

SUBJECT: Valued Policy Law

ABSTRACT: The Florida Valued Policy Law, s. 627.702, F.S., is summarized and related case law is reviewed.

The Statute

SUBJECT	THE LAW'S PROVISIONS
Total losses requiring insurer payment of policy face amount.	If total loss to building/structure/mobile home per 320.01(2)/manufactured building per 553.36(11), amount of coverage for which premium has been charged and paid shall be paid by insurer, if no exception applies.
Partial losses — fire and lightning.	For partial loss by fire or lightning to property described above, payment shall be for "actual amount of such loss" not exceeding policy amount and subject to coinsurance clause. See cases as to partial loss when rebuilding law applies and what is "actual amount of loss."
Conditions under which provisions do not apply.	<ol style="list-style-type: none">1. Change increasing risk without insurer's consent.2. Fraudulent or criminal intent by insured or one acting in insured's behalf.3. If same item insured in two or more insurers and not disclosed to all insurers.4. If insurer elects to repair or replace at its own expense without contribution by insured.
Property to which law does not apply.	<ol style="list-style-type: none">1. Personal property, except specified mobile homes and manufactured buildings.2. Two or more items insured under blanket form with single limit of coverage.3. Completed value of structure under builder's risk policy.4. If specific structure is not insured for stated dollar amount (e.g., a structure under Homeowners Coverage B).
Mobile homes — special provisions.	Insurers must offer stated value coverage. If coverage written on any basis other than stated value, disclosure of relative premiums must be made on form approved by Department, signed by insured.

General Notes

Prior to 1982, the law applied only to losses by fire or lightning. All parts except the reference to partial losses were revised to make the law's provisions apply to all covered perils.

As to flood insurance, based upon NFIP coverage being based on acts of the Federal Congress, it is the view here that the Valued Policy Law does not apply.

Case Law

**“Actual Amount”
of Partial Loss**

In *Sperling v. Liberty Mutual*, 281 So.2d 297 (Fla., 1973), Sperling owned a 40-year old building and insured it with Liberty for \$90,000 under a standard fire policy. A fire occurred, damaging the structure.

The lower court established the cost of repair at \$48,500, applied one-third depreciation, resulting in net loss payment of \$32,350. The Valued Policy Law was referred to in the decision, along with two prior Florida cases establishing actual cash value as being replacement cost less depreciation.

The Supreme Court held that prior cases cited, to determine actual cash value, were inapplicable because they dealt with personal property rather than real property. Damage to personal property does not come under the Valued Policy Law, whereas the law does apply to buildings. The Court said:

“...since the purpose of an insurance contract is to indemnify the owner of property against loss, the measure of value of partial destruction of a building by fire should be the cost of placing the building in as nearly as possible the same condition that it was before the loss, without allowing depreciation for the materials used.”

Such is the Court’s interpretation of “actual amount” of partial loss under 627.702. There has long been full awareness among insurance people of the basic effect of valued policy laws: the requirement to pay the face amount for total loss to buildings. But in partial losses, the general view has been that ACV conditions of the policy govern, and that means replacement cost less fair depreciation. One should not expect that, based on this decision, insurers will voluntarily offer replacement cost adjustments for partial losses under ACV policies.

Rebuilding Laws

In *Netherlands Ins. Co. v. Fowler*, 181 So.2d 692 (Fla. 2d DCA 1966), the insurer issued a fire policy for \$10,000 on a building, with standard provisions that coverage was for actual cash value and not exceeding repair cost, without allowance for increased costs of repair or construction by reason of any law regulating construction or repair.

After the fire, the insurer tendered \$4,619 as the ACV of the loss. The insured refused and sued for the \$10,000 face amount based on the city’s refusal to allow repair and its order for demolition. The insurer contended there was not a total loss for application of the Valued Policy Law; the building was only partially destroyed; the damage was repairable; total loss was caused by operation of the city building code and not fire. The court held the building was a total loss by fire and the Valued Policy Law was applicable, requiring payment of the policy face amount.

Florida seems to be in the minority in its interpretation. There is, of course, an optional coverage offered to cover loss from operation of rebuilding laws, in recognition of the basic policy exclusion and assuming its validity. With the judicial view that basic policy coverage includes the exposure, the exclusion notwithstanding, some may raise a question about whether it is important to recommend the coverage. If there is a desire to cover the exposure, why not simply cover for an amount that is sufficient for both the costs of demolition for partial damage and the cost to rebuild in compliance with current building code (without attachment of the building laws endorsement, which requires a premium surcharge)? Such approach is not recommended; the insurer should be expected to seek adjustment of any loss in accordance with policy contract provisions and no one wants coverage that requires a lawsuit to achieve the desired results.

**Mobile Home
Contents**

The precise wording of subsection (5) of the Valued Policy Law reads: “This section shall not apply as to personal property or any interest therein, except with respect to mobile homes as defined in s. 320.01(2)...” In *Independent Fire Ins. Co. v. Sheffield*, 404 So.2d 406 (Fla. 5th DCA 1981), the insured argued this wording meant that personal property as *contents* of a mobile home were subject to the law, but the court rejected such argument.

**627.702 Valued
policy law.**

(1) In the event of the total loss of any building, structure, mobile home as defined in s. 320.01(2), or manufactured building as defined in s. 553.36(11), located in this state and insured by any insurer as to a covered peril, in the absence of any change increasing the risk without the insurer's consent and in the absence of fraudulent or criminal fault on the part of the insured or one acting in his behalf, the insurer's liability, if any, under the policy for such total loss shall be in the amount of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.

(2) In the case of a partial loss by fire or lightning of any such property, the insurer's liability, if any, under the policy shall be for the actual amount of such loss but shall not exceed the amount of insurance specified in the policy as to such property and such peril.

(3) The provisions of subsections (1) and (2) do not apply when:

(a) Insurance policies are issued or renewed by more than one company insuring the same building, structure, mobile home, or manufactured building, and the existence of such additional insurance is not disclosed by the insured to all insurers issuing such policies;

(b) Two or more buildings, structures, mobile homes, or manufactured buildings are insured under a blanket form for a single amount of insurance; or

(c) The completed value of a building, structure, mobile home, or manufactured building is insured under a builder's risk policy.

(4) The amount of any loss referred to in subsection (1) or subsection (2) shall be subject to any coinsurance clause contained in the policy pursuant to s. 627.701.

(5) This section does not apply as to personal property or any interest therein, except with respect to mobile homes as defined in s. 320.01(2) or manufactured buildings as defined in s. 553.36(11). Nor does this section apply to coverage of an appurtenant structure or other structure or any coverage or claim in which the dollar amount of coverage available as to the structure involved is not directly stated in the policy as a dollar amount specifically applicable to that particular structure.

(6) With regard to mobile homes included in subsection (1), any total loss shall be adjusted on the basis of the amount of money for which such property was insured as specified in the policy, whether on an actual cash value basis, replacement cost basis, or stated amount, and for which a premium has been charged and paid only if the insured has elected to purchase such coverage at the inception of the policy. However, when coverage is written for a mobile home on any basis other than stated value, a complete disclosure of the relative cost between that policy and the stated value policy shall be made to the insured on a form and in a format approved by the department. Such forms shall disclose and describe the differences between the types of policies and shall be signed by the insured. Copies shall be maintained in the insurer's file, and a copy shall be made available to the insured. Each insurer licensed to write insurance covering mobile homes shall make such stated value coverage available at the option of the insured.

(7) Nothing herein shall be construed as prohibiting an insurer from repairing or replacing damaged property at its own expense and without contribution on the part of the insured except, as provided in subsection (6), when an insured has elected to purchase stated value coverage. Such repair or replacement of damaged property shall be in lieu of any liability created by subsection (1); and any insurer so repairing or replacing shall have no liability pursuant to subsection (1), provided such insurer returns to the named insured a portion of the premium, for all policy terms during which the policy limits were the same as those in effect on the date on which the loss occurred, equal to that portion of the premium paid for limits of insurance on the structure in excess of the cost of replacement.

(8) Any property insurer may, by an appropriate rider or endorsement or otherwise, provide insurance indemnifying the insured for the difference between the insurable value of the insured property at the time any loss or damage occurs, and the amount actually expended to repair, rebuild, or replace within this state, with new materials of like size, kind, and quality, such property as has been damaged or destroyed.