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NEWS & MEDIA



OCTOBER 20, 2022

SW Fla. Owners Surprised by FEMA's 50% Rule

By Mike Sunnucks

If damage exceeds 50% of a home's market value, owners can't just repair what was destroyed – they must upgrade the entire home to current building codes.

NORTH PORT, Fla. – Scores of Floridians are getting a crash course on the Federal Emergency Management Agency's (FEMA) 50% rule governing rebuilding homes after Hurricane Ian. And for many, the FEMA rule is an unpleasant, problematic surprise after all of Ian's damage and traumas.

The 50% rule dictates the future of hurricane damaged homes in designated flood zones.

The federal rule prohibits repairs and improvements on damaged homes exceeding 50% of their market value unless the entire residential structure is brought up to the most current building codes and flood regulations. Basically, if the repairs to a home damaged by Ian are greater than 50% of its value, homeowners are compelled to rebuild at current codes and elevation requirements in coastal and other flood zone areas.

The aim is to mitigate damages and insurance costs of future storms. But the reality for homeowners can be very tough and very expensive medicine, and could price longtime homeowners and others out of coastal real estate markets – leaving more of the region's waterfronts to the wealthy.

"The FEMA rule is going to impact a lot of people," said Charles Whittington, a real estate attorney with the Grant Fridkin Pearson P.A. law firm in Naples. "The rule is going to significantly affect people's ability to rebuild."

The 50% rule is part of the FEMA-managed National Flood Insurance Program which aims to control development on designated floodplains. The idea is to bring properties up to current codes after flooding and wind damage so residences are more resilient against future storms – thus lowering insurance and damage costs.

Attorneys, appraisers, Realtors and insurance agents across the region are fielding calls from Ian-impacted homeowners about their repair and rebuilding options after the storm. Some local homeowners have limited or no previous knowledge of the FEMA rule and potential restrictions on their post-hurricane path.

"A lot of people are calling because they had a flood and they've got no idea what to do," said Cameron Woodward, a real estate and land-use attorney with the Woodward, Pires & Lombardo PA law firm on Marco Island.

Woodward points to Lee County data showing more than 48,500 residential properties were damaged by the Category 4 hurricane with more 5,000 destroyed and another 13,100 with major damage. Woodward said the FEMA rule could make renovations and rebuilding tough on homeowners without ample financial cushions, such as retirees on fixed incomes, as well as those with older properties.

"They are going to have issues," the attorney said. "There is no nice way to say it. They are going to have troubles. You are going to have a lot of rebuilding going on."

That rebuilding could entail more complete tear downs and new construction of elevated and more expensive homes built to current codes and flood rules rather than repairs of existing older homes.

"You are going to see the nature of the community change structure by structure," Woodward said. "You are going to go to Fort Myers Beach 10 years from now and it is going to look nothing like it does now."

'The super rich'

Patricia Staebler, principal with Bradenton-based Staebler Appraisal and Consulting, sees the 50% rule after Ian resulting in coastal areas being rebuilt mostly by wealthy buyers and investors.

"The super rich," said Staebler on who will be able to afford to rebuild and live in hard hit coastal areas and barrier islands that felt the brunt of the hurricane but offer expensive and attractive waterfront properties. "We normal people, we will all be priced out of the market."

Staebler said many transplants and homebuyers from other states have limited knowledge at best of the 50% rule.

"There is a lack of information and a lack of knowledge," said Staebler. "Too many people are buying homes not knowing what they are buying into," she said.

Staebler wants more detailed disclosures of floodplains and the FEMA rule to prospective real estate buyers as well as rethinking of developments on barrier islands after Ian pummeled Sanibel and Pine islands as well as coastal areas.

"There is no disclosure, no information," she said. "They prefer to remain ignorant and not disclose just to make a sale. It comes down to the five-letter word – greed. Greed in every aspect," Staebler said.

Florida statutes do not require specific disclosures from sellers about their properties, but they do have to disclose material impacts on property values via a 1985 Florida Supreme Court decision in Johnson v. Davis, according to Marla Martin, media and communications manager for the Florida Realtors group. She said those disclosures can be made verbally or in writing.

"Florida Realtors provides its members with a real property condition disclosure form that's used in many transactions involving a Realtor. This form provides prospective purchasers with a wide variety of information regarding the property they are considering purchasing, including water intrusion, drainage, and flooding," she said.

FEMA and local jurisdictions also have flood maps and other property information available – including on the 50% rules and other substantial damage provisions.

No easy solutions

Whittington said determination of real estate values under the 50% rule apply to homes and residential structure, not the value of the land. But it is difficult to stay under the threshold with major roof and water damage from the storm, he said.

"There's not an easy solution. A neighbor's situation is going to be different from the person immediately next door," Whittington said.

Woodward said homeowners do have some ability to appeal damage estimates in the FEMA rule process. "You can appeal certain aspects of it," he said. "If you are right at 50 or 51%, there is something that can be done."

Hurricane Ian caused as much as \$70 billion in damage, according to real estate research firm CoreLogic.

Staebler worries about the already stressed property insurance situation being worsened by Ian (including via lawsuits) and said the rebuilding process will take several years.

"This will take more than a year," she said of all the expected new elevated buildings and new and more expensive structures. "This will take five, six, seven years to rebuild."

For more information on Hurricane Ian recovery efforts and survivor options, visit Florida Realtors Hurricane Recovery Center (<https://www.floridarealtors.org/tools-research/hurricane-ian-recovery-assistance-realtors-resources>).

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