related disclosure, and the National Resources Defense Council recently gave Maine a score of F in their analysis of state flood hazard disclosures. Currently, the Maine Real Estate Information System, Inc., separately incorporated but wholly-owned by the Maine Association of REALTORS®, has only one question pertaining to flood which can be found in Section V – General Information: *“Is House now covered by flood insurance policy (not a determination of flood zone)?”*. The response options are Yes, No, or Unknown. This question creates confusion, a false sense of security, and is inadequate in conveying whether flood damage has occurred or if future flood risk exists.

First, since a flood insurance policy is a binding document between a property owner and insurer, stating “unknown” should not be an option. Also, the requirement to have a flood insurance policy is predicated on certain circumstances which this question does not address, making it ineffective in informing prospective buyers of actual flood risk. If the home is not encumbered or has a federally backed or insured loan of less than \$5,000, has a private mortgage, or obtains an incorrect flood determination, a seller can choose to respond “no” regardless of a known history of flooding. A “yes” answer is helpful for exploring the issue further, but still lacks the detail needed for a buyer to make an informed decision. With an understanding that 40% of all flood insurance claims in the last 5 years occurred on homes not required to carry mandatory flood insurance, a question that only addresses the existence of a policy falls short of disclosing anything of real value. Depending on circumstances, flood damage and risk can be a material defect or latent defect which requires real estate disclosure but there is currently no mandate to do so. Flood history should be an independent section in the Property Disclosure, as it has the potential to greatly impact real estate value more than many of the other items listed.

Furthermore, advances in technology intended to streamline mapping flood risk or insurance premiums, such as “Flood Factor” and Risk Rating 2.0, which utilize online mapping platforms and data sets that do not include actual flood risk and could be based on outdated or inaccurate data, will never be as helpful as the accounts of people who have lived at the property. The public safety of the buyer and the protection of lenders, Realtors, and other important stakeholders can no longer be overlooked. With a changing global climate, expanding real estate development, and vegetation loss, bringing actual flood risk more in line with real estate value requires improved seller flood hazard disclosure.

Sincerely,

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