
PERSPECTIVES

WHEN AND WHERE DO CODE
UPGRADES OCCUR DURING A
STRUCTURE'S RENOVATION?

Second Edition



Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

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Disclaimer: This article is not intended to offer any policy interpretation and/or legal opinion. The author's objective is to shed light on common challenges and disputes in code upgrades. The code clauses referenced herein were simplified for a non-expert audience. This should not be construed as general rules or the author's stance on every case.

Insurance claims professionals, coverage counsel, property insurers handling complex renovation or property loss claims, construction attorneys, forensic engineers, building owners, and risk managers involved in renovation disputes or structural failure investigations should read this article to learn more about:

- Why “grandfathering”¹ is conditional, not absolute
- Why renovations usually trigger localized upgrades
- How and when safety risks can override grandfathering
- Why “like kind and quality” may be insufficient
- Why the extent of upgrades is a prime dispute area
- When code upgrades may be considered as betterment²

Executive Summary

This article examines when and where building code upgrades are required during renovations, property transactions, or post-loss reconstruction, and when existing structures may be “grandfathered.” It explains that codes typically require full-building upgrades only when there is a change of use or occupancy,

EXPERT VOICES

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Ben is a forensic structural engineer with expertise in standard-of-care assessment and failure analysis in the construction industry. In this article, he examines the concept of building code “grandfathering” and the practical challenges that arise when engineering judgment intersects with insurance coverage and judicial scrutiny. In this piece, he uniquely connects engineering performance, real-world cases, and recent court decisions to show why loss-driven safety repairs should not be mischaracterized as betterment or optional upgrades.

while renovations generally trigger code compliance only in the altered or damaged areas unless the work is deemed substantial or raises safety concerns. Through real-world case examples, the article highlights gray areas that often lead to disputes among owners, insurers, and regulators, emphasizing that rigid, policy-driven approaches may conflict with engineering realities and life-safety objectives.

Introduction: Key Questions in the Claims Handling Process

Should an old cottage be upgraded to the current code by a new owner? When can a building component be “grandfathered?” Who should pay for the code upgrades following a property loss claim? These are common questions regarding upgrading a building to current codes and standards prior to a renovation project, before purchasing an old cottage, or after a property loss claim. Renovating old properties may initially appear to be a viable upgrade option, but it often raises questions about where and to what extent the code upgrade applies.

¹ Code “grandfathering” means exempting existing buildings and structures from new regulations, allowing them to operate under the codes in place when they were originally built or permitted.

² Betterment in the insurance industry means value enhancement of an insured property beyond its pre-loss condition, typically by replacing worn-out parts with new ones.

When and Where Code Upgrades Occur

Codes, bylaws, and ordinances may mandate upgrades to existing buildings for various reasons, such as higher safety standards, energy conservation, illegal construction, or changes in zoning laws. However, when a property loss occurs, the common expectation is that the insurer will pay for all required upgrades to the insulation, electrical components, or plumbing. Even if the policy covers code upgrades, it may be challenging to determine the extent of code upgrades in reconstruction.

Ontario Building Code, Change of Use, and Renovation

The Building Codes of Canadian jurisdictions, such as the Ontario Building Code (OBC), generally include two parts pertaining to existing buildings that outline “Change of Use” and “Renovation” requirements. In the US, similar provisions have been included in the International Existing Building Code (IEBC) since 2015.

In a nutshell, the “Change of Use” or “Major Occupancy Change” sections of the building codes contain provisions that, if the building’s occupancy changes, a code upgrade is required for the entire building. Examples of changes in occupancy may include splitting a residence into two or using a warehouse as an exhibition space. Therefore, an old cottage, although lawfully remaining non-compliant to the current code, will not require a code upgrade by a new owner if it remains a cottage and is safe to occupy. This is called “grandfathering” a building code.

The “Renovation” section of the Canadian Codes applies to partial alteration of the building components that have been in existence for at least five years. In general, this means that only the renovated portions of the building should be upgraded to the current code, unless the renovation is “substantial.” For instance, in a kitchen renovation project, code upgrades will be limited to the kitchen’s “building systems,” e.g., plumbing, framing, electrical, etc. Similarly, after a property loss, only the damaged components of the building will need code upgrades, although there are some exceptions to these general rules. Under the IEBC, the renovation provisions are more granular and are categorized as “prescriptive,” “work area,” or “performance,” which one can follow. However, the general concept remains the same: Code upgrades apply to the damaged/renovated areas, unless there is a safety concern or the repair is considered substantial per the IEBC definition. It should be noted that some jurisdictions have their own definitions of the “substantial” repair and upgrade threshold. For instance, the Florida Building Code mandates that the entire roof covering be upgraded to the current code if more than 25% of the roofing is damaged.³

Renovation Upgrade Requirements and Extent of Upgrades

There are two gray areas regarding code upgrades in renovation or remedial projects that may lead to legal disputes. First, sometimes the renovation necessitates upgrading an undamaged or unaffected portion of the building, such as constructing a new wall on a pre-existing defective foundation wall when the foundation wall’s capacity is questionable. The building code draws a line in these

³ Refer to [Florida’s 25% Roofing Rule](#), Mike Rimoldi, J.S. Held, for further details.

