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CASUALTY INSURANCE FOR HISTORIC STRUCTURES: TREAD CAREFULLY

By Craig J. Litherland

Owners of historic buildings may be unaware of a serious gap in the insurance policies that are routinely offered for fire, storm, and other casualty losses upon such properties. Although many building owners buy insurance coverage linked to the estimated value of buildings to allow for the repair or replacement of buildings that might be damaged by fire, storm, or other casualties, the owners of historic structures, in particular, face an acute risk of a common insurance policy limitation that can leave the owners underinsured for the costs of repair should a loss occur.

Precisely because historic structures are old, these buildings usually do not meet a variety of laws, ordinances, and building codes that have been enacted since these buildings' original construction. Current building regulations often do not require the modification of pre-existing buildings to meet the newer requirements. But, if a building owner undertakes a significant repair or reconstruction of a building that is out of compliance with current regulations, the regulations are often triggered to require the repaired or reconstructed building to be updated to bring the structure up to current codes. Thus, the repair or reconstruction due to fire, storm, or similar damage may force a building owner to bring a historic structure into compliance with current regulations. The costs of bringing a historic structure into compliance with current codes can dramatically increase these costs of repair. Indeed, the costs of improvements to meet current regulation requirements can, in some cases, exceed the costs of restoring a building to its condition prior to a fire, storm, or other loss.

A typical casualty insurance policy requires the insurer to pay the costs of repair or reconstruction necessary to return a damaged building to the building's condition immediately prior to the occurrence of an insured risk. The policy requires an insurer to pay to "repair, rebuild or replace the property" to "like kind or quality."

Since a historic building may not have been in a condition that would have satisfied regulations enacted since the time of original

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construction, this type of “standard” insurance coverage alone may leave the owner uninsured for the increased building repair costs associated with a required update to meet current regulations. However, most insurers offer specialized coverage endorsements that provide protection against these kinds of increased repair costs.

The specialized coverage endorsements for these kinds of costs are referred to by a variety of titles such as “Ordinance or Law Coverage” or “Building Code Upgrade Coverage” endorsements. Although the precise nature of these endorsements vary among insurers, these provisions usually provide that the insurer will cover additional repair costs up to a specified limit if laws, ordinances, or building codes require compliance as a result of the casualty loss related repairs. For example, when an insured building is damaged by a covered loss and repairs of that damage trigger an applicable building code or regulation, a typical endorsement provides:

With respect to the building that has sustained covered direct physical damage, we will pay the increased cost to:

- (1) repair or reconstruct damaged portions of that building; and/or
- (2) reconstruct or remodel undamaged portions of that building, ...

when the increased cost is a consequence of enforcement of the minimum requirements of the ordinance or law.

Because of the likelihood that current regulations may materially impact necessary repairs of historic structures, owners of these kinds of buildings should pay special attention to this coverage at the time of renewal of their casualty insurance policies. As these endorsements usually place a specific limit on the covered costs related to regulation required repairs, owners should carefully consider the kinds of building improvements that current regulations could require and insure that any coverage limits related to such required improvements are adequate to meet those costs should a casualty event occur. Indeed, building owners should consider whether an architect’s review of the building is necessary to set a prudent level of coverage. At least for commercial or public buildings, any significant repair or reconstruction may trigger requirements for the addition or improvement of fire sprinkler systems, bathrooms, access for those with limited mobility, or electrical wiring and plumbing upgrades.

Owners of historic structures should carefully review their existing insurance policies and consider any gaps in coverage that might arise if the building is repaired or restored. Fortunately, an Ordinance or Law Coverage or Building Code Upgrade Coverage endorsement that provides at least some level of coverage is often available at little or no material increase in premium.