

Contribute

How to Appeal Substantial Damage assessments conducted by FEMA or your municipality.



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Substantial Damage determinations at times can cause additional disaster debt burden beyond what the homeowner can financially manage. When we need to contest or appeal the substantial damage report we need to follow federal and your municipality policy.

The appeal instructions from your municipality are included in the [substantial damage letter](#) you received. The appeal instructions provided to you in the standard notification letter do not detail the appeal process and procedure. In this article I will cover the substantial damage percentage determination appeal process.

Introduction: With all disaster mitigation processes the homeowner ultimately determines the disaster recovery path taken. The two main factors with mitigation are Ease and Cost.

In Louisiana, most homeowners experience on average a 30 percent reduction in net worth after a severe disaster. This calculation is determined by estimated damages to structures and personal property losses combined with the increased costs of materials and labor for recovery.

Objective: This article will cover contesting or filing an appeal with your municipality over the FEMA Substantial Damage determination. You will need to recruit and/or hire two industry professionals to create a solid appeal. One

licensed real estate agent who is willing to document that your structure has a market value of no less than 2 times the repair costs. One licensed home construction or repair contractor who will give a valid materials and labor quote that is less than 50% of the market value of the structure.

Keep it Simple: With more than 1,000 audits to review by your municipality they are not going to have the time to discuss the process with you in any great detail. The easiest method is to supply the required appeals documentation and let your municipality update your damage assessment.

- **Does FEMA make the substantial damage determinations?**
 - Answer: Only the local community official can make substantial-damage determinations.

Estimating Software: Increased Cost of Compliance Coverage Guidance for State and Local Officials FEMA 301 / September 2003. "A computer program called the Residential Substantial Damage Estimator (RSDE) has been developed by FEMA to assist State and local officials in estimating building value and damage costs for both single-family and manufactured homes. This computer application is based on regulatory requirements of the NFIP and is intended to be used in conjunction with an industry-accepted residential cost-estimating guide."

Estimates of market value can be calculated by any of the following:

- An independent appraisal by a professional appraiser. The appraisal must exclude the value of the land and not use the "income capitalization approach" which bases value on the use of the property, not the structure.
- Detailed estimates of the structure's actual cash value—the replacement cost for a building, minus a depreciation percentage based on age and condition. For most situations, the building's actual cash value should approximate its market value. Your community may prefer to use actual cash value as a substitute for market value, especially where there is not sufficient data or enough comparable sales.
- Property values used for tax assessment purposes with an adjustment recommended by the tax appraiser to reflect current market conditions (adjusted assessed value).
- The value of buildings taken from NFIP claims data (usually actual cash value).
- Qualified estimates based on sound professional judgment made by the staff of the local building department or tax assessor's office.

For your detailed estimates and when calculating depreciation be sure you follow market value as defined by FEMA.

Livingston Parish Louisiana, your appeals will be sent to Brandi A. Janes, LOHSEP Director.

Example Real estate agent letter:

[Date]

TO: Brandi A. Janes, LOHSEP Director
P.O. Box 1060
Livingston, LA. 70754

RE: Appeal Substantial Damage determination property located at **[full address of property]**

To Whom It May Concern:

It is my professional opinion the property located at **[full address of property]**, would currently be valued at **[value of home]**. The most recent sale in **[nearby subdivision name]**, subdivision, which is a like property as the one above, sold for **[enter sqft dollar amount]** per sqft. This home could be listed, marketed and sold for **[value of home]**.

If you have any questions please let me know.

Thank you

[Full signature and contact information for your real estate agent]

Contractor estimate:

FEMA: "Local officials may use a contractor's estimate or a community's estimate in lieu of the SDE computed damages. "

Find a contractor willing to provide you with an estimate based on your supplied information of the damaged home after the disaster.

You may have to pay for this estimate because it will for the most part not lead to any actual repairs. You are at this time claiming you completed the repairs and the value of those repairs are as the licensed contractor describes them in the estimate you are presenting.

