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Buyer Beware: Evaluating Property Disclosure as a Tool to Support Flood Risk Management

Daniel Henstra and Jason Thistlethwaite

Key Points

- Property disclosure offers a potential tool by which buyers could become informed about a home's history of flood damage and its exposure to future flood risk.
- Property disclosure to inform buyers about flood hazards has been entrenched in public policy in many other jurisdictions, but this approach has not been embraced in Canada.
- An effective flood risk property disclosure regime requires accurate, up-to-date and publicly available flood risk maps, clarification of legal liability associated with disclosures and a neutral third party to prepare and distribute property disclosure information.

Introduction

Flood risk management is a strategic framework that involves modifying the probability and severity of flooding through preventive measures, while also reducing the vulnerability of people and property to flood-related impacts (Alexander, Priest and Mees 2016). In Canada, all levels of government have begun embracing risk assessment as the basis for setting protection priorities, combining multiple policy instruments to reduce flood risk (such as public education, warning systems and so on) and sharing the responsibility for flood protection and recovery with businesses and individuals. These policy priorities reflect a key principle of flood risk management: since absolute protection from flooding is impossible, stakeholders (including individual property owners) must accept some responsibility by, for example, knowing their flood risk, subscribing to and heeding flood warnings, and adopting property-level flood protection measures (Sayers et al. 2015).

In order for individual property owners to play a meaningful role, they must be made aware of their property's flood risk and accept that they have a role in managing it. Improving public awareness of flood risk is an important step toward meeting Canada's commitment to the Sendai Framework on Disaster Risk Reduction. This 2015 international agreement identified "understanding disaster risk" as its first priority for signatories, arguing that "policies and practices for disaster risk management should be based on an understanding of disaster risk in all

About the Authors

Daniel Henstra is a CIGI senior fellow and associate professor of political science at the University of Waterloo. At CIGI, Daniel's research centres on the multi-level governance of complex policy areas, such as climate change adaptation and flood risk management, where he focuses on the networked relationships among elected officials, public servants, stakeholders and the public. Daniel's research has been supported by grants from the Social Sciences and Humanities Research Council, as well as from the Marine Environmental Observation Prediction and Response Network. In addition to his academic work, he has substantial experience in applied policy analysis, including contract research with government departments such as Infrastructure Canada, Natural Resources Canada and Public Safety Canada. Daniel holds a Ph.D. in political science from the University of Western Ontario (2007).

Jason Thistlethwaite is a CIGI senior fellow, as well as assistant professor in the School of Environment, Enterprise and Development in the Faculty of Environment at the University of Waterloo. At CIGI, Jason's research focuses on the global governance of disaster and climate change risk. His research will dive deeper into Canada's current approach to hazard disclosure in real estate markets, flood risk mapping and the moral hazard surrounding disaster assistance. To inform this research, Jason works directly with business and government leaders in the insurance, banking, real estate, building and investment industries. His research has been published in a number of academic and industry journals, and he is a frequent speaker and media contributor on Canada's growing vulnerability to extreme weather. Jason holds a Ph.D. in global governance from the Balsillie School of International Affairs.

its dimensions of vulnerability, capacity, exposure of persons and assets, hazard characteristics and the environment" (UN Office for Disaster Risk Reduction 2015, 14). All too often, however, property owners affected by flooding claim that nobody told them about the risk they faced.

In the aftermath of major floods, it is common for victims and advocates to call on governments to better communicate flood risk to potential property buyers, so that they can make informed decisions and undertake protective measures (Weisleder 2013). In response to enduring problems stemming from the 1997 Red River flood in Manitoba, for instance, a report commissioned by the provincial government recommended that previous flood damage to properties should be disclosed during real estate transactions, to protect buyers (Neufeld 2009). Similarly, after major flooding in Alberta in 2005, a provincial flood mitigation committee recommended that "a notification system be established that will inform any potential buyer that the property is located within a designated flood risk area" (Groeneveld 2006, 3).

