

# What Happens If Buildings Are “Substantially Damaged” After a Major Storm?

## Why this matters

After a major flood event (like Sandy), Sussex County is required to determine whether buildings are “substantially damaged.” This determination has serious legal and financial consequences for the entire community — regardless of insurance coverage.

This explainer outlines what the rules require, what choices exist, and what happens if a community cannot comply.

## 1. What does “substantially damaged” mean?

A building is considered substantially damaged when:

- The cost to repair the building to its pre-damage condition
- Is 50% or more of the building’s market value (structure only, not land)

This determination is made by Sussex County, using National Flood Insurance Program (NFIP) rules.

## 2. What happens once a building is designated substantially damaged?

Once this designation is made:

- The building is legally treated as new construction
- Repairs cannot proceed unless the building is brought into full compliance with current floodplain regulations
- For residential condominiums, this almost always means elevation

There is no hardship exemption based on affordability or owner votes.

## 3. Is elevation optional?

No.

If a building is substantially damaged:

- Standard “repair only” permits cannot be issued
- Insurance will not pay for non-compliant repairs
- The building cannot be legally reoccupied until compliant

## 4. What happens if owners cannot afford the required work?

If a community cannot fund the required elevation and compliance work:

- Buildings may remain uninhabitable
- Certificates of Occupancy may not be reissued
- The county may eventually condemn unsafe structures
- Demolition becomes the default outcome, not because it is desired — but because repair is legally prohibited

## **5. What does this mean for owners with mortgages?**

Mortgage obligations do not disappear if a building is damaged or demolished.

- Owners remain responsible for their loan balance
- Insurance proceeds typically go to lenders first
- If insurance + remaining value are less than the loan, owners may still owe the difference

This occurred in many post-Sandy communities along the East Coast.

## **6. Why pre-disaster planning matters**

Once substantial damage occurs:

- Options narrow quickly
- Costs rise
- Time pressure increases
- Communities lose flexibility and leverage

Planning and mitigation before a major storm preserves choice.

Waiting until after a disaster often removes it.

## **Key takeaway**

After a substantial damage determination, the question is no longer whether to elevate — it is whether the community can afford to remain intact at all.

# **What Happens to Owners Whose Buildings Are Not Substantially Damaged?**

Even if a building is not substantially damaged in a major flood event, other owners in the community are still affected while the recovery and compliance process unfolds.

This is because condominiums operate as shared financial and legal systems, not isolated buildings.

## **1. Property values may decline community-wide**

Real estate markets evaluate overall community risk, not just individual units.

When some buildings are substantially damaged and face:

- Mandatory elevation requirements
- Uncertain funding
- Long repair timelines
- Possible condemnation or demolition

Buyers and appraisers often discount all units in the community — including those that did not flood.

This can result in:

- Lower sale prices
- Longer time on market
- Reduced buyer demand

## **2. Financing becomes harder for everyone**

During prolonged uncertainty:

- Some lenders pause or restrict new loans
- Others require higher down payments or additional documentation
- FHA, VA, or conventional approvals may be delayed or suspended

For unaffected owners, this often means:

- Fewer qualified buyers
- Increased reliance on cash buyers
- Pressure to lower prices to complete a sale

## **3. Insurance impacts can extend beyond damaged buildings**

Insurance providers evaluate risk at the community level, not just building by building.

As a result:

- Master insurance premiums may increase
- Deductibles may rise
- Coverage terms may change

These impacts can affect all owners, even if their building did not flood.

## **4. Association costs may shift to remaining owners**

While damaged buildings are:

- Uninhabitable

- Delayed in paying assessments
- In litigation or regulatory review

The association must still cover:

- Insurance
- Legal and administrative costs
- Engineering and compliance work
- Maintenance of common elements

These costs are often spread across the broader ownership, placing financial pressure on owners whose buildings were not damaged.

## 5. Uncertainty itself affects value

The length of time it takes to resolve flood compliance issues matters.

Extended uncertainty can:

- Depress market confidence
- Create a stigma around the community
- Delay normal buying and selling activity

Even without additional flooding, unresolved issues can impact values over time.

### Key point

In a condominium, flood risk and financial risk are shared — even when damage is not.

These examples are included to show how regulatory, financial, and safety requirements can intersect after major damage — and why planning ahead matters for condominium communities.

## Real-World Examples: When Multi-Family Buildings Could Not Be Repaired

The scenarios described above are not hypothetical. Similar outcomes have occurred in other U.S. communities when multi-family buildings became uninhabitable and the cost of compliance or repair proved infeasible.