Your paperwork will not have to provide proof of payment, the substantially damaged determination only has to be proven incorrect on paper to make the changes.

You would now send your contractors estimate and your real estate agents cash value letter to your municipality.

Example Homeowner letter:

Under Louisiana State Contractor laws you as the homeowner can actually complete your repairs. You will have to complete a permit application and sign the state licensing waiver provided by your municipality. At this point, estimates can and should be offered by showing cancelled payments for materials and labor. You can use any data provided to you from any agency, state, insurance adjustor, contractor, etc. Be sure to check with any additional restrictions your municipality may have.

NOTES, FORMULAS, CALCULATIONS, VALUE DETERMINATIONS.

- **ACV** actual cash value
- **RCV** replacement cost value
- **FMV** fair market value

The appeals process starts with the collection of information to determine your homes pre-disaster value. We want to use the method that offers us the highest uncontested value. Your local municipality will be the reviewing agency and if you follow the FEMA guidelines your municipality follows you should not have any issues with your appeal.

The SD determination includes one structure on your property and has to be your primary living structure, your home. Do not include accessory buildings and structures on your property. If you have attached garage, office, workshop these will be included.

Depreciation Ratings – Residential Structures.

The Substantial Damage Estimator (SDE) tool which FEMA uses includes a depreciation methodology that is based on a U.S. Army Corps of Engineers’ methodology. A depreciation rating of 1 to 6 with 1 being the lowest is based on the condition of the structure prior to the damage event. (Ref sde_3.0_user_manual_field_workbook_0.pdf Table 3-5).

Table 3-5: Depreciation Ratings – Residential Structures

Depreciation Rating	Description	Depreciation Value
1	Very Poor Condition. The structure is dilapidated and deteriorating. The residence is uninhabitable and most likely abandoned.	88.9%
2	Requires Extensive Repairs. The residence can be inhabited, but is in need of extensive repairs and maintenance.	66.5%
3	Requires Some Repairs. The residence requires some repair and maintenance.	38.8%
4	Average Condition. There is normal wear on the house, but no signs of major repairs or maintenance needed.	24.2%
5	Above Average Condition. Little visible wear on the structure, but it is not considered "brand new." Most functional value is remaining.	13.4%

6	Excellent Condition. Structure was recently built (2 years old or less). There is no visible deterioration. This condition is rare in structure inventories and should be reserved for only brand new structures that have all functional value remaining.	2.9%
Other	Determined by inspector (must provide a reason in pop-up Depreciation Explanation window).	Value defined by user

Determining Market Value for SD determinations, instructions provided by FEMA to local officials.

1. The market value is the structures market value before repairs, construction or improvements were made after the declared disaster date. For DR-4277 (LA August 2016 Floods) any improvements made after August 13, 2016 can not be used in the determination of market value. The market value is before the damage occurred.

2. If the structure has not been maintained and has deteriorated over time since the disaster date the market value is determined at the time you apply for a permit to make repairs. If a permit is not required then market value is applied to the home at the start of repairs after the disaster event date.

When using the market value it's important to understand how FEMA views the calculation and what is excluded in the formula. Market value is explained by FEMA as "... the amount an owner would be willing but not obliged to accept, and that a buyer would be willing but not compelled to pay".

The National Flood Insurance Program (NFIP) has requirements as well when determining the market value of a structure.

NFIP requirements:

- Market value must always be based on the condition of the structure before the improvement is undertaken or before the damage occurred.
- Only the market value of the structure is pertinent. The value of the land and site improvements (landscaping, driveway, detached accessory structures, etc.) and the value of the use and occupancy (business income) are not included. Any value associated with the location of the property should be attributed to the land, not the building.

At this point you understand the depreciation methodology and how to determine the market value. Your parish (county) office will most likely place the same number as your cash value for their updated report.

At this point back in 2016/2017 you had several options;

- Elevate and Repair
- Repair (If top of lowest floor was over BFE+1 foot.)
- Demolish and Reconstruct.