This policy brief examines property disclosure as a potential tool to improve public understanding of flood risk and support disaster risk reduction. It begins by discussing the importance of having accurate information in assigning responsibility for flood risk reduction behaviour. The second section explains the role of property disclosure, which is followed by a more detailed discussion of its use in flood risk management. The third section discusses some of the challenges associated with property-level flood risk disclosure in practice. The final section provides some recommendations on how property disclosure could be made more useful for increasing public awareness of flood risk and for informing purchase decisions.

Responsibility for Flood Risk Management

In the spring of 2016, researchers at the University of Waterloo surveyed 2,300 Canadians, with representation from all 10 provinces. The survey targeted homeowners living in areas defined as high risk by the Flood Damage Reduction Program, an intergovernmental floodplain mapping initiative that operated between 1975 and 1999.[1] Questions probed respondents' sense of responsibility for flood management, awareness of their property's flood risk, adoption of property-level protection measures and attitudes about the communication of flood risk information.

Although 83 percent of respondents believed that individuals have a responsibility to protect their property from flood damage, most were not aware of their flood risk. Only six percent correctly answered that their home was located in a designated flood risk area, and only 14 percent reported that they lived in an area vulnerable to flooding. With this low awareness of risk, it was perhaps unsurprising that less than 30 percent of the respondents had implemented property-level protection measures such as sump pumps or water-resistant building materials, and about half were not willing to pay more than $500 for such measures (which would typically cost considerably more than this amount).

However, respondents also indicated a strong appetite for flood risk information and a demand to be treated fairly during a real estate transaction by receiving accurate information about the perils facing their prospective property. Among the respondents, 90 percent wanted to know if their home is located in a designated flood risk area, 91 percent agreed that sellers should be required to inform potential buyers if their house had been damaged by flood and 91 percent agreed that sellers of properties in designated flood risk areas should be required to inform potential buyers about the risk. These findings confirm demand for flood risk information, but little is known about the design and implications of property disclosure as a tool to support disaster risk reduction. The following sections describe in more detail the use of property disclosure in managing flood risk.

1 See Thistlethwaite et al. (2017). All survey results discussed in this section are from this study unless otherwise identified. More information on the survey's methodology and results are available at https://uwaterloo.ca/climate-centre/news/canadian-voices-changing-flood-risk-findings-national-survey.

Property Disclosure as a Flood Risk Management Tool

For most people, a house is the largest and most important purchase of their life. Many considerations influence the decision to purchase a home, such as price, layout and nearby amenities, and this information is generally available through property listing services. To make a fully informed decision, however, potential buyers also require information about latent defects and risks that are not readily visible through routine inspection but could entail significant expense to remedy.

Disclosure Rules Vary in Canada

Property disclosure involves the voluntary or mandatory release of information about a property that is salient to a potential buyer's decision. In Canada, the conduct of real estate transactions is regulated by provincial governments, so rules about property disclosure vary across the country. In every province except Alberta,[2] the provincial real estate association offers a form that asks sellers to disclose, to the best of their knowledge, whether the property is subject to various conditions that could influence a potential buyer's decision.

Sellers in Saskatchewan, for instance, complete the Property Condition Disclosure Statement, which includes general questions about the home, such as whether it contains an unauthorized accommodation or asbestos insulation and whether there are any structural defects causing leaking or other water problems in the basement. Similarly, New Brunswick sellers complete the Residential Property Disclosure Statement, in which they disclose general property information — whether there are any easements, heritage designations or restrictive covenants, for instance — but also environmental conditions, such as whether there is radon gas, a buried fuel storage tank or asbestos on the property.

2 Alberta sellers once completed a form called the Residential Property Disclosure Statement, but the Alberta Real Estate Association decided in the early 2000s to discontinue its use for property transactions.

Forms in some provinces cover specific hazards. For example, the British Columbia Real Estate Association's Residential Property Disclosure Statement asks sellers to disclose whether the property has been used as a marijuana grow operation, and the Manitoba Real Estate Association's Property Disclosure Statement asks them to indicate whether the building contains aluminum wiring or mould. Such information is valuable in that it notifies the buyer about the risks associated with the property — aluminum wiring is associated with elevated fire risk, for example — but also about repairs or upgrades that might be needed.

