

ORDINANCE NO. 09-____

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2
3 AN ORDINANCE OF THE BOARD OF COUNTY
4 COMMISSIONERS OF LEON COUNTY, FLORIDA,
5 ENACTING A NEW SECTION OF ARTICLE I, "IN
6 GENERAL," OF CHAPTER 12, "OFFENSES -
7 MISCELLANEOUS," OF THE CODE OF LAWS OF LEON
8 COUNTY, FLORIDA, TO PROVIDE FOR PURPOSE;
9 FINDINGS; DEFINITIONS; PROHIBITION OF FAILURE
10 TO DISCLOSE KNOWN FLOOD CONDITIONS OF
11 RESIDENTIAL PROPERTY TO PROSPECTIVE BUYERS
12 OR TENANTS; EFFECT ON VALIDITY OF
13 TRANSACTION AND TITLE; EXEMPTIONS;
14 PENALTIES; SEVERABILITY; SAVINGS CLAUSE; AND
15 AN EFFECTIVE DATE.
16

17 WHEREAS, the Florida Constitution and Chapter 125, Florida Statutes, grants the
18 authority to the Leon County Board of County Commissioners to perform any act, not
19 inconsistent with law, which is in the common interest of the citizens of Leon County and to
20 adopt ordinances necessary for the exercise of such authority and to prescribe fines and penalties
21 for the violation of such ordinances; and

22 WHEREAS, as a result of Tropical Storm Fay in 2008, and of other such storm events in
23 past years, an abundance of Leon County citizens have suffered significant damages and have
24 been driven from their homes due to the flooding of their residential property; and

25 WHEREAS, in many instances, those citizens affected by the flooding were unaware that
26 their residential properties were prone to such flooding and, in fact, that their property had
27 experienced similar such flooding events prior to their ownership or occupancy; and

28 WHEREAS, it is the policy of the Board of County Commissioners to protect the health,
29 safety, and welfare of its citizens and to promote an environment free from the risk and fear of
30 the damages and disruption of lives that result from such flooding; and

1 WHEREAS, the Board of County Commissioners desires to enact an ordinance creating a
2 new Section 12-8 of Article I of Chapter 12 of the Leon County Code of Laws, relating to
3 Miscellaneous Offenses.

4 BE IT ORDAINED by the Board of County Commissioners of the County of Leon,
5 Florida, as follows, that:

6 **Section 1.** The Code of Laws of Leon County, Florida, is hereby amended at Chapter 12,
7 “Offenses – Miscellaneous,” by adding a new Section to Article I, “In General” to be numbered
8 Section 12-8, which Section shall read as follows:

9 Section 12-8. Failure to Disclose Known Flood Conditions of Residential Property to
10 Prospective Buyers or Tenants.

11 (a) *Purpose.* The purpose of this Ordinance is to protect the health, safety,
12 and welfare of its citizens and to promote an environment free from the risk and
13 fear of the damages and disruption of lives that result from the flooding of
14 residential property.

15 (b) *Findings.* With regard to the flooding of residential property, the Board of
16 County Commissioners finds as follows:

17 (1) that flooding of residential property may result in significant
18 damages to real and personal property as well the displacement of
19 residents to alternate housing;

20 (2) that, prior to experiencing such flooding, the owners and tenants
21 are oftentimes not aware prior to the purchase or lease of their property
22 that it had experienced flooding in the past or was otherwise prone to
23 flooding;

1 (3) that, if the floodprone condition of the property had been disclosed
2 to such owners and tenants prior to their purchase or lease, it would have
3 changed their decision to purchase or lease the property thereby
4 preventing any damages or displacement; and

5 (4) Florida law requires that a when a seller or landlord of residential
6 property, including the seller's or landlord's Broker, knows of facts that
7 materially affect the value of such property, and which are not readily
8 observable and are not known to a prospective buyer or tenant, the seller
9 or landlord is under a duty to disclose such facts to a prospective buyer or
10 tenant. *Johnson v. Davis*, 480 So.2d 625 (Fla. 1985); *Syvrud v. Today*
11 *Real Estate, Inc.*, 858 So.2d 1125 (Fla. 2d DCA 2003)

12 (c) *Definitions.* The following words, terms, and phrases, when used in this
13 Section, shall have the following meanings, except where the context clearly
14 indicates a different meaning:

15 (1) *Dwelling unit* shall mean a single room or unified combination of
16 rooms, regardless of form of ownership that is designed for residential use
17 by one family. The definition shall include, but not be limited to,
18 condominium or cooperative units, mobile homes, manufactured housing,
19 individual attached or detached apartments, and individual houses.

