

# Superstorm Sandy Prompts New Land Use Exemption

By: Donald Scarinci

<http://scarincilawyer.com>

Rebuilding in the wake of Superstorm Sandy continues throughout New Jersey. For homeowners and municipalities, ensuring compliance with new federal flood guidelines and existing local land use ordinances has proven challenging.

To address the problem, Gov. Chris Christie recently signed legislation that permits limited exemptions to local land use restrictions for homeowners forced to raise a structure to meet new federal flood elevation standards. The exemption would specifically allow a person to raise the structure to the “highest applicable flood elevation standard,” which is defined in the bill to be the higher of two standards:

- The new Federal Emergency Management Agency (FEMA) base flood elevation plus two additional feet, or
- Any applicable flood elevation standard required pursuant to rules and regulations adopted by the Department of Environmental Protection (DEP) pursuant to the “Flood Hazard Area Control Act.”

A “new FEMA base flood elevation” is defined in the bill to mean any advisory base flood elevation or effective base flood elevation proposed or adopted after October 29, 2012, by the FEMA. [A base flood elevation](#), as calculated by FEMA, represents the elevation of a flood with a one percent chance of occurrence during any given year, commonly referred to as a “100-year flood.” A structure that is not elevated to the applicable FEMA-issued base flood elevation for its location is subject to a higher flood insurance premium under the National Flood Insurance Program. Accordingly, the law ([A3890](#)) allows a property owner to raise an existing structure to the highest applicable flood elevation standard without violating local land use restrictions. The exemption applies only to the minimum extent or degree necessary to meet the higher of the two standards, as they apply to the location in question.

The exemption is available for structures that existed on Oct. 28, 2012, including those that require rebuilding or reconstruction due to Hurricane Sandy. It does not apply to new construction.

For more information about the law or the compliance issues involved, we encourage you to contact a member of [Scarinci Hollenbeck's](#) Government Law Group.