

Roof Damage Insurance Claims: Using the Florida Building Code to Your Advantage

By Michael D. Cerasa, Esq.

The Re-Roofing Conundrum:

Cracked and dislodged tiles and shingles on the roof. Water stains scattered across the ceiling. Adding insult to injury, your client is being told by the local building department that they need an entire new roof when only a portion of the roof was damaged by the storm. As we approach another hurricane season, now is the time to prepare your clients and ready your arsenal with respect to insurance claims for storm related damage. Due to the prevalence of hurricanes and other severe weather that routinely wreak havoc on the residents of the Sunshine State, claims for roof damage to homes and businesses are routinely filed against insurance companies. Just as routinely these claims are denied or underpaid.

A common problem that insureds encounter is when the insurance company acknowledges that a portion of the roof was damaged by a covered loss (such as hurricane), but then declares that the remainder of the roof is either not damaged, or was damaged by an excluded cause (e.g., wear and tear or lack of maintenance). This problem is exacerbated when the insured or their contractor applies for a building permit for the repair, only to be told by the local building department that a permit won't be issued because the entire roof needs to be brought up to compliance with the current building code.

To solve this problem, the 2007 Florida Building Code can be used in conjunction with an often overlooked coverage commonly available in homeowner's insurance policies and some commercial insurance policies. Using the Ordinance or Law Coverage in the insurance policy with the requirements of Section 611.1.1 of the Florida Building code can maximize recovery for your client, and obtain payment for a full roof replacement, even when only a portion of the roof damage is from a covered loss.

SECTION 611.1.1 of the 2007 Florida Building Code: Re-Roofing:

Section 611 of the current Florida Building Code outlines the situations under which roofs on existing structures need to be made compliant with the current building code. This section requires that roof repairs to existing roofs and roof coverings shall comply with the provisions of the Code. Specifically, the Code requires:

611.1.1 Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12 month period unless the entire roofing system or roof section conforms to requirements of this code.

Under section 611.1.1, if more than 25% of the roof surface is to be repaired, then the entire roof needs to be in compliance with the Code. In most cases, this means that the entire roof needs to be replaced. This can create a significant financial problem for your client when they have only been paid for a roof repair by the insurance company. The solution to this problem can be found in a separate, optional coverage found in many insurance policies that addresses this very situation.

“Ordinance or Law”

Your client’s insurance policy may contain an additional coverage commonly referred to as “Ordinance or Law” or “Building Code Upgrade” coverage. The provision in the policy is commonly worded as follows:

You may use up to 25% of the limit of liability that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;

The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against.

The Ordinance or Law coverage can be used to bridge the gap between what the carrier paid related to covered damages from the loss and the cost of complying with the current building code. However, Ordinance or Law coverage is different than traditional dwelling coverage. With dwelling coverage, the insured is paid up front and then makes repairs with the funds. Ordinance or Law Coverage is what is commonly referred to as “incurred expense” coverage. This means that the coverage doesn’t ripen, and the insured isn’t entitled to the benefits, until they actually incur additional expenses for compliance with the building code. *See Ceballo v. Citizens Property Ins. Corp.*, 934 So. 2d 536 (Fla. 3d DCA, 2006).

Proving the added expenses have been incurred due to building code compliance can be accomplished in several ways. The easiest is to provide the following information to their insurance carrier: A copy of a signed contract for roof replacement, a copy of the building permit application, and a copy of the letter or form from the local building department rejecting the roof repair and requiring replacement to comply with the current building code.

Conclusion

The Florida Building Code, used in conjunction with additional coverage often found under an insurance policy can result in a much greater recovery for your clients, especially in cases of partial roof damage. Now is the time to remind your clients to call their agent and ensure that they have this helpful coverage as part of their homeowners’ insurance or commercial insurance policy before hurricane season starts again.

Michael D. Cerasa is an associate with Colling, Gilbert, Wright & Carter in Orlando, Florida. Michael practices in the areas of first party insurance litigation, personal injury and nursing home negligence claims. Michael is a 2005 graduate of the Florida State University College of Law, and a 2001 graduate of Clemson University with a bachelor's degree in Political Science.