

Building Codes, Ordinance or Law & Property Claims

MLPA

September 2, 2020

Jeff Blevins & Steve Carroll

Wisconsin Reinsurance Corp.

Building Codes Defined

- Regulations enacted by state or local governments that relate to design, construction, renovation and repairs.
- 'Ordinance' refers to rules and legislation enacted by a municipal authority.





Content of Building Codes

Codes commonly address:

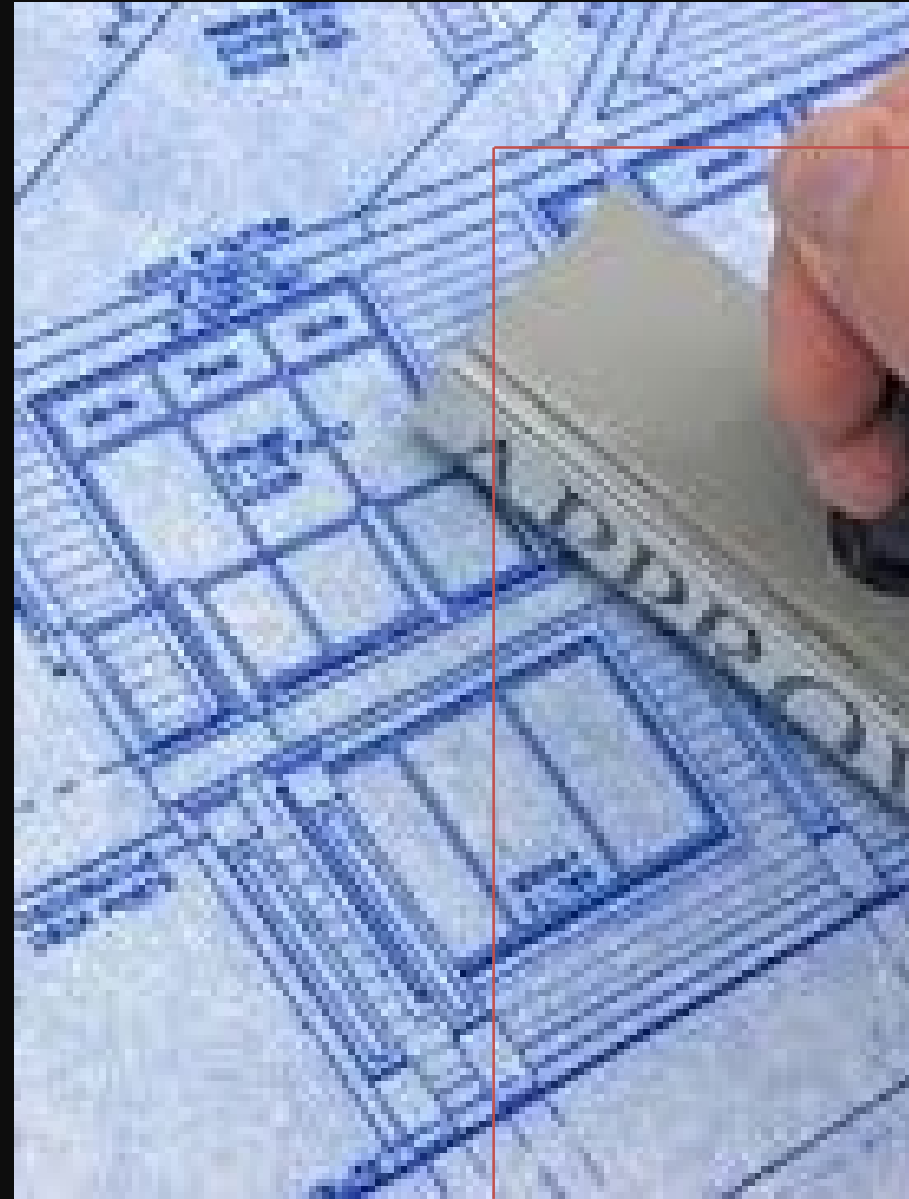
- Grading & Drainage
- Foundation, Roofing and Structural Support
- HVAC, Electrical & Plumbing





The Normal Process

- Codes require building permits for new construction and substantial renovation.
- Owner or licensed contractor 'pull a permit'
- Building inspector then ensures work complies with building codes.
- Approval is made for occupancy and use.