Other Jurisdictions' Experiences

Property disclosure offers a potential tool by which buyers can become informed about both a home's history of flood damage and its exposure to future flood risk (Lightbody 2017). Openly communicating flood risk information enables and motivates individuals to take protective action and support risk reduction. Moreover, from an ethical standpoint, individuals should only be held responsible for managing their flood risk if they have been empowered through risk information to act in their own best interests (Doorn 2016).

In other jurisdictions, the value of using property disclosure to inform buyers about flood hazards has been recognized and has become entrenched in public policy. In the US state of California, for instance, property sellers have been required since 1998 to complete the Natural Hazards Disclosure Statement, which informs potential buyers if the property is located in a "special flood hazard area" — the 100-year flood zone designated by the Federal Emergency Management Agency, in which flood insurance is mandatory — or in an area of potential flooding due to dam failure, as designated by California's Office of Emergency Services (Detwiler 1998).

Similarly, the Illinois Residential Real Property Disclosure Act requires all sellers to complete a disclosure report, in which they must indicate whether they are aware of recurring basement flooding and whether the property is located in a floodplain (Illinois 1994). In Alaska, sellers are required to complete a detailed Residential Real Property Transfer Disclosure Statement, in which they must state their awareness of whether the property has flooded (and give its official flood zone designation), as well as say whether there has been any damage to the property or structures from flooding (and other hazards) (Alaska 2014). The Australian state of Victoria requires that property owners prepare a "vendor's statement" that informs buyers whether the local municipality has designated the area at risk of flooding and whether further redevelopment or additional land use has been prohibited.[3]

Whereas property disclosure statements in some Canadian provinces, such as Manitoba, Quebec and New Brunswick, ask sellers whether the property has sustained previous damage from flooding, only Ontario's Seller Property Information Statement includes a specific question about current flood exposure: "Is the property subject to flooding?" In their current form, therefore, property disclosure statements in Canada provide inadequate information for buyers to make educated decisions about flood risk. Should property disclosure be formalized as a tool of flood risk reduction? There are a number of policy-relevant issues to consider.

Formalizing Property Disclosure: Policy Considerations

One policy consideration is whether property disclosure should be voluntary or mandatory. Mandatory property disclosure has some advantages, including a higher rate of compliance among sellers and greater consistency in the information that is available to buyers when comparing properties, which creates a "level playing field" among sellers (Lefcoe 2004). In all Canadian provinces, however, sellers are not legally obligated to provide property disclosure statements, even if the buyers request them.

Lawyers and real estate professionals are divided as to whether sellers should complete the forms (Bruineman 2013). Some argue that completing the forms provides transparency for buyers about potential costs they might face, which avoids unpleasant surprises (and potential litigation) after the sale, whereas failing to complete the forms makes buyers suspect that information is

3 See www.floodvictoria.vic.gov.au/faq/houses-and-property-and-floods.

being concealed (Colbert 2016; Weisleder 2009). Others argue that property disclosure *increases* the likelihood of legal disputes between buyers and sellers, because a seller often interprets the document as a warranty, despite the disclaimer that it is provided for information only (Aaron 2013; Rumack 2013). The ambiguity around the importance and meaning of property disclosure statements — and the assignment of liability in the event that a buyer perceives the seller has concealed information — inevitably leads to inconsistency in their use and, therefore, in their utility for flood risk management.

A second policy question is whether sellers can be expected to understand what information is needed on the forms and to have adequate knowledge to complete them truthfully. In all provinces, the property disclosure form directs sellers to complete a series of questions or statements to the best of their knowledge, normally with response categories that include "Yes," "No" and "Don't Know." For most of the information fields on the form, such as whether major repairs or renovations have been completed, it is reasonable to expect the seller to know the answers.

Flood risk information, on the other hand, is generally of poor quality and is difficult to access. For instance, the Flood Damage Reduction Program identified more than 900 communities across Canada as "designated flood risk areas," meaning they were subject to recurrent and severe flooding (Natural Resources Canada 2017). However, as the survey conducted by the University of Waterloo researchers demonstrated, few Canadians (six percent) know whether their property is located in a designated flood risk area (Thistlethwaite et al. 2017), so they could honestly answer "No" or "Don't Know" to a question asking them to disclose whether their property is "subject to flooding."

