



OFFICE OF INSURANCE REGULATION

LAW AND ORDINANCE COVERAGE

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January 2006

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Introduction

Prior to Hurricane Andrew in 1992, most homeowner's insurance policyholders were unaware of law and ordinance coverage. Those familiar with this coverage knew their homeowner's insurance policy contained an exclusion for expenses associated with compliance with local building code laws and ordinances in the event of damage to their residence. That changed when large numbers of older and not-so-old homes were severely damaged or destroyed by Hurricane Andrew. Many policyholders found out that the cost of reconstructing their homes exceeded the coverage limits in their homeowner's policies because they had to repair and rebuild their homes to comply with the current building code rather than the building code in effect when their homes were originally built.

This report will address the nature of law and ordinance coverage, review the actions taken by the Florida Legislature to make this coverage available to residential property policyholders, review the demographics of Florida's population growth and housing stock, and describe the insurance policy forms and rating factors relating to law and ordinance coverage used in Florida. Further, this report is intended to comply with the directive of the Florida Legislature contained in legislation (CS for SB 1486) enacted in the 2005 Regular Session for a study of certain aspects of law and ordinance, which stated that:

...This report shall include findings and recommendations on requiring residential property insurers to provide law and ordinance coverage for residential property insurance policies, the increase or decrease in insurance costs associated with requiring such coverage, and such other related information as the Office of Insurance Regulation determines is appropriate for the Legislature to consider.

It is necessary to point out that some of the literature on law and ordinance coverage uses the term “law or ordinance” or “ordinance or law.” The Florida Legislature, however, has adopted the term “law and ordinance” and that term is used in this report.

Building Codes and Law and Ordinance Coverage

Building codes became widespread in the United States during the last century, although the earliest known building regulation appeared in the Code of Hammurabi over 4000 years ago. That building code regulation stated that if an architect built a house negligently or improperly and the house fell down and killed the owner's son, then the architect's son was to be put to death.

The first statewide building code was mandated by the Florida Legislature in the early 1970s and required all cities and counties to adopt and enforce one of the four state recognized model codes. In the late 1990s, the State of Florida established the Florida Building Commission, which developed a single, statewide building code to be administered and enforced by local jurisdictions and certain state agencies. Under certain conditions, these governmental entities may amend the building code and make the requirements more stringent. One reason for the development of the new Florida Building Code, which went into effect on March 1, 2002, was to strengthen and make more uniform building code requirements for windstorm-related exposures. In general, the new building code has stronger windstorm-related requirements for buildings closer to the coast.

Building codes typically set forth minimum requirements for the quality and durability of construction materials and techniques to be both "practical and adequate for protecting life, safety, and welfare of the public" (See Alachua County Code). The codes cover most aspects of building construction, such as fire and structural safety and electrical, plumbing and mechanical systems. Because building codes change from time to time and tend to reflect higher standards and improved technology, an important feature of building codes is that they apply only to new construction and are not applied retroactively to existing buildings.

They do apply, however, to previously existing buildings that are substantially damaged or remodeled. For example, Section 3401.7.2.6 of the Florida Building Code states:

When repairs and alterations amounting to more than 50% of the value of the existing building are made during any 12-month period, the building or structure shall be made to conform to the requirements for a new building or structure or be entirely demolished.

This provision, which is commonly found in this or a similar form in building codes elsewhere, has important property insurance implications (See Florida Association of Insurance Agents).

The traditional coverage offered within a majority of property insurance policies, including the homeowner's insurance policy, is intended to rebuild or repair a damaged structure and return it to the state in which it existed prior to the loss caused by a covered peril. This coverage is not intended to pay all of the costs to update the structure so that it complies with current building and zoning laws, codes and ordinances. This is particularly an issue when a structure is substantially, but not completely, destroyed and when the undamaged portion of the structure requires extensive renovation to comply with current building and zoning laws, codes and ordinances. As an example, the policy used by one of the largest writers of homeowner's insurance in Florida contains the following language:

We will pay the cost to repair or replace with common construction and for the same use on the premises ... the damaged part of the property covered ..., subject to the following

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(5) We will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, except as provided under (the building ordinance or law coverage).

