

NEW FORM FOR LANDLORDS

The *Addendum Regarding Rental Flood Disclosure* meets disclosure requirements that went into effect January 1.

During the 87th Texas Legislature, a change in law passed that requires landlords to give notice to prospective residential tenants whether they are aware that the rental dwelling is located in a 100-year floodplain or whether the rental dwelling has flooded during the past five years.

Texas REALTORS® created the *Addendum Regarding Rental Flood Disclosure* (TXR 2015) to satisfy the required disclosure. Use of the form became mandatory January 1, 2022. Here are answers to questions about the new form.

When must the addendum be provided?

The *Addendum Regarding Rental Flood Disclosure* applies to landlords, who are required to provide the addendum to a tenant at or before the execution of the lease.

Can I fill out and sign the addendum on behalf of the landlord?

Agents and brokers should not help landlords fill out the addendum because doing so can increase their liability. Also, brokers and agents have a duty to disclose material facts they know about the property but are not required to do additional research for the purpose of making disclosures on properties they represent.

Is the addendum required if the property is not in a 100-year floodplain and has never flooded?

Yes. Landlords can indicate in the addendum that they are not aware that a dwelling is located in a 100-year floodplain or that they are not aware that the dwelling has flooded at least once within the last five years. However, a landlord is not required to disclose on the addendum that the landlord is aware that a dwelling is located in a 100-year floodplain if the elevation of the dwelling is raised above the 100-year floodplain flood levels in accordance with federal regulations.

Do I have to provide the addendum when extending a lease or when a lease automatically renews to a month-to-month?

For a lease that was executed prior to the notice requirement (January 1, 2022), the landlord should provide the *Addendum Regarding Rental Flood Disclosure* when extending the lease or when it automatically renews, since that would be the first time the amendment would be provided. The addendum is *not* required for extensions or automatic renewals on any lease where the amendment was previously given on or before the execution of the lease.

The lease extension form is an amendment to the lease, and the renewal is automatic, meaning there are no later executions of a lease in either instance.

If a new lease is signed between the same landlord and tenants and the addendum was provided with a previous lease, does the landlord need to provide another addendum if nothing has changed?

Yes. Because a new lease is being executed, the addendum should be provided irrespective of whether the previous information has changed.

What does “100-year floodplain” in Section A of the addendum mean?

The term “100-year floodplain” is defined as any area of land designated as a flood hazard area with a 1% or greater chance of flooding each year by the Federal Emergency Management Agency (FEMA) under the National Flood Insurance Act of 1968. FEMA maintains a flood map on its website that is searchable by address, where a landlord can determine if a dwelling is located in a flood hazard area.

What does “flooding” in Section B of the addendum mean?

Flooding is defined as a general or temporary condition of partial or complete inundation of a dwelling caused by any of the following:

- The overflow of inland or tidal waters
- The unusual and rapid accumulation of runoff or surface waters from any established water source such as a river, stream, or drainage ditch
- Excessive rainfall.

What happens if the landlord fails to provide the addendum and the dwelling floods?

Section 92.0135 of the Texas Property Code states that if the landlord fails to provide the required notice and a tenant suffers a substantial loss or damage to their personal property, then the tenant may terminate the lease by giving a written notice of termination to the landlord no later than 30 days after the date the loss or damage occurred. Substantial loss means that the cost of repairing or replacing the personal property equals 50% or more of the personal property’s market value when the flooding occurred. However, the termination would not affect a tenant’s liability for delinquent rent, unpaid rent, or other sums owed to the landlord before the date the lease was terminated by the tenant.

This new addendum is available from all approved Texas REALTORS® form vendors and is available to members at texasrealestate.com/realtorforms.