Common Codes

Many state and local building codes are based on model codes drafted by the **International Code Council (ICC)**.

They have created the following codes:

International Residential Code (IRC)- applies to new construction of one and two family dwellings and townhomes.

International Building Code (IBC), applies to commercial construction.

International Existing Building Code (IBEC), applies to renovation, alteration and repair of existing buildings.



NFPA

Common Codes

NFPA 54 – National Fuel Gas Code

NFPA 58- Liquefied Petroleum Gas Code – ‘propane gas’.

NFPA 70 – National Electrical Code

NFPA 211 – Standard for chimneys, fireplaces, vents, solid fuel appliances.

NFPA® 211

Standard for
Chimneys, Fireplaces,
Vents, and
Solid Fuel-Burning
Appliances
2013 Edition



NFPA, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269-2471, USA
An International Codes and Standards Organization

Ordinance or Law Exclusion

-similar exclusion
in most policies-

a. Ordinance Or Law -- "We" do not pay for:

- 1) any loss or increased cost that results from the enforcement of a code, ordinance, or law that regulates the construction, repair, or demolition of property or the removal of its debris, except as provided under the Incidental Property Coverage for Increased Cost -- Ordinance Or Law;
- 2) any loss in value of property that results from the enforcement of a code, ordinance, or law; or
- 3) any loss, cost, or expense that results from the enforcement of a code, ordinance, or law requiring that an "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in anyway respond to or assess the effects of "pollutants".

- Loss caused by Peril Insured Against
- Incurred cost due to enforcement of a (specific) code, ordinance or law.
- Can apply to construction, use, repair or demolition.

Ordinance or Law – **Incidental Property Coverage**

Ordinance or Law – Incidental Property Coverage

(H0 003 09 08)

What it does not do:

- Does not increase “limit” applying to this coverage – unless by amendatory language.
 - **Other coverage forms may provide as additional insurance by \$ or % amount.*
 - Does not cover loss in value to property resulting from enforcement of code, ordinance or law.
 - Does not cover responding to or assessing the effects of pollutants
-



Safety Considerations

- Are the costs being incurred dictated by safety considerations?
- The exclusion is not intended to apply where costs to repair a covered loss would have existed even in the absence of ordinance or law.
- For example, if safety considerations require special handling of hazardous materials, the costs may be compared to the cost of scaffolding for the repair of a multi-story building.




Asbestos

Small basement fire –
extinguished by insured

- Tile floor is damaged and must be replaced.
- It is discovered to be asbestos material.
- What is covered / not covered?







EPA's Lead Renovation, Repair and Painting Rule (RRP Rule)



Requires that firms performing renovation, repair, and painting projects that disturb lead-based paint in homes, child care facilities and pre-schools built before 1978 have their firm certified by EPA, use certified renovators who are trained by EPA-approved trainers and follow lead-safe work practices.