It is the law and ordinance coverage referred to in exception clause (5) above that the Florida Legislature has required insurance companies to make available to all homeowner's insurance policyholders in Florida.

The Legislative History of Law and Ordinance Coverage in Florida

After Hurricane Andrew struck Florida in August 1992, the Florida Legislature responded aggressively and persistently in both regular and special sessions for the next several years. The legislative actions included the creation of the Florida Residential Property and Casualty Joint Underwriting Association and the Florida Hurricane Catastrophe Fund; the implementation of several limited moratoria on the cancellation and non-renewal of residential property insurance policies; and many other actions designed to assist policyholders and to encourage insurance companies to provide insurance capacity to meet Florida's growing need for residential property insurance. One of those actions mandated the availability of law and ordinance coverage in homeowner's insurance policies.

1993 Legislation

During the 1993 Regular Session, the Florida Legislature created the Study Commission on Property Insurance and Reinsurance (Study Commission) to consider a number of important property insurance issues. The Study Commission stated in its September 1993 final report (on page 18) that:

Following Hurricane Andrew, some policyholders discovered that they were not fully covered for replacement of their buildings and contents. In some cases, the cost of rebuilding structures or replacing contents exceeded limits specified in the policyholder's contract. . . .

Among the many recommendations of the Study Commission was the following (on page 21):

Law and Ordinance Coverage/Mandatory Offers—There should be a mandatory offer of law and ordinance coverage by insurers, with limits of 25 percent of the dwelling limits. This offer should be required to be made upon issuance of the policy and first renewal, and once every 3 years thereafter. A declination of such offer by a policyholder should be obtained in writing.

The Study Commission's recommendation on law and ordinance coverage was enacted by the Legislature during a special session in November 1993 and signed into law as part of Chapter 93-410, Laws of Florida. The newly created Section 627.7011, Florida Statutes, which is set forth in Attachment A, implemented the Study Commission's recommendations. A later chapter of this report will describe how insurance companies responded to the law and ordinance statutory requirement.

2003 Legislation

As part of the massive Governmental Reorganization Act, which was signed into law as Chapter 2003-261, Laws of Florida, minor changes were made in Section 627.7011, Florida Statutes. The word "department" was replaced with "office" in Paragraph (2). Also, for consistency purposes, the phrase "a form specified by the department" was changed to "a form approved by the office" in the same paragraph. These changes were not intended to, and did not, make any substantive changes in Florida's law and ordinance coverage requirement.

2005 Legislation

After Florida's extraordinary 2004 Hurricane Season, the Legislature created the Joint Select Committee on Hurricane Insurance, which submitted its report on February 25, 2005. The Joint Select Committee made 21 recommendations on a wide variety of property insurance issues regarding (a) hurricane deductibles and consumer disclosures, (b) Florida Hurricane Catastrophe Fund, (c) Citizens Property Insurance Corporation, (d) hurricane loss mitigation, (e) hurricane loss models, and (f) several other issues. Many of these recommendations were included in CS for SB 1486, which passed on the last day of the 2005 Legislative Session and was signed into law as Chapter 2005-111, Laws of Florida.

The Joint Select Committee did not make a specific recommendation regarding law and ordinance coverage even though it did make recommendations regarding other coverage issues. Nevertheless, the Legislature included in CS for SB 1486 a number of significant changes to the law and ordinance coverage provisions of Section 627.7011, Florida Statutes, the final version of which is set forth in Appendix B. The changes are described below:

1. Insurers are required to offer policyholders the option of purchasing law and ordinance coverage for either 25 percent or 50 percent of the dwelling limit.
2. If an insurer automatically includes law and ordinance coverage in its policies at the 25 percent level, it must still offer the policyholder the option of purchasing law and ordinance coverage at the 50 percent level.
3. Homeowner's insurance policies issued or renewed on or after October 1, 2005 must include the following statement in bold type no smaller than the 18 point type shown below:

LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.