Other options were not offered to all homeowners such as buyouts and house moving. We'll focus on what you can do today, nearly 5 years after the fact.

- Elevation and Repair.

Elevation could be covered by FEMA Hazard Mitigation Grant Program (HMGP) with a cost share of 25% for homeowner and 75% from FEMA. Then you would use your flood insurance or cash to repair your home to a safe and healthy condition. FEMA and HUD were offering elevation grants. In some cases the cost share can be paid by HUD Community Development Block Grants for Mitigation (CDBG-MIT) projects. The state was awarded \$1.2 billion in CDBG-MIT grants in 2019 and has programs to offset the cost share in place.

- Repair Only

If you have a recent certificate of elevation that shows you are currently at BFE+1 foot you do not have to elevation but will need to repair. Most of you that were substantially damaged were below BFE but in case you were 1 foot above your appeal will be as simple as sending the most up to date certificate of elevation and then your cost for repairs percentage to your homes cash value or market value.

- Demolition and Reconstruction

If your home was substantially damaged you would have the option to demolish and reconstruct. This option would have been presented by the state of Louisiana Office of Community Development Disaster Recovery Unit and funded by HUD Community Development Block Grant - Disaster Recovery (CDBG-DR) grants. You would have to contact your FEMA representative at the parish level to find out if FEMA offered any reconstruction grants for DR-4277.

At this point if you're not able to do any of the normal mitigation practices then all we have remaining is to appeal the SD determination and have the parish submit the paperwork to remove you from the Substantially Damaged list.

You will need three (3) professionals.

- Licensed Realtor
- Licensed Contractor
- Licensed Elevation Surveyor

You will need to file your certificate of elevation with this paperwork unless your parish waives this requirement.

You will need your contractor to do your estimate for repairs. If you hired a contractor and have the invoice or receipt with proof of payment you can use that information. Otherwise, you'll need to tell the contractor what repairs you completed and they will give you a quote. You may need to pay your contractor for the estimate because for most it will not lead to them doing any work.

You will need to have a realtor give you a market or cash value for your home and remember to list your depreciation when calculating this number.

Example:

Your current SD is over 50% or you would not have been sent the letter. So I'll show in the first example a case that is over 50% and then advise what could be done to bring the percentage below 50% and 30% for some with homes that were in very rough condition before the floods.

1. Home valued at \$100,000
2. Depreciation of rating 4 (24.2%)
3. Repair estimated at \$25,000

Math: $\text{Repair} / (\text{Value} - \text{Depreciation}) = \text{SD Percentage}$.

$(\$100,000 - 24.2\%) = \$75,800$

$\$25,000 / (\$100,000 - 24.2\%) = 50,800$

$\$25,000 / \$50,800 * 100 = 49\%$

We find in this example that the home's damage assessment is 49% which is below the 50% required cost / loss to be determined a substantially damaged home and a home required to mitigate to prevent future damage. Mitigation for most will require elevation.

I can not tell you your numbers, you have to work with people to make your disaster recovery plan work for you. But I can repeat the line that your state workers used when it was time to produce numbers. "Be very creative" with your proposed solution but be within policy guidelines and follow policy to the letter.

The bottom line is if you are completed with your repairs and have estimates on elevation and can not afford to elevate as part of your mitigation you should contact the state office of community development for grant funds to pay the 25% cost share. If they refuse then you can request Increased Costs of Compliance funds from your Flood (NFIP) insurance adjustor (not agent). If you did not have flood insurance and can not take on additional disaster debt you can contact your parish office for grants from any of the not for profits funded by HUD to include CDBG grants for home buyers to CDBG-DR disaster grants and CDBG-MIT mitigation grants.

I will be updating and clarifying this article to make it as clear as possible without suggesting you do anything but follow FEMA policy to the letter. You must do what you can afford to do and for now that is to keep your flood insurance as low as possible by filing an appeal to the FEMA Verified Loss / Substantially Damaