

[Flood insurance law hurting Sandy victims](#)

Newsday

A little-known provision in some Long Island homeowners' flood insurance policies could stymie their claims to collect for superstorm Sandy damage.

Advocates and lawyers for property owners say it's a loophole for insurance companies and the Federal Emergency Management Agency that is based on semantics. But federal officials and the companies say they're following the letter of the law and that there is ample precedent for the denials.

At issue is the "earth movement" exclusion in standard flood policies. The exclusion denies payment for loss of property caused directly by earth movement, even if the movement was caused by a flood.

No one knows exactly how many homeowners are affected, but Sen. Kirsten Gillibrand (D-N.Y.) said it could be in the thousands. She wrote a letter of protest late last month to FEMA administrator Craig Fugate.

"It is unacceptable for the federal government to use such loopholes to deny responsible homeowners the benefits that they have paid for through their insurance premiums," Gillibrand wrote. "To deny these claims pulls the rug out from underneath homeowners who are relying on their flood insurance policies to repair and rebuild their homes" post-Sandy.

FEMA spokesman Dan Watson said the agency is following the law. In addition, some homes may have had pre-existing problems, meaning not all the damage was directly caused by Sandy, he said. The agency also said it encourages people to appeal the insurance claims decisions if they are not satisfied.

Erosion vs. 'scouring'

Some experts said the issue involves the difference between what FEMA and insurance adjusters determine is "erosion" and what is determined to be "scouring" of the soil beneath the foundation and its supports, if any. Scouring generally is defined as having occurred when there was flooding with enough water movement to carry subsoil away from the slab or foundation walls; this usually leaves visible signs.

"It's affecting a lot of people," said Robert Trautmann, an attorney in Red Bank, N.J., who said he is handling dozens of such cases for New Jersey homeowners.

If FEMA — or private insurance companies that administer the flood insurance program on FEMA's behalf — determines that foundation damage was caused by erosion, the homeowner will not be paid. If, on the

other hand, the damage is caused by scouring, then a claim will be paid, Trautmann said. For Stephen Parke, a schoolteacher whose house in Freeport was devastated by Sandy, the debate is absurd.

He said he has a FEMA-backed flood insurance policy through Fidelity that calls for \$180,000 in flood coverage. But Fidelity and FEMA are paying only \$94,000 — mainly for Parke's damaged garage, which was detached from the house.

Parke figures it will take at least \$230,000 to rebuild his house, which was condemned by the Village of Freeport as unsafe. It is set to be demolished any day.

He and his longtime companion, Michele Mittleman, are temporarily living in a rented apartment in Westbury, which FEMA helps pay for. Mittleman's 11-year-old son is sleeping in a walk-in closet there, she said.

Earlier this month, Parke got a letter from FEMA stating that a large portion of his claim was being denied.

"It was a shell shock," Parke said. "I was flabbergasted."

A FEMA official who did not want to be identified said that by law, the Standard Flood Insurance Policy (SFIP) "only covers direct physical loss to buildings by flooding. For instance, damage caused by the surge or flow of flood water can scour around foundations or undermine a slab, directly damaging the foundation."

"By law, the SFIP does not cover earth movement, including destabilization caused by nearby flooding," the official added.

Ruling: Not flood-related

James A. Sadler, director of claims for FEMA's National Flood Insurance Program, wrote in a July 11 letter to Parke that much of the damage to Parke's home, according to an engineer's report, was due to "long-term differential movement of the supporting soils at the site, and long-term deterioration, deflection and distortion of the building components."

Sadler added that the problems "were unrelated to the subject flood event."

The FEMA official "is out of his mind," Parke said. "How does a wall of water come 14 feet high and hit the house and then you say the house wasn't rocked by the water?"

Jeff Moore, senior vice president of claims for Wright Flood, the company that has handled Parke's case on behalf of FEMA, said the company was following federal mandates.

"Wright Flood adjusts flood claims under the guidance of FEMA and the flood policy contract," Moore said in a statement. "Related to earth movement, there has been a long-standing exclusion in the flood policy which is very specific and cannot really be considered a 'loophole.' If FEMA revises their interpretation of

the exclusion related to earth movement, we will, of course, follow their direction.”

Trautmann said he is planning to challenge FEMA in federal court, saying the National Flood Insurance Program gives homeowners the false impression they are covered in the event of a devastating flood, when they often are not.

Minimizing payouts?

Amy Bach of United Policy Holders, a nonprofit in San Francisco that assists insurance policyholders, said the case of Parke and others in a similar situation appears to represent a pattern of insurance companies that work with FEMA seeking to minimize payouts.

“We can’t have people thinking they have protection and then they find out they don’t,” she said.

Watson, the FEMA spokesman, said that according to estimates reported by private insurance companies that work with the agency, “99 percent of the more than 143,000 Sandy-related claims are closed, and approximately \$7.7 billion has been paid out to survivors.”