The Legislature also included in the amended Section 627.7011, Florida Statutes, a statement that its intent is to encourage policyholders to purchase sufficient coverage “in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property.” The Legislature also stated its intent to encourage policyholders to discuss such matters as law and ordinance and flood coverage with their insurance agent.

Demographic Aspects of Law and Ordinance Coverage

Florida has experienced significant, sustained population growth for several decades. Table I below shows a five-decade perspective on Florida's population growth:

Table I

Year	Population	Change
1951	2,980,135	
1961	5,241,204	2,261,069
1971	7,233,610	1,992,406
1981	10,222,533	2,988,923
1991	13,326,892	3,104,359
2001	16,414,693	3,087,801

Source: Florida Demographic Estimating Conference, October 18, 2005

The average population growth per decade in Florida for the 1970s, 1980s and 1990s averaged approximately 3,060,000, which exceeded the state's population in 1951. Most of this growth was concentrated in coastal areas (see below) and took place during an extended period of below average hurricane activity. In addition, the growth in population during these three decades increased the number of households in Florida by an average of more than 1.2 million each decade, which is more than 120,000 households per year or 330 households per day. Table II on page 12 shows available data on the change in the number of households in Florida over the past 25 years:

Table II

Year	No. of Households	Change
1980	3,744,254	
1990	5,134,869	1,290,615
2000	6,338,075	1,203,206
2005	7,105,018	766,943

Source: Florida Demographic Estimating Conference, October 18, 2005.

Using the residential property exposure data submitted to the Florida Hurricane Catastrophe Fund (FHCF) in 2004 and considering Hillsborough County as a coastal county and Jefferson County as an inland county, 79 percent of Florida’s total residential property exposure was located in 34 coastal counties and 21 percent was located in 33 inland counties. The FHCF data includes all types of residential properties, although one-to-four family residences amount to about 83 percent of the statewide total residential property exposure.

While the 2004 hurricane season proved that residents in all Florida counties have exposure to hurricane losses, the Florida residents in coastal counties clearly have greater exposure to hurricanes – both meteorologically and economically – than residents of inland counties. Table III on page 13 lists in decreasing order the ten Florida counties with the largest total amount of residential property exposure. Of these counties, only Orange County is not on the coast.

Table III

County	Number of Single-Family Residences (2002)	Average Age	Number of New Single-Family Residences Constructed	Percentage of Total By County
Palm Beach	203,191	26 years	4,236	2.1%
Broward	356,764	24	8,380	2.4
Miami-Dade	310,711	33	1,953	0.6
Orange	226,900	22	7,423	3.3
Hillsborough	265,712	22	7,477	2.8
Pinellas	241,379	34	1,650	0.7
Lee	137,053	19	6,675	4.9
Duval	215,026	31	4,862	2.3
Collier	61,860	15	3,652	5.9
Brevard	152,819	23	4,481	2.9
Total of 10 Counties	2,171,415		50,789	
Statewide	3,986,553	24	110,675	2.8
% of Statewide	54.5%		45.6%	

Source: *The State of Florida's Housing, 2004*, Shimberg Center, University of Florida, pp 30-33.

Table III also includes the number and average age of single-family residences in 2002, the number of new single-family residences constructed during 2002 in those counties, and the percentage this represents of each county's stock of single-family residences. 2002 was probably not a year of unusual construction activity because it appears to be consistent with other demographic data. For example, the two counties in Table III with the lowest average

age of single-family residences and the highest percentage of new single-family residence construction in 2002, i.e., Collier and Lee Counties, also had above-average population growth during the 1990s. The two counties in Table III with the highest average age of single-family residences and the lowest percentage of new single-family construction in 2002, i.e., Miami-Dade and Pinellas Counties, also had below-average population growth during the 1990s.

