

FEMA 50% RULE

What is the 50% rule?

The 50% Rule is a regulation of the National Flood Insurance Program (NFIP) that prohibits improvements to a structure exceeding 50% of its market value unless the entire structure is brought into full compliance with current flood regulations. This may include elevating the structure, using flood-resistant materials, and proper flood venting among others.

What is Substantial Improvement and Substantial Damage?

Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building, the cumulative cost of which equals or exceeds 50% of the depreciated market value of the building or structure before the improvement or repair is started. If a project meets the definition of Substantial Improvement or Substantial Damage it is considered new construction and the entire building must be elevated to or above the Base Flood elevation (BFE) and otherwise made fully flood compliant.

Why is it important to know if an improvement is “substantial?”

Exceeding the Substantial Improvement threshold requires the entire structure to be brought into compliance with current NFIP regulations, the Florida Building Code, local government code. This may include elevating the structure at or above Base Flood Elevation (BFE), flood proofing it, installing proper flood venting, and using flood-resistant construction materials.

What types of structures does the “50% Rule” apply to?

All existing structures: Those that were present the year that the NFIP floodplain management and Flood Insurance Rate Maps were adopted in the County as well as those structures built earlier.

New construction: Substantially improved structures must meet the floodplain management regulations and BFE effective at the time the permit is approved.

Non-compliant structures erected prior to adoption of the Flood Insurance Rate Maps may remain so unless they are substantially improved. These structures are evaluated on a case-by-case basis.

Will permits be issued for a “Substantial Improvement?”

Yes, provided the plans demonstrate the entire structure is being brought into compliance.

What is Market Value?

The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. Most jurisdictions determine market value in the following ways:

Utilize the County Property Appraiser’s assessment for ad valorem taxation for the (depreciated) market value for the structure only.

An independent appraisal for the structure only prepared and certified by a Florida Licensed Appraiser.

Can replacement cost be substituted for market value to determine substantial improvement or damage?

No, replacement cost is the cost of replacing the structure with a structure of like kind, using present day costs for labor and materials. Replacement cost is often much greater than market value.

A Repair Improvement Cost Form is required to be submitted with all permit applications so that a substantial Improvement determination can be made.

Are there any projects that do not count towards the 50% Rule?

Yes, in the following examples the cost of improvements do not apply to the 50% Rule:

Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions. This does not apply to structures that are considered “Substantially Damaged.”

Any repair, rehabilitation or addition constituting substantial improvement to a designated historic structure may be exempt, but the owner must receive in writing approval from the Florida Division of Historic Resources office that the structure will maintain its historical integrity and historical classification.

Costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided the costs of such measures, plus the costs of any other improvements, do not exceed 50% of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or impact resistant glass, strengthening of roof attachments, floors, or walls, and minor measures to reduce flood damage. Mitigation improvements may be made in the same year as other improvements, but the total cost of both types of improvements may not exceed 50% of the market value of the structure.

Costs related to the development of plans and specifications, surveys, and permits.

Do maintenance projects count toward the 50% calculation?

Yes, maintenance projects of any type are logged toward the 50% rule.

If the maintenance requires a permit a Repair Improvement Cost Form must be provided with the permit application.

Even if a permit is not required by the Florida Building Code (e.g., renovation of cabinets, countertops, painting, etc.), a Repair Improvement Cost Form is still required to be submitted to track the cumulative improvement to the structure as it relates to the 50% rule.

Can I enclose the area underneath my home and make it into habitable space?

No, if the enclosed area is located below the base flood elevation, this area can only be used strictly for storage, parking, and building access. Utilities are prohibited in these spaces and they cannot be air conditioned.

Is Substantial Improvement cumulative?

“Substantial improvement” involves: “Any repair, reconstruction, rehabilitation, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair, is started.”

How is the value of an improvement determined?

