

Flood Insurance Problems that Bedeviled Sandy Homeowners Still Remain: Who Will Fix Them?

NJ Spotlight

Menendez legislation that would reform federal program may be voted on this week, but it faces uphill battle

When Superstorm Sandy came ashore near Denise Vaccaro's bayfront home in the Ocean County community of Forked River back in October of 2012, it was just the start of her problems. The damage was so extensive that her house was condemned, but her flood insurance company offered her just \$29,000 to rebuild.

Seven years after Sandy, Vaccaro and other homeowners worry that fundamental problems with the nation's flood insurance program — which became starkly evident in the storm's aftermath — still have not been fixed.

Vaccaro remembers looking at her adjuster's estimate. "Because I was in the contracting field, I knew the A's, B's, and C's," she said. "I knew the number was wrong right away. So I brought it to some friends, and they said, 'This is not much for material and labor. Even if I help you, it's still not much. Things are so destroyed in your house that you don't want them half fixed. It needs to be done properly!'"

The difficulty Vaccaro had getting paid a fair amount to cover her losses was something that thousands of New Jersey storm victims experienced after Superstorm Sandy. In many cases, insurance companies tampered with engineering reports to minimize the damage on paper, and used loopholes and technicalities to lowball or improperly reject claims. The issues also led to a series of lawsuits.

If there was any doubt the problems were real, the Department of Homeland Security's Office of

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Inspector General released a report in March 2016 confirming that FEMA Federal Emergency Management Agency) had failed to provide adequate oversight of the private insurance companies which issue National Flood Insurance Program policies, and had therefore failed to identify systemic problems with how the program was being run.

Major reform still needed

Amid all the criticism, FEMA allowed Sandy survivors unhappy with their settlements to re-open their insurance claims, and it created a new position of policyholder advocate. The agency also implemented a number of administrative changes behind the scenes to “improve customer experience.”

But years later, none of those fixes have been codified into law, and storm-victim advocates rattle off a list of reforms they say are needed to prevent similar problems from occurring in the future. They’re calling for fairer and more transparent handling of flood insurance claims, removing some of the bureaucratic hurdles that made it difficult and expensive to rebuild, and reducing rate hikes to ease the financial burden on homeowners going forward. Sen. Robert Menendez D-NJ) has introduced legislation to correct many of these issues. He hopes that legislation will be voted on this week when the Senate votes to reauthorize and extend the NFIP, which it’s required to periodically do. But while Menendez’s bill has gained some bipartisan support, it faces an uphill battle.

Amanda Devecka-Rinear runs the New Jersey Organizing Project, a grassroots group that lobbies on behalf of residents of South Jersey and the Shore still recovering from Superstorm Sandy.

“We need a flood insurance program where there are no clauses that you can use to cheat people and there’s not an endless bank to cover your legal fees when homeowners are fighting you,” she said. If another big storm were to hit the Jersey Shore tomorrow, “literally the exact same thing would happen,” she added. “It’s insane, actually.”

Strange exception

David Charles is president of Master Claims Consultants. As a public adjuster who’s spent 40 years focusing on disaster relief — including five years in New Jersey following Superstorm Sandy — he’s had a front-row seat to everything that went wrong.

“The big issue that really was my pet peeve of all the storms I’ve ever worked is the way that they wielded the earth movement exclusion,” he said, referring to insurance companies that drew up engineering reports to say that major damage to homeowners’ foundations had supposedly pre-existed the storm or was due to natural movement of the earth rather than raging floodwaters.

“They’ve got a couple words [in the policies] that are really crafted more for sinkholes and earthquakes. The language was vague, and it just left a loophole that then they exploited,” Charles continued. “They didn’t do the right thing and denied thousands of claims. They were offering \$50,000 settlements on \$250,000 losses, where people were just having to walk away from their houses!”

And if people tried to fight their settlements, he said, the deck was usually stacked against them.

“The appeals process was really exposed for the sham that it was. They would say that you could have an appeal, but nobody ever prevailed in one. It was just a joke!”

Amy Bach also recognized this imbalance in power. She runs United Policyholders, a national insurance consumer advocacy organization.

“Sandy revealed that the way the NFIP was run was heavily favoring the insurers and putting policyholders in a second class position,” she said.

Bach is worried because — all these years later — the problem that she views as the heart of the entire Sandy flood insurance scandal has still not been corrected.

Pressure to underpay?

“Adjusters were being penalized for overpaying, but they were not being penalized for underpaying,” she said, explaining that although the federal government generally gives insurance companies the money for flood claim settlements, FEMA requires them to foot the bill out of their own pockets for any payments to homeowners later determined to be in excess of what was required. “The compensation structure was almost designed to facilitate lowballing. What we haven’t seen is a clear penalty that would be a deterrent for an adjuster to underestimate a claim.”

Bach says her concerns are tempered by the fact that there haven’t been any major flood insurance

scandals in the years since Sandy, and her organization isn't aware of widespread policyholder complaints. She acknowledges that with several recent big hurricanes like Maria and Harvey, much of the related flooding affected people who didn't have flood insurance to begin with because they couldn't afford it, didn't think they needed it, or weren't able to purchase it where they lived. In some cases, homeowners weren't required to have flood insurance because they didn't have mortgages or live in areas that were previously considered at risk of flooding. So Bach says it's possible that the NFIP has yet to be fully put to the test. But she also takes some comfort from what she sees as a culture shift within FEMA.

Insurance affordability issues aside, "I have to believe that new management at the program has improved their customer satisfaction," she said. "And I would say, overall, I expect it to be more pro-consumer after the next major flood event for the people who have flood insurance."

As for the underpayments and denials for Sandy damage, "The program had to pay quite a bit out in attorneys' fees to settle the people's lawsuits," she added, "and I would imagine that chastened them quite a bit from continuing with that practice going forward."

Others aren't so sure.

A broken system

Having worked in disaster recovery for close to two decades, Sue Marticek believes she's seen it all. She used to run the Ocean County Long Term Recovery Group. Now she's taken the lessons she's learned from Sandy and founded a national nonprofit organization called Compass 82 to help storm victims in other places navigate the bureaucratic hurdles necessary to get funding and rebuild their lives. Currently her group is assisting residents of South Florida recovering from hurricanes Michael and Irma.

"There's a reason why they say the insurance companies deny, delay, and defend," she explained. "Once you deny, about 50% of the people won't ever push back. And then you delay it, and you probably lose another 25 to 35% of the people. And then they put the rest of the people in litigation, and they just can drag them out. It's just a real horrible thing to do when people are basically overwhelmed."

There were myriad explanations for why flood insurance companies acted the way they did, so it's clear

to Marticek that a simple, Band-Aid solution won't solve the problem.

"It's not a few bad apples," she said. "It's a broken system that needs to be fixed!"

She's frustrated that, after all these years, lawmakers still haven't been able to agree on passing the needed reforms to ensure these problems won't happen again. She recalled recent correspondence she had with a flooding victim in another part of the country that alarmed her.

"We had someone just reach out to us recently from Mississippi that knew of our work in Sandy. They sent us their documents, and it was some of the same players with some of the same reasons for denial," she said, explaining that the flood insurance company's language rejecting the correspondent's claim based on the earth-movement exclusion was eerily similar to what she remembered from the aftermath of Sandy. "I don't know how we keep repeating the same mistakes."

Menendez wants sweeping changes

Menendez's spokesman Steve Sandberg says stories like this have spurred the senator to take action. In the aftermath of Sandy, Menendez held a series of hearings to investigate the flood insurance scandal. Based on what he learned, as well as from meetings with storm victims, he originally drafted the SAFE NFIP Reauthorization Act of 2017, a package of what he called "sweeping reforms to address the waste, abuse and mismanagement plaguing the system that led to delayed recovery for Sandy survivors." That measure stalled in committee and never came up for a vote.

Now Menendez has introduced an improved version of his bill, called the National Flood Insurance Program Reauthorization and Reform Act of 2019, or "NFIP-Re" for short. It would prohibit insurance companies from denying claims due to "earth movement," prevent them from manipulating engineering reports, and equalize the penalties they'd face for over- and under-payments in order to eliminate their current incentive to err on the side of paying policyholders less than they are rightfully owed.

The measure also mandates better training for insurance adjusters, makes the appeals process easier and more transparent, institutes changes so homeowners would get paid faster after filing claims, and lets them spend some of their insurance money for mitigation against future storms. It also caps annual rate increases to make flood insurance more affordable. And if it were to become law after the current

congressional authorization of the NFIP expires on Thursday, it would extend the program until late 2024, a break from the short-term extensions that have become the norm in recent years, thereby providing some stability to the real estate market and protection for policyholders in case of a future government shutdown, which could pause home sales and delay processing of claims.

Fear that future flood victims will face similar issues

“Until the comprehensive reforms Sen. Menendez has called for become law,” his spokesman Steve Sandberg said in an email, “there is real concern that current and future flood victims will face the same systemic failures of the NFIP that Sandy survivors were forced to endure.”

As for Denise Vaccaro, the Sandy victim fighting her flood insurance company over the property in Forked River, it took two years before she was able to go back to court to re-open her case. She remembers her phone conversation with the judge who was making the final decision about her settlement.

“I told her, ‘Listen. If I didn’t deserve this, I wouldn’t be asking,’” Vaccaro recalled. “‘I’m just looking for my home back and to have a normal life. I just want it done safely and properly. I owned my home, and I paid my bills like a good girl, and it was devastating!’ And it wasn’t very long before she agreed. She goes, ‘Yeah, you definitely have to have more money to rebuild your home. You can’t live like this!’”

Between state grant funding and the additional insurance money she received, Vaccaro was eventually able to rebuild her house, and she even got funding to elevate it 10 feet in the air to protect it from future storms. But she also had to spend a lot of her savings to buy new furniture and appliances, and she regrets that the process took so long.

“The insurance companies are just taking advantage of people that are in a dire strait of a disaster,” she said. “There were some people who were strong enough to fight, and there were a lot of people that weren’t strong enough to fight. Some people had to walk away. I realize it’s a business, but you’re playing with people’s lives.”

And although she continues paying for flood insurance, the way things are now, she still worries a lot about future storms.

“I always have that bad pit in my stomach,” she said, “cause you don’t trust anybody now. You just hope they do the right thing.”

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