The association between population growth and average age of single-family residences by county is further evidenced by comparing the population growth rates during the 1990s of the Florida counties with the lowest average age of single-family residences relative to the statewide average age of single-family residences of 24 years with the corresponding population growth rates of the Florida counties with the highest average age of single-family residences. Table IV on page 15 shows this comparison for the ten counties with an average age for single-family residences of 18 years or less with the eleven counties with an average age of 32 years or more. The counties with the lowest average age of single-family residences in 2002, which experienced an (unweighted) average growth rate of almost 52 percent during the 1990s, were generally smaller coastal counties. The counties with the highest average age of single-family residences, which experienced an (unweighted) average growth rate of below 19 percent during the 1990s, were with the exception of Miami-Dade and Pinellas Counties rural inland counties primarily in northern Florida.

Table IV

County	Low Average Age	Population Growth Rate *	County	High Average Age	Population Growth Rate *
Flagler	12 years	74%	Hamilton	34 years	22%
St. Johns	14	47	Pinellas	34	8
Sumter	14	69	Holmes	33	18
Collier	15	65	Jackson	33	13
Osceola	15	60	Liberty	33	26
Hernando	16	29	Miami-Dade	33	16
Clay	17	33	Bradford	32	16
Citrus	18	26	Gadsden	32	10
Santa Rosa	18	44	Hardee	32	38
Walton	18	69	Putnam	32	8
			Suwannee	32	30
Statewide	24 years	24%			

Source: *The State of Florida's Housing, 2004*, Shimberg Center, University of Florida, pp. 6-7, and pp.30-33.

* During the 1990s

Law and Ordinance Coverage Forms and Rating Factors

After passage by the Florida Legislature in the late 1993 Special Session of the requirement that property insurers make available law and ordinance coverage in an amount equal to 25 percent of the dwelling limit for homeowner's insurance policies, the insurers and the Department of Insurance agreed on policy language and rating factors to implement the law and ordinance offer requirement. Over time, insurers comprising the largest portion of the homeowner's insurance market in Florida have integrated the 25 percent law and ordinance coverage into their homeowner's insurance policies. Some insurers, however, chose not to build in the 25 percent law and ordinance coverage and to take on the responsibility of making the required offers.

Insurers were required to comply with the 2005 amendments to the law and ordinance requirements in Section 627.7011, Florida Statutes, (see Attachment B) by October 1, 2005. It appears initially that most of the insurers among the 20 largest homeowner's insurance writers have chosen to build in the 25 percent law and ordinance coverage, which still requires them to make available the 50 percent coverage option. Some insurers have taken the approach of making available both the 25 and 50 percent options and obtaining the required refusals in writing, if necessary. At the other extreme, a few insurers have decided to build in the 50 percent law and ordinance coverage and to offer a premium credit for policyholders selecting a lesser amount of law and ordinance coverage.

Coverage

One important development after Hurricane Andrew was the action by the Insurance Services Office, Inc. (ISO), which is a rate service organization that makes standard policy

forms and rating information available to insurers that subscribe to its services, to develop new policy language and rating factors for law and ordinance coverage for its homeowner's insurance programs. Initially, the law and ordinance policy language was available as an endorsement, but when the ISO's national homeowner's insurance program was revised in the late 1990s as the Homeowner's 2000 program, the law and ordinance coverage was integrated into the policy itself as an additional coverage. The Homeowner's 2000 program contains a separate limit of 10 percent of the dwelling limit for law and ordinance coverage for the following:

1. The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by an insured peril;
2. The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by an insured peril to another part of the building or other structure; or
3. 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 the part of the covered building or other structure damaged by an insured peril.

The ISO law and ordinance coverage provision also covers related debris removal but not (a) loss in value to a covered building or other structure because of the requirements of any law or ordinance or (b) compliance costs with any law or ordinance requiring the testing, monitoring, clean up, removal, containment, treatment, etc. or any assessment of the effects of any pollutant in or on any covered building or other structure. To comply with Section 627.7011, Florida Statutes, insurers using the ISO 2000 Homeowner's program in Florida have to attach an endorsement to reflect the policyholder's choice of either 25 percent or 50

percent law and ordinance coverage unless the policyholder refuses in writing to purchase the additional law and ordinance coverage.

