Farr Law Firm Newsletter
Big City Solutions. Small Town Values.
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Flood Insurance Update:

Homeowner Flood Insurance Affordability Act of 2014

My October 2013 newsletter outlined the ramifications of the Biggert-Waters Flood Insurance Reform Act of 2012 ("Biggert-Waters"). In response to Biggert-Waters and to soften some of the harsh effects it was wreaking on the real estate economy in flood zones, the federal government passed the Homeowner Flood Insurance Affordability Act of 2014 (the "New Act").

Pre-FIRM Properties

"Pre-FIRM" properties are homes or other buildings that were constructed prior to establishment and adoption of a flood insurance rate map ("FIRM") for the community in which they are located. Oftentimes, these buildings were constructed below the base flood elevation established by the FIRM. The buildings that were constructed below that base flood elevation are considered subsidized in that owners do not pay what the National Flood Insurance Program ("NFIP") considers to be the actual risk-rated premium.

Biggert-Waters provided that if a property that was "subsidized" was sold or the flood insurance lapsed, the new owner or existing owner acquiring a new policy would pay the full unsubsidized risk premium. That meant that flood insurance policies to new owners or owners who had allowed their policy to lapse could increase substantially.

Under the New Act, neither the sale of the property or the lapsing of an existing policy, results in the premiums being increased to full unsubsidized rates. Instead, premiums on owner-occupied homes will increase by 5% to 18% until the policy reaches the full risk rate. Where a particular property will fall within that range of increases depends on a number of factors specific to the property and the community in which it is located.

For properties that are not owner-occupied or are commercial properties, the New Act does nothing to alleviate the effects of Biggert-Waters. Those properties will still see increases of 25% per year until they reach the full risk premium.

Grandfathered Properties

The New Act provides relief for homes and structures that were constructed in compliance with the FIRM when built, but which, because of subsequent changes to the FIRM, are no longer compliant. Biggert-Waters provided for a phase-out of the subsidized rates, although the Federal Emergency Management Agency ("FEMA") had yet to implement

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a plan for phasing out such subsidies. The New Act maintains the subsidized rates on these grandfathered properties that are presently insured.

Owners of properties that are not presently insured, but who later procure insurance, will initially get the benefit of subsidized rates which will be phased out on the same schedule that applies to pre-FIRM properties.

Additional Charges

Properties deemed to be in high risk areas, such as velocity zones ("V" or "VE") and "A" and "AE" flood zones will pay a premium of either $25 or $250 each year to defray the cost of the New Act. This surcharge will apply to all properties in such zones, even if owners of those properties are already paying full risk rates.

Premiums vs. Claims Paid

What makes these rate increases appear more inequitable for Florida property owners to stomach is that over the last 35 years, Floridians have paid four times more into the NFIP than they have received in claim reimbursements. Some states, such as Colorado, fared even worse, paying in 15 times what they received out of the program. Whereas, Louisiana received four times as much in claims payments as premiums paid, largely due to Hurricane Katrina. Of course, these ratios could quickly change if a major flooding event is experienced by one of these states currently paying in more than they receive.

Conclusion

While the New Act helps to stem the tide of rate increases in flood insurance premiums in the near term, overall the cost of flood insurance will continue to rise on properties in flood prone areas. Hopefully, the federal government can develop a framework that more fairly allocates the cost relative to the risk; however, when dealing with the uncertainty of natural disasters that task is more easily said than done.

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