Lead Paint Issue

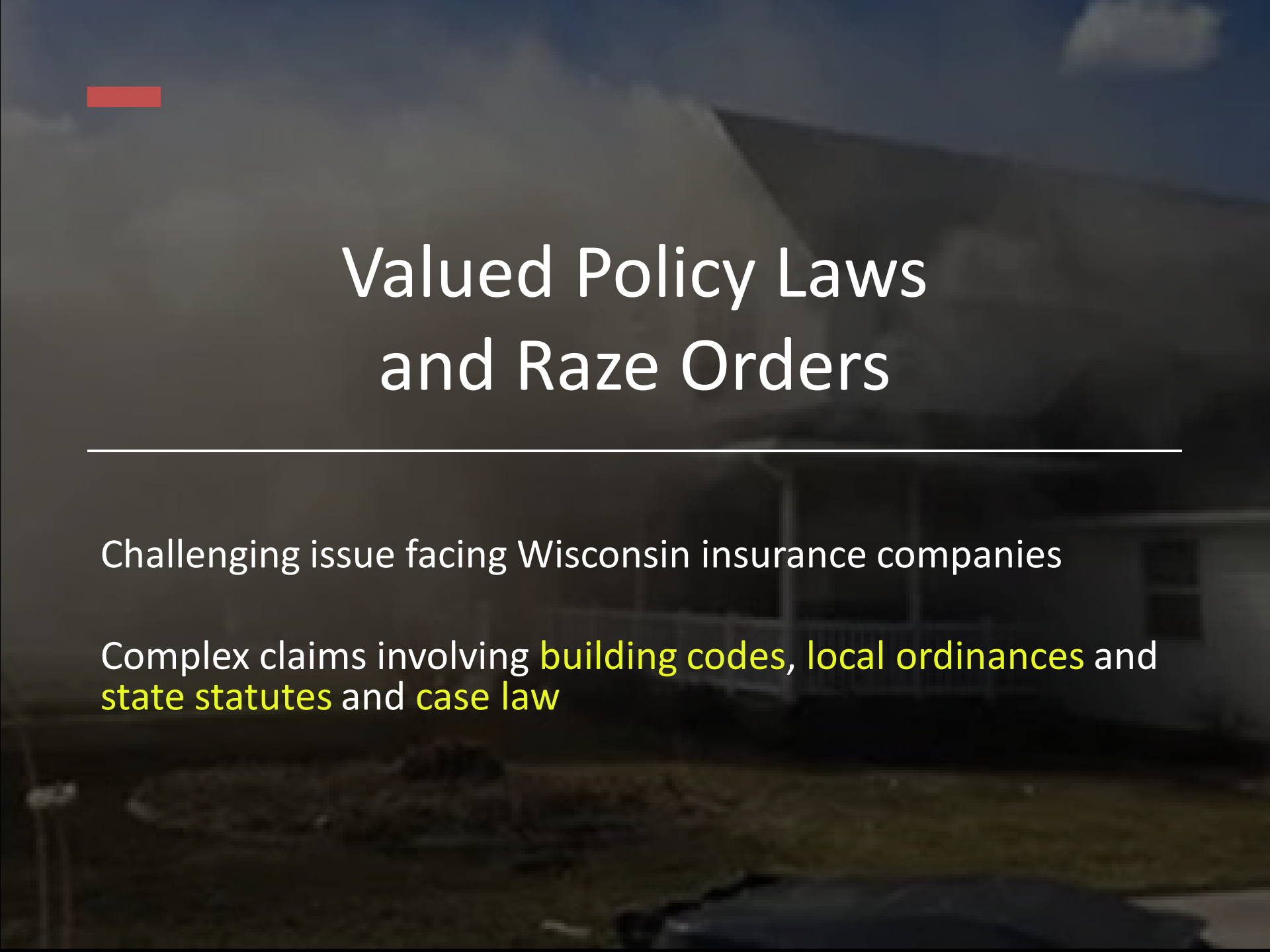


LEAD HAZARD
WORK AREA KEEP OUT
NO WORKING, EATING, OR DRINKING

Exterior repairs needed to painted siding -

Contractor affiliated with Public Adjuster includes the following line items in his estimate:

- Hourly Rate for OSHA Certified Safety Monitor
- PPE & Tarping
- Hourly Rate for Hazardous Waste Removal Supervisor
- Plastic bagging / HEPA Vacuuming
- No led testing included



Valued Policy Laws and Raze Orders

Challenging issue facing Wisconsin insurance companies

Complex claims involving **building codes, local ordinances** and **state statutes** and **case law**

In a Nut Shell

WI Valued Policy Law – If the home is deemed a total loss, the ‘limit of coverage’ is paid out to the insured. Applies to owner occupied dwellings.

WI Statute regarding Raze Orders - If repair costs exceed 50% of assessed value, a raze order may be issued by the municipal authority.





Example with Fire Loss

Fire & Smoke Damage to Dwelling
Still structurally sound.

Coverage A Limit is \$287,000

Bid for Repairs: \$130,000

Costs related to remediation of smoke & water are 50% of cost.

Assessed Value \$124,000

Inspector issues raze order- “presumptively unreasonable to repair under formula set forth in WI raze order statute”

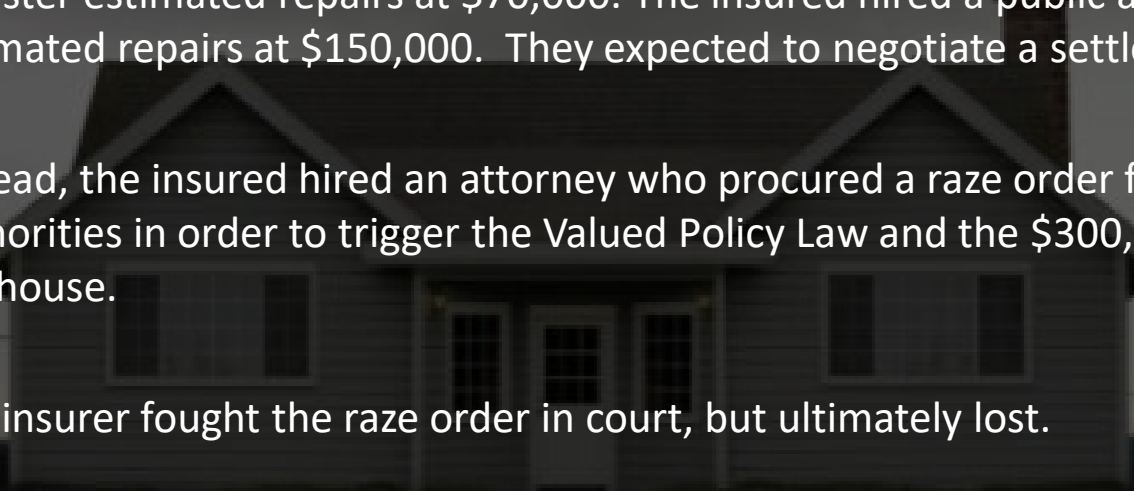


Example with Tornado Loss

Insurer received a claim for damage to a dwelling caused by a tornado. Independent adjuster estimated repairs at \$70,000. The insured hired a public adjuster, who estimated repairs at \$150,000. They expected to negotiate a settlement.

Instead, the insured hired an attorney who procured a raze order from the local authorities in order to trigger the Valued Policy Law and the \$300,000 policy limits on the house.


The insurer fought the raze order in court, but ultimately lost.





Homeowner Association Construction Rules

Do they qualify as
“ordinances or laws” for
the purposes of code
upgrade coverage?



Wind damaged the wood-shake roof on a luxury condominium home in a golf course development.

- Repairs could be made for \$750. However, the homeowner wanted to completely replace the roof for \$47,000 under his ordinance or law upgrade endorsement.
- The homeowners association rules included "design standards" stating that any "roof that needs repair must be re-roofed in entirety. Partial or patch roofing is not permitted."

Wind Damage to Luxury Condo Home

The court held that "ordinance or law" meant rules created and enforced by a governmental authority; **it did not mean private agreements in deeds or leases that restrict land use.**

Homeowners association construction rules did not trigger ordinance or law coverage.