This finding suggests that sellers must first have access to accurate, up-to-date flood maps if they are to be expected to know and disclose their properties' exposure to flooding. The alternative is that sellers would need to seek out this information from experts who have the requisite knowledge. In California, for example, George Lefcoe (2004, 243) found that "most sellers have no practical alternative other than to pay specialized firms $50 to $100 per transaction to provide the required information" and estimated that California sellers were spending up to US$54 million per year on the reports.

A third policy question is whether disclosure of previous flood damage or current flood risk will harm property values. Although the common perception is that it will, empirical analysis of this relationship suggests that the effect of disclosure on property values is marginal and temporary. For instance, based on seven studies of variations in property prices before and after flood risk disclosure in Australia, Canada, New Zealand and the United States, Stephen Yeo (2003) found no price effect in two cases, a modest decrease in property values in three cases and a slight increase in property values in the remaining two. While this finding improves the political feasibility of flood risk disclosure, it raises questions about disclosure's value for flood risk management, since disclosure should be expected to reduce the value of property in high-risk flood areas to limit demand for resale or redevelopment in these zones.

Recommendations

Analysis of the suitability of property disclosure as a tool to reduce exposure to flood risks reveals that it must be aligned with existing policy frameworks to be effective. The following three recommendations identify ways of ensuring that an expanded policy concerning property disclosure is coherent with the existing real estate and local land use regulatory frameworks.

Resolve the legal ambiguity over flood risk liability through coordination among governments, the real estate industry and the legal community. If flood risk disclosure is considered "information" that does not attribute liability, it is unlikely to be an effective risk management instrument. However, there is uncertainty over who should be responsible for the liability associated with risk, given that the owner is not responsible for the development of the property and a local government has permitted the land use. According to the 2016 University of Waterloo survey, 64 percent of respondents believe governments should be responsible for compensating property owners for flood damage if they have allowed the owners to build in high-risk areas (Thistlethwaite et al. 2017). Unfortunately, this liability is difficult to attribute to one level of government, even though municipalities are responsible for regulating development. For example, provincial and federal governments regularly fund rebuilding in high-risk flood areas (Stewart 2016). This ambiguity demands coordination among the legal community, all levels of government and the real estate sector.

For disclosure to be effective, flood risk maps must be made publicly available. To ensure that a property owner or other stakeholder has the knowledge necessary to inform disclosure, standardized flood risk maps must be made publicly available. Without this information, disclosure is unlikely to be accurate or consistent across jurisdictions (Sandink et al. 2010). For example, Canadian provinces use different floodplain designation standards to inform land use. If disclosure was implemented, provinces with more stringent floodplain regulations could face a competitive disadvantage in property markets, because there would be a higher density of property and population in risky areas. Coordination among the provinces — which are primarily responsible for flood mapping — and the federal government is necessary to ensure a consistent approach that is understandable to Canadians.

Flood risk disclosure should be managed by a third party, to avoid conflicts of interest. A third-party organization may be necessary to manage flood risk disclosure, to avoid situations where a property owner or real estate official has a disincentive to provide information on flood risk. Under the current system, the onus is on the property owner and real estate representative to disclose flood risk, which they often perceive could limit demand for the property, thereby creating a conflict of interest. Other property information is publicly available in Canada through the online Multiple Listing Service (MLS) database, which enables comparison of properties. Provinces or the federal government could develop information based on comparable flood risk maps and require that the MLS system also disclose this information.