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circumstances and states that the “performance level” of the building after the renovation should not be lower than that of the existing building. This statement is often interpreted such that if the existing elements withstand the current applied loads, they can be grandfathered (i.e., the history of trouble-free performance of the existing components proves similar functionality in the future). Hence, no code upgrade or replacement would be warranted. But this is not necessarily a true interpretation of the code.

In one case in Ontario, a commercial building collapsed immediately following a roof renovation. The building was 30 years old and consisted of a long-span, steel-frame structure with no interior columns. The roof renovation project entailed replacing the metal decking, roof insulation, and roof purlins with “like kind” materials. The weight difference between the new and old roofs was about 1% of the total dead load, which was negligible; as such, no structural analysis was conducted, and the steel frames were deemed adequate per code provisions. In fact, the building was grandfathered, and only the new components were upgraded to the current code. In the first snow season after the renovation, the building collapsed in a heavy snowfall. The snow load did not exceed the historical heavy snowfalls of that region, which the structure had safely endured in its 30-year life span. The forensic experts assessed many scenarios, and the renovation project emerged as the likely culprit. Investigations revealed that the original structure was not properly designed for the unbalanced snow loads; however, heat loss through the roof had caused snow to melt and slide, potentially reducing the ice and snow load by 30% over a long, cold season. In fact, the poor insulation was the lifesaver until the new insulation was installed. The grandfathered building collapsed, although the building code did not explicitly mandate any structural upgrade.

The second gray area is the extent of code upgrades. From an engineering perspective, the affected components of a building after the loss should be built to the current code, regardless of the policy wording. However, this area becomes a matter of dispute when the policy only covers the cost of replacement with “like kind and quality,” and the reconstruction of the new building system would be non-compliant or unsafe. In such cases, the replacement may cost significantly more than the original system or the actual cash value; this is often considered “betterment.”

In *DEB Associates v. Greater New York Mutual Insurance Co.*, the Superior Court of New Jersey addressed a significant dispute regarding coverage for building code upgrades and ruled that lawful pre-existing buildings can be grandfathered, except for unsafe structures. The case arose after a windstorm sheared off a portion of a brick façade on the seventh floor of the plaintiff’s eight-story office building. During the resulting inspection, local officials discovered that the building’s walls were not adequately secured as required by current building codes, causing an unsafe condition throughout the entire structure. The official ordered the building vacated and required that “the walls on floors two through eight, and the roof, be secured to comply with the then-current State construction code. The central issue was whether the insurer was liable for the cost of upgrading the undamaged portions of the building to meet the ordinance requirements. The court ultimately ruled in favor of the insured, concluding that because the windstorm (a covered loss) necessitated the inspection and subsequent enforcement of the code, a sufficient “direct connection” existed to trigger coverage for the mandatory upgrades throughout the building. This case is a distinct example that safety-based code enforcement can require upgrades beyond the damaged area, regardless of the policy limits.

The extent of code upgrades can be more convoluted when the policy entails a code upgrade limit or exclusion. In this case, the insured has agreed to bear the additional costs of code upgrades beyond the policy limits. However, insureds may challenge the definition of code upgrade. In a residential flood case, multiple buildings in a neighborhood were to be reconstructed due to substantial structural damage. The engineering firm retained by the insureds recommended modifications to the site grading, the elevation of the buildings, and alterations to the original design to minimize the risk of similar flood damage in the future. The insurer deemed the changes substantially beyond the policy limits and extent and insisted on grandfathering the original site geometry, in compliance with the policy's code upgrade limit. The insureds raised a safety concern, arguing that if the houses were built with "like kind," the residents would be exposed to the risk of flood damage, given that similar events were likely in the future. Parties finally agreed to follow most of the engineering recommendations beyond the code upgrade limit.

Conclusion

Grandfathering and code upgrades to building systems are often the subject of disputes. A cookie-cutter approach to responding to such claims may be disproportionate, since policy interpretation and legal arguments may not be fully consistent with engineering fundamentals. These cases require precise and multifaceted strategies to avoid unnecessary legal costs.

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