### Example 1: Dockside Condominiums — Charleston, South Carolina

Dockside is a large waterfront condominium complex in Charleston. After engineers identified serious structural safety concerns, the buildings were **ordered evacuated** and residents were forced to leave.

Owners later **voted not to fund the repairs**, citing the high cost. As a result, the condominium association filed for **Chapter 11 bankruptcy** while attempting to sell the property. The

buildings remain vacant, and owners continue to face financial obligations for homes they cannot occupy.

This case illustrates how a condominium can become **uninhabitable with no viable repair path**, leaving owners with ongoing financial exposure even after evacuation.

**News coverage:**

ABC News 4 — “*Dockside condominium board files for bankruptcy as it attempts sale of property*”

<https://abcnews4.com/newsletter-daily/dockside-condominium-board-files-for-bankruptcy-as-it-attempts-sale-of-property>

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## **Example 2: Arbor Court Apartments — Houston, Texas**

Arbor Court is a large multi-family apartment complex that suffered repeated flooding, including during Hurricane Harvey. After severe flood damage, the City of Houston **denied permits for reconstruction** under floodplain regulations.

Without the ability to rebuild in compliance with current standards, the complex has remained **vacant and deteriorating for years**, while owners and the city continue to dispute responsibility and options.

This example shows how **regulatory requirements following flood damage can effectively prevent rebuilding**, leaving large residential properties unusable and unresolved for extended periods.

**News coverage:**

Houston Chronicle — “*Houston wants to stop flood-prone apartments from being rebuilt*”

<https://www.houstonchronicle.com/news/houston-texas/environment/article/arbor-court-flooding-lawsuit-21020135.php>

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## **Why these examples matter**

These cases demonstrate outcomes that can occur when:

- Buildings become unsafe or substantially damaged
- Required compliance costs exceed what owners can fund
- Repair permits cannot be issued under current regulations
- Communities are left with **evacuation, long-term vacancy, bankruptcy, or demolition** as the remaining options

They show that the risks discussed in this explainer have **already materialized in real multi-family communities**, not just single-family homes.

# **Q&A: Common Questions Owners Ask Regarding Substantial Damage**

## **Q: Can owners vote “no” to elevation?**

**A:** Owners can vote however they choose, but a “no” vote does not override county or federal floodplain regulations. Without compliance, repairs cannot legally proceed.

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## **Q: Can we just repair the damaged units and leave the rest alone?**

**A:** No. Once a building is designated substantially damaged, the **entire structure** must be brought into compliance before permits are issued.

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## **Q: What if everyone has flood insurance?**

**A:** Insurance does not override floodplain law. Insurance also will not pay for repairs that do not meet required compliance standards.

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## **Q: Can we delay and decide later?**

**A:** Delays can make things worse. Buildings may remain uninhabitable, insurance issues may arise, and condemnation becomes more likely over time.

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## **Q: Could the community choose demolition instead?**

**A:** Demolition is not usually a first choice, but if repair is legally prohibited and funding is unavailable, demolition may become the only viable outcome.

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## **Q: Would owners with mortgages still owe money if buildings are demolished?**

**A:** Yes. Mortgage obligations generally remain even if a unit is no longer habitable or is demolished.

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## **Q: Why talk about this now instead of after a storm?**

**A:** Because **after a storm, choices disappear**. Pre-disaster planning helps communities preserve options, reduce risk, and avoid crisis-driven decisions.

**Q: Would FEMA buyout programs prevent this outcome?**

**A:** FEMA buyouts are voluntary, competitive programs that are typically available only after a presidentially declared disaster and require state and local government sponsorship. Property owners do not apply directly, and funding is not guaranteed. Buyouts can take years to complete and are not a reliable or timely solution for communities facing immediate repair or compliance decisions.

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**Q: Could insurance or special “building code” coverage pay for required elevation or compliance?**

**A:** Insurance may help cover some repair costs, but it does not override floodplain regulations or eliminate compliance requirements. Flood insurance and “ordinance or law” coverage generally do not cover the full cost of elevation or allow repair when repairs are legally prohibited under current floodplain rules.

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**Q: Could only some buildings be demolished while others remain?**

**A:** In some cases, yes — but this can significantly change the structure, finances, and long-term viability of a condominium association. Partial demolition can shift costs to remaining owners, alter common elements, affect insurance and financing, and create long-term uncertainty for the community.

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**Q: How long do these situations typically take to resolve?**

**A:** Real-world examples show that outcomes involving evacuation, litigation, bankruptcy, buyouts, or demolition often take **years**, not months. During that time, buildings may remain vacant, owners may continue paying assessments or mortgages, and property values may be affected by ongoing uncertainty.