20 (2) *Flood, flooded, or flooding* shall mean a general and temporary
21 condition of partial or complete inundation of normally dry surfaces from
22 the overflow of streams, rivers, or other inland water, or the unusual and
23 rapid accumulation of surface water runoff from any source.

24 (3) *Floodprone* shall mean susceptible to being flooded.

1 (4) *Residential property* shall mean any parcel of real property located
2 in Leon County upon which is located an existing dwelling unit or which
3 is the planned location of a dwelling unit to be constructed or installed by
4 a prospective buyer or tenant.

5 (5) *Seller and landlord* shall mean an owner of a residential property
6 that offers such residential property for sale or for lease, respectively. The
7 terms *seller* and *landlord* shall include an authorized agent of the owner.
8 When an owner has retained the services of a Broker, as that term is
9 defined in Section 475.01(a), Florida Statutes (2008), to assist in the sale
10 or lease of a residential property, the terms *seller* and *landlord* shall
11 include the Broker.

12 (d) *Prohibition.* It shall be unlawful for a seller or landlord of residential
13 property, with knowledge that such property has experienced flooding or is
14 otherwise floodprone, to fail to disclose such facts in writing to a prospective
15 buyer or tenant when such flood conditions are not readily observable and are not
16 known to the prospective buyer or tenant. In addition to the penalties contained
17 herein, the failure of a seller or landlord to provide such disclosure in advance of
18 entering into either a purchase and sale agreement, in the case of a prospective
19 buyer, or an oral or written lease agreement, in the case of a prospective tenant,
20 shall create a rebuttable presumption that the seller or landlord has failed to
21 disclose facts that materially affect the value of such property and shall entitle the
22 purchaser or tenant to seek to recover from the seller, in accordance with the
23 remedies available at law, any damages resulting from such failure to disclose.

1 (e) *Effect on Validity of Transaction or Title.* A seller's or landlord's failure
2 to disclose flood conditions to a prospective purchaser or tenant as prohibited
3 herein shall not impair the enforceability of a purchase and sale agreement
4 between such seller and buyer or a lease agreement between such landlord and
5 tenant, or impair the title to any residential property conveyed by a seller or
6 landlord to a buyer or tenant, respectively.

7 (f) *Exemptions.* The sale or lease of commercial real property or any other
8 real property deemed herein to not be a residential property, shall be exempt from
9 the provisions of this Section.

10 (g) *Penalties.* A seller or landlord who fails to disclose flood conditions as
11 prohibited herein is guilty of a civil infraction which is punishable by a fine not to
12 exceed Five Hundred and 00/100 Dollars (\$500.00). Each occurrence of such
13 failure to disclose constitutes a separate offense and may be punished separately.

14 **Section 2. Conflicts.**

15 All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are
16 hereby repealed to the extent of such conflict, except to the extent of any conflicts with the
17 Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail
18 over any parts of this Ordinance which are inconsistent, either in whole or in part, with the said
19 Comprehensive Plan, and, further, that this Ordinance shall not repeal, amend, or replace the
20 provisions found in Section 4-36 of the Leon County Code of Laws.

21 **Section 3. Severability.**

22 If any provisions or portion of this Ordinance is declared by any court of competent
23 jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and
24 portions of this Ordinance shall remain in full force and effect.

1 **Section 4. Savings Clause.**

2 An enforcement action which is pending on the effective date of this Ordinance and
3 which arose from a violation of an ordinance repealed by this Ordinance, or an enforcement
4 action which is started within one (1) year after the effective date of this Ordinance arising from
5 a violation of an ordinance repealed by this Ordinance, shall be tried and determined exactly as if
6 the ordinance had not been repealed.

7 **Section 5. Effective Date.**

8 This Ordinance shall have effect upon becoming law.

9 DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon
10 County, Florida this _____ day of _____, 2009.

11
12 LEON COUNTY, FLORIDA

13
14
15 By: _____
16 Bryan Desloge, Chairman
17 Board of County Commissioners
18

19 ATTESTED BY:
20 BOB INZER, CLERK OF THE COURT
21 LEON COUNTY, FLORIDA
22

23
24 By: _____
25 Bob Inzer, Clerk of Court
26 Leon County, Florida
27

28
29 APPROVED AS TO FORM:
30 COUNTY ATTORNEY'S OFFICE
31 LEON COUNTY, FLORIDA
32

33
34 By: _____
35 Herbert W. A. Thiele, Esq.
36 County Attorney