Most jurisdictions use a Repair Improvement Cost Form which must be completed, signed by the contractor or the owner-builder, and submitted with the permit application to determine if a project can be completed under the 50% threshold. This form must also include copies of the construction contract and any subcontractor bids. The permitting agency will evaluate the cost of improvements and determine if they are fair and reasonable. The cost of improvement includes the total costs for repair, reconstruction, rehabilitation, additions, or other improvements to the structure. These costs include all materials, labor, built-in appliances, overhead, profit, demolition, and repairs made to the structure. The application must be reviewed and approved prior to building permit approval and commencement of work. Some jurisdictions also use the Repair Improvement Cost Form for projects that do not require building permits. The purpose of this form is to track the costs of improvements to ensure the 50% threshold is maintained in cases where proposed projects do not require a building permit under the Florida Building Code.

Is the cost of an improvement discounted if the owner does the work or the materials are donated?

No, the value placed on materials must equal the actual or estimated cost. The value placed on labor must be estimated based on applicable hourly wage scales for the type of construction work. Improvement costs cannot be discounted to keep the cost estimate below 50%.

Are there any items that can be excluded from the cost of improvement?

Items that should not be counted toward the cost of repair include plans, specifications, surveys, building permits, and other items separate from or incidental to the repair or improvement of the structure such as outdoor landscaping. Improvements to the land, such as driveways, pools, seawalls, etc. are not included in the 50% Rule value.

How do I find out the required BFE of my property and what does it mean? You can call local government or you can look on the Flood Insurance Rate Map (FIRM) for the jurisdiction in which the property is located. Base Flood Elevation (BFE), is the 1% annual chance of flooding. The 1% annual chance of flood is one that has a 1% (1 out of 100) chance of occurring in any given year. The base flood is also informally.

What are the flood zones? Referred to as the 100-year flood and is the national standard used by the NFIP and all Federal agencies for the purposes of requiring the purchase of flood insurance. AE Zone – the AE Zones have a BFE established on the FIRM and are areas that are susceptible to lower wave heights. VE Zone – The VE zones, also known as Velocity zones or Coastal High Hazard Areas, are in the coastal area along the Gulf of Mexico. These areas have a BFE established on the FIRM and are areas that are susceptible to wave action and quickly rising floodwaters during a storm.

How do I find out the elevation of the lowest finished floor of my house?

An Elevation Certificate is needed to determine the elevation at which a structure is built. Some homes have had elevation certificates completed. If not, an Elevation Certificate will need to be completed by a Florida Licensed Surveyor.

Is flood insurance required?

The purchase of flood insurance is mandatory for all federal or federally related financial assistance for the acquisition and/or construction of buildings in a Special Flood Hazard Area (SFHA). There is a 30 day waiting period for a new flood insurance policy to take effect, so don't wait until a storm threatens to contact an insurance agent! If you've paid off your mortgage, you might be tempted to cut corners and eliminate your flood insurance and rely, instead, on federal disaster relief should your home be damaged in a flood. While you're banking on suffering flood damage only in a declared disaster -- a choice that can backfire on you -- you also won't be off the hook financially if you receive disaster assistance. Assistance isn't a grant, but a loan that you pay back with interest.

Why should an owner suffer what seems to be a penalty for upgrading and/or improving a structure?

The underlying principal for counting extra costs associated with the more expensive materials, labor or design is the added real property that would be at risk to flood damage. It should be noted that in some form, the Federal Government (NFIP, FEMA, or various disaster assistance programs) would likely be obligated to pay a portion of or all future damage to these more expensive improvements. In addition, structures located in a SFHA that are not elevated to or above the BFE pose threats to the health and safety of the occupants of these structures. Over time it is not only important to protect the property of the existing structures through substantial improvement, but also protect the health and lives of the people that occupy them.

What is Substantial Damage? Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes

flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. The flood regulations for the renovation of a substantially damaged structure are the same as those for one that is substantially improved.

What happens when a structure is damaged, but not substantially, and during the repair the owner also makes an addition, rehabilitation, or other improvements to the structure?

If the owner of a building, which was 30% damaged by flood, decides to add a room during the repair process for the flood damage, the combined total of these improvement must be equal to or less than 50% of the structures pre-damaged market value to not be considered a substantial improvement.