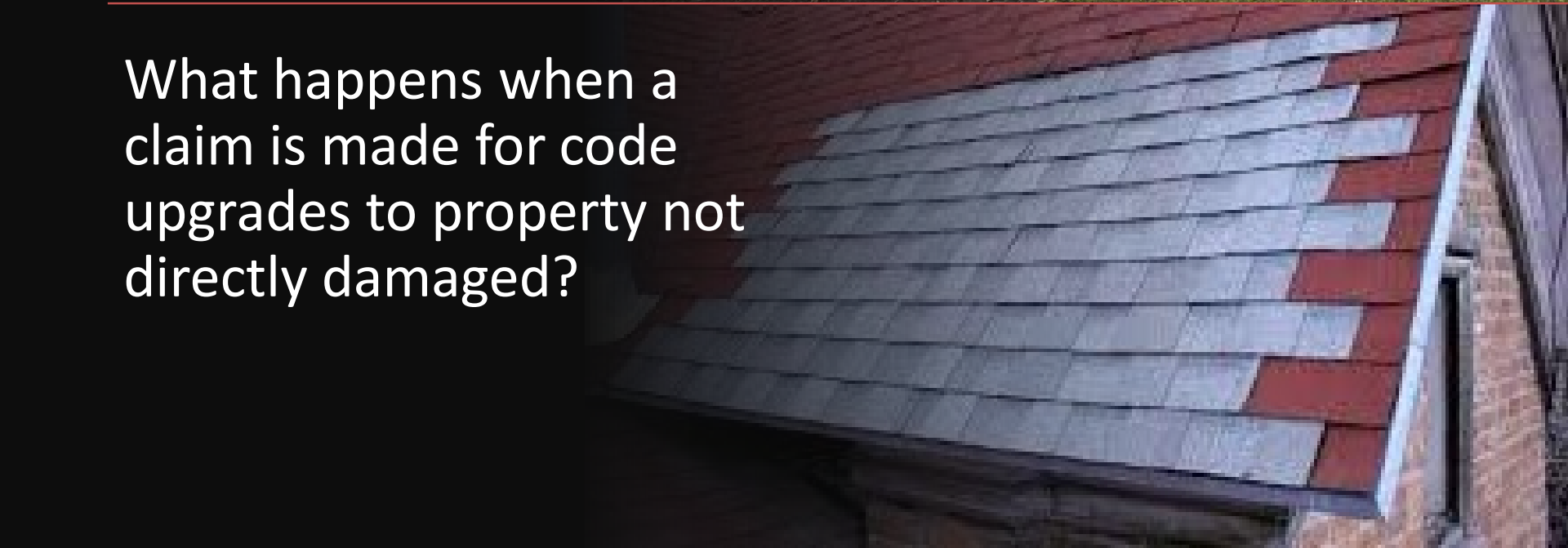
What if a municipality had a similar ordinance about matching?





Undamaged Property

What happens when a claim is made for code upgrades to property not directly damaged?





Total Loss Fire – Rebuild Home

The policyholder is looking for insurance to pay for the new septic system as the existing one was not up to code for the new dwelling

The policyholder is looking to insurance to pay for the cost of removing the old foundation under debris removal coverage.

The new dwelling was built on the same spot





The policyholder is looking for insurance to pay for a new egress window in a basement bedroom.

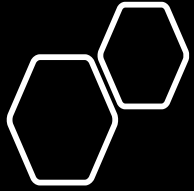


There was no egress window in place prior to the loss.

After a fire loss - The policyholder is looking for insurance to pay for a new sprinkler system required by local building codes

There was no sprinkler system in place pre-loss.





Building Codes & Subrogation

Be on the look out for:

Improper installations

**Negligent compliance with
codes, ordinance, laws,
professional standards**

A few common areas netting recovery results



Electrical, plumbing and other mechanical systems.



Foundations and other structural components



Fire walls and fire resistant materials



Minimum height requirements



Keep the discussion going! Send us your claim scenarios, comments and questions!! We will follow up with you.

Reach out anytime!

jblevins@thewrcgroup.com tel. 888.332.4148

scarroll@thewrcgroup.com tel. 833.275.2905