The law and ordinance coverage language in the ISO 2000 Homeowner's program is significant because many insurers use these forms or variations thereof. A number of other insurers, however, use homeowner's insurance policy forms of their own design. One of the large homeowner's insurance writers in Florida has developed the law and ordinance coverage language shown in Attachment C. This insurer's language is generally similar to the ISO language, but it differs in several respects. The ISO language refers to "enforcement of any ordinance or law" and to "covered building or other structure," while the large insurer's language refers to "enforcement of a building, zoning or land use ordinance or law" and provides coverage only for the "dwelling." There are other wording differences between the two law and ordinance coverages, and the effect of all of these differences in wording could be meaningful. While the different versions of law and ordinance coverage used by various insurers probably all comply with the requirement in Section 627.7011, Florida Statutes, to cover "the costs necessary to meet applicable laws regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris..." if the "total damage to the structure exceeds 50 percent of the replacement costs of the structure," the policy language differences may lead to disparity in the ways that law and ordinance claims are adjusted by these insurers.

Rating Factors

The different ways that insurers have decided to make available the 25 and 50 percent options have also affected the way they have structured their rating rules and rate factors. Although most of the larger homeowner's insurance writers built in the 25 percent coverage, they sometimes use different premium calculation formulas to reflect the coverage options. For example, a .05 or 1.05 multiplier is an approved factor used by several large insurers to

calculate the premium for increasing the law and ordinance coverage from 25 percent to 50 percent for the HO-3 policy, which is the homeowner’s insurance policy used for single-family homes. Other insurers have not included the rate effect of the 25 percent law and ordinance coverage in their base rates, and they use two rating factors, as shown in Table V.

Table V

Company	25% Factor	50% Factor
J	1.03	1.06
K	1.05	1.15
L	1.10	1.15
M	1.15	1.20

The rating factors shown in Table V indicate that the effective cost to increase law and ordinance coverage from 25 percent to 50 percent is 2.91 percent for Company J, 9.52 percent for Company K, 4.55 percent for Company L, and 4.35 percent for company M. The 50 percent rating factor currently used by Company K is outside the normal three to five percent range that has been recently approved by the Office of Insurance Regulation (the Office) because the factors for Company K in Table V were approved prior to the 2005 changes in the law and ordinance requirements. The Office is currently reviewing the rates of Company K, and the Office has said that Company K will be required to amend its 50 percent rating factor to be consistent with those recently approved by the Office.

Claim Experience

The Office requested law and ordinance claim data from five of the largest insurers and two smaller, randomly selected insurers. These data were requested for the 2004 calendar year in

an effort to obtain sufficient data to reveal the frequency and severity of law and ordinance claim payments caused by the four hurricanes that year and the law and ordinance claim payments related to non-windstorm losses. The responses from insurers were of two types. First, some insurers said that they had not been coding claim payments with sufficient specificity to allow law and ordinance claim payments to be reported separately from other types of claim payments. For example, when the total amount paid to claimants was less than the dwelling limit even with a law and ordinance claim payment, the insurers were not always identifying the law and ordinance claim payment separately. Second, some insurers indicated law and ordinance claim data may be obtained through a manual review of individual claim files but that this effort may still not produce accurate results.

Findings and Recommendations

This report represents what may be the first organized look at the statutorily-required law and ordinance coverage in Florida, and it contains a number of findings and recommendations that may be of value to legislators and insurance regulators.

Findings

The data in Tables I to IV provide the opportunity to make a number of observations regarding Florida's exposure to catastrophic hurricane losses in general and to potential law and ordinance coverage claims in particular.

1. More than three-quarters of Florida's residential property exposure is located in coastal counties where it is highly exposed to catastrophic hurricane losses.
2. The average age of single-family residences in Florida is 24 years, which indicates a high likelihood of building code compliance issues if, or when, these residences suffer significant damage from windstorm or non-windstorm perils. This holds true in

coastal areas where only two of the nine coastal counties with the largest residential property insurance exposure have an average age of single-family residences below 20 years.