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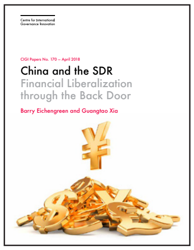


China and the SDR: Financial Liberalization through the Back Door

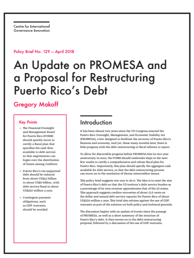
CIGI Paper No. 170
Barry Eichengreen and Guangtao Xia

This paper analyzes the motives for China's special drawing rights (SDRs) campaign. Shedding light on the motives behind the campaign requires placing the SDR issue in the context of Chinese economic reform. It requires relating the issue to changes in China's international economic relations and analyzing Chinese officials' approaches to managing those changes. And it requires placing the SDR in its historical context — acknowledging that China's views of the SDR have a long history and understanding how those views have evolved over time — as this paper seeks to do.

Issues and Challenges in Mobilizing African Diaspora Investment

CIGI Policy Brief No. 130
Cyrus Rustomjee

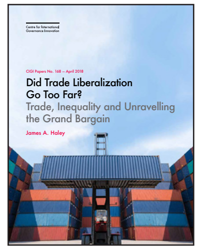
The costs of financing African development, including infrastructure and the United Nations' Sustainable Development Goals, are escalating, intensifying the quest for new innovative sources of financing to meet these costs and close existing financing gaps. African diaspora populations are growing, as are their savings and the scale of resources available to reinvest in their countries of origin. Yet, until recently, African countries have made little substantive progress in attracting these savings. Several key actions, catalyzed and supported by the African Development Bank and other development partners, can generate substantive new and additional resources from diaspora savings, helping to finance infrastructure and other development costs.



An Update on PROMESA and a Proposal for Restructuring Puerto Rico's Debt

CIGI Policy Brief No. 129
Gregory Makoff

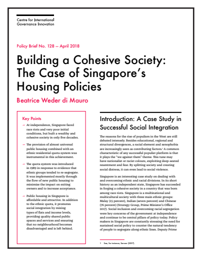
It has been almost two years since the US Congress enacted the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), a law designed to facilitate the recovery of Puerto Rico's finances and economy. And yet, these many months later, there is little progress with the debt restructuring or fiscal reforms to report. To allow for discernible progress before PROMESA hits its two-year anniversary in June, the Financial Oversight and Management Board for Puerto Rico should undertake steps in the next few weeks to certify a comprehensive and robust fiscal plan for Puerto Rico.



Did Trade Liberalization Go Too Far? Trade, Inequality and Unravelling the Grand Bargain

CIGI Paper No. 168
James A. Haley

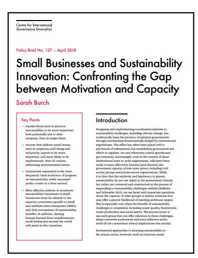
This paper reviews the history of trade liberalization and the effects of freer trade on US labour market outcomes. It is motivated by the rise of economic nationalism, evident in the United States and elsewhere, which threatens the international "architecture" of trade, economic and financial arrangements that has been erected over the past 70 years. The paper argues that these effects do not necessarily imply that trade went "too far." Addressing the challenges posed by political populism and economic nationalism requires a consensus on domestic policies and changes to the international architecture that facilitate this policy framework.



Building a Cohesive Society: The Case of Singapore's Housing Policies

CIGI Policy Brief No. 128
Beatrice Weder di Mauro

This brief shows how Singapore's social integration policies, in particular the housing policies, have been instrumental in reducing residential segregation among ethnic groups. At independence, Singapore faced race riots and very poor initial conditions, but built a wealthy and cohesive society in only five decades. The provision of almost universal public housing, combined with an ethnic residential quota system, was instrumental in this achievement. Public housing in Singapore is affordable and attractive. In addition to the ethnic quota, it promotes social integration by mixing types of flats and income levels, providing quality shared public spaces and services and ensuring that no neighbourhood becomes disadvantaged and is left behind.



Small Businesses and Sustainability Innovation: Confronting the Gap between Motivation and Capacity

CIGI Policy Brief No. 127
Sarah Burch

Smaller firms tend to perceive sustainability to be more important, both personally and to their company, than do larger firms. Actions that address social issues appear to be more important, and more likely to be implemented, than do actions addressing environmental issues. More effective policies to accelerate sustainability transitions in small businesses must be tailored to the capacity constraints specific to small and medium-sized enterprises and their perceptions of sustainability benefits.

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