3. Based on 2002 data, many Florida counties would currently have less than ten percent of their single-family residences built under the new Florida Building Code. Only fast growing counties, such as Collier and Lee counties, are likely to have more than 10 percent of their single-family residences built under the new state building code.
4. As a result, with the expectation that Florida will experience above average hurricane frequency and severity for another 10 to 20 years, law and ordinance coverage is likely to be a significant element of homeowner's insurance coverage from the perspective of both the individual homeowner and the State of Florida.

Research to date indicates that Florida continues to be the only state to mandate the offering of law and ordinance coverage in homeowner's insurance policies. Likewise, its development of a statewide building code with a strong windstorm protection component also causes Florida to stand out even among hurricane-prone states on the Atlantic and Gulf Coasts. While the Florida Building Code is not the focus of this report, the fact that it may (and probably should) evolve in the years ahead to promote residential construction with even greater protection from hurricane force winds will continue to make law and ordinance coverage a subject of special interest. In this regard, the action of the Florida Legislature in 2005 to expand the offering of law and ordinance coverage in homeowner's insurance policies was an important consumer protection initiative.

The review in this report of insurer responses to the 1993 law and ordinance requirements in Section 627.7011, Florida Statutes, and to the significant 2005 amendments produces the following observations:

5. Many, but not all, insurers have built in law and ordinance coverage into their homeowner's insurance policies at the 25 percent level.
6. Some insurers are using "standard" policy language for law and ordinance coverage, but other insurers, including some of the largest writers of homeowner's insurance, have developed their own policy language for law and ordinance coverage.
7. Many insurers are using similar rating factors for the law and ordinance coverage options, but some are not.
8. Section 627.7011, Florida Statutes, refers specifically to law and ordinance coverage for homeowner's insurance policies. It does not require law and ordinance for dwelling fire insurance policies, which are usually bought by owners of one-to-four unit rental properties even though renters of these properties have law and ordinance coverage included in their HO-4 policies for any building additions and alterations they may have made. Also, some residential property owners who occupy their residences have no choice other than to buy a dwelling fire insurance policy if their residences do not qualify for a homeowner's insurance policy.
9. The Office has received indications that insurers are not tracking law and ordinance claim payments accurately or consistently. This may be due to the urgency and complexity associated with processing large numbers of property loss claims following catastrophic hurricanes when the largest number of law and ordinance claims is likely to occur, and it may also be due to insurers not requiring contractors to separate law and ordinance costs from other reconstruction and repair costs estimates.

Recommendations

Based on the discussion of law and ordinance coverage in this report and, in particular, the findings listed above, the following recommendations are offered by the Office for consideration by the Florida Legislature:

- A. Section 627.7011, Florida Statutes, should be amended to require law and ordinance coverage to be built into homeowner's insurance policies at 25 percent of the dwelling limit for HO-3 policies and 25 percent of the relevant limit for HO-4 (tenant) and HO-6 (condominium unit owner's) policies. This is consistent with the public policy of Florida that residential structures should be protected against hurricane force winds to the extent reasonably possible. The current statutory requirement that insurers must offer law and ordinance coverage to homeowner's insurance policyholders at the 50 percent level should remain.
- B. If Recommendation A is not adopted, the Legislature should amend subsection (2) of Section 627.7011, Florida Statutes, to specify the level of law and ordinance coverage deemed to be included when the insurer does not obtain the policyholder's written refusal of the 25 percent or 50 percent coverage options.
- C. As a part of the project in CS for SB 1486 relating to the development of standard policy language or as a separate endeavor, standard policy language for law and ordinance coverage should be developed and required to be used in homeowner's insurance policies in Florida.
- D. The Office should continue to review the rating factors for law and ordinance coverage used by various insurers. In this regard, the Office is considering a survey of insurers to determine compliance with the numerous requirements in CS for SB 1486, and it will consider including in that survey a request for data to allow the Office to analyze the relationships between the proportion of policyholders that have purchased law and ordinance coverage, the rating factors used by insurers, and other relevant considerations.

- E. In connection with Recommendation D, the Office should evaluate the claim data recording practices of insurers for law and ordinance claims and develop rules and regulations, if necessary, to achieve greater accuracy and uniformity in these practices.
- F. The Legislature should consider the issues associated with expanding the law and ordinance coverage requirements to include dwelling fire insurance policies. It is not clear, for example, why the owner of a house being rented to someone else would not have access to law and ordinance coverage while a new owner would have access to law and ordinance coverage if the new owner lived in the house.

Attachment A

1993 Law and Ordinance Statute

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.--

(1) Prior to issuing a homeowner's insurance policy on or after June 1, 1994, or prior to the first renewal of a homeowner's insurance policy on or after June 1, 1994, the insurer must offer each of the following:

(a) A policy or endorsement providing that any loss which is repaired or replaced will be adjusted on the basis of replacement costs not exceeding policy limits as to the dwelling, rather than actual cash value, but not including costs necessary to meet applicable laws regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.

(b) A policy or endorsement providing that, subject to other policy provisions, any loss which is repaired or replaced at any location will be adjusted on the basis of replacement costs not exceeding policy limits as to the dwelling, rather than actual cash value, and also including costs necessary to meet applicable laws regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris; however, such additional costs necessary to meet applicable laws may be limited to 25 percent of the dwelling limit, and such coverage shall apply only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b). This subsection does not prohibit the offer of a guaranteed replacement cost policy.

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the coverage specified in paragraph (1)(b). The rejection or selection of alternative coverage shall be made on a form approved by the department. The form shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide such policyholder with notice of the availability of such coverage in a form specified by the department at least once every 3 years. The failure to provide such notice constitutes a violation of this code, but does not affect the coverage provided under the policy.

(3) Nothing in this section shall be construed to apply to policies not considered to be "homeowners' policies," as that term is commonly understood in the insurance industry. This section specifically does not apply to mobile home policies. Nothing in this section shall be

construed as limiting the ability of any insurer to reject or nonrenew any insured or applicant on the grounds that the structure does not meet underwriting criteria applicable to replacement cost or law and ordinance policies or for other lawful reasons.

History.--s. 17, ch. 93-410.

Attachment B

2005 Law and Ordinance Statute

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.--

(1) Prior to issuing a homeowner's insurance policy on or after October 1, 2005, or prior to the first renewal of a homeowner's insurance policy on or after October 1, 2005, the insurer must offer each of the following:

(a) A policy or endorsement providing that any loss which is repaired or replaced will be adjusted on the basis of replacement costs not exceeding policy limits as to the dwelling, rather than actual cash value, but not including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris.

(b) A policy or endorsement providing that, subject to other policy provisions, any loss which is repaired or replaced at any location will be adjusted on the basis of replacement costs not exceeding policy limits as to the dwelling, rather than actual cash value, and also including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property or requiring the tearing down of any property, including the costs of removing debris; however, such additional costs necessary to meet applicable laws and ordinances may be limited to either 25 percent or 50 percent of the dwelling limit, as selected by the policyholder, and such coverage shall apply only to repairs of the damaged portion of the structure unless the total damage to the structure exceeds 50 percent of the replacement cost of the structure.

An insurer is not required to make the offers required by this subsection with respect to the issuance or renewal of a homeowner's policy that contains the provisions specified in paragraph (b) for law and ordinance coverage limited to 25 percent of the dwelling limit, except that the insurer must offer the law and ordinance coverage limited to 50 percent of the dwelling limit. This subsection does not prohibit the offer of a guaranteed replacement cost policy.

(2) Unless the insurer obtains the policyholder's written refusal of the policies or endorsements specified in subsection (1), any policy covering the dwelling is deemed to include the coverage specified in paragraph (1)(b). The rejection or selection of alternative coverage shall be made on a form approved by the office. The form shall fully advise the applicant of the nature of the coverage being rejected. If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of the coverage or election of the alternative coverage on behalf of all insureds. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy when the policyholder has rejected the coverage specified in this section or has selected alternative coverage. The insurer must provide such policyholder with notice of the availability of such coverage in a form approved by the office at least once every 3 years. The failure to provide such notice constitutes a violation of this code, but does not affect the coverage provided under the policy.

(3) In the event of a loss for which a dwelling or personal property is insured on the basis of replacement costs, the insurer shall pay the replacement cost without reservation or holdback of any depreciation in value, whether or not the insured replaces or repairs the dwelling or property.

(4) Any homeowner's insurance policy issued or renewed on or after October 1, 2005, must include in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agent.

(5) Nothing in this section shall be construed to apply to policies not considered to be "homeowners' policies," as that term is commonly understood in the insurance industry. This section specifically does not apply to mobile home policies. Nothing in this section shall be construed as limiting the ability of any insurer to reject or nonrenew any insured or applicant on the grounds that the structure does not meet underwriting criteria applicable to replacement cost or law and ordinance policies or for other lawful reasons.

History.--s. 17, ch. 93-410; s. 1184, ch. 2003-261; s. 14, ch. 2005-111.

Attachment C

Other Law and Ordinance Coverage Policy Language

Option OL – Building Ordinance or Law

1. Coverage Provided.

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the Declarations of the Coverage A limit shown in the Declarations at the time of the loss, as adjusted by the inflation coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

2. Damaged Portions of Dwelling.

When the dwelling covered under Coverage A – DWELLING is damaged by a Loss Insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

3. Undamaged Portions of Damaged Dwelling.

When the dwelling covered under Coverage A – DWELLING is damaged by a Loss Insured we will also pay for:

a. the cost to demolish and clear the site of the undamaged portions of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs; and

b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:

the enforcement is directly caused by the same Loss Insured;

the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;

the ordinance or law regulates the construction or repair of the dwelling, or establishes zoning or land use requirements at the described premises; and

the ordinance or law is in force at the time of the occurrence of the same Loss Insured: or

c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

a. We will not pay for any increased cost of construction under the coverage:

- (1) until the dwelling is actually repaired or re-placed at the same or another premises in the same general vicinity; and
- (2) unless the repairs or replacement are made as soon reasonably possible after the loss, not to exceed two years.

b. We will not pay more for the loss to the undamaged portion of the dwelling caused by the enforcement of any ordinance or law than:

- (1) the depreciated value of the undamaged portion of the dwelling, if the dwelling is not repaired or replaced;
- (2) the amount you actually spend to replace the undamaged portion of the dwelling if the dwelling is repaired or replaced.

c. We will not pay more under this coverage than the amount you actually spend:

- (1) for the increased cost to repair or rebuild the dwelling at the same or another premises in the same general vicinity if relocation is required by ordinance or law; and
- (2) to demolish and clear the site of the un damaged portions of the dwelling caused by enforcement of building, zoning or land use ordinance or law.

We will never pay more than a dwelling of the same height, floor area and style on the same or similar premises as the dwelling, subject to the limit provided in paragraph 1. Coverage Provided of this option.

References

Alachua County, Department of Growth Management. "What are Building Codes?" <http://growth-management.alachua.fl.us/codeenforce/buildcode.php>.

Florida Association of Insurance Agents. "Ordinance and Law Coverage or Rebuild Me to the New Building Code."

http://www.faia.com/web/2005/08/ordinance_and_law_coverage_or_rebuild_me_to_the_new_building_co.aspx

Florida Hurricane Catastrophe Fund. "Fiscal Year 2003-2004 Annual Report."

<http://www.sbafla.com/fhcf/pdf/reports/03-04%20Annual%20Report.pdf>

Florida Legislature, The. "Final Report and Recommendations." Joint Select Committee on Hurricane Insurance. February 25, 2005.

Florida Legislature, The. "Florida Demographic Estimating Conference." Office of Economic and Demographic Research. October 18, 2005.

Florida Legislature, The. "Florida Population and Components of Change." Office of Economic and Demographic Research. October 21, 2005.

Florida Legislature, The. "Report of the Study Commission on Property Insurance and Reinsurance." September 1993.

Rejda, George E., *Principles of Risk Management and Insurance*. Pearson Custom Publishing, Boston, MA. 2001.

Shimberg Center for Affordable Housing, Florida Housing Data Clearinghouse, University of Florida. *The State of Florida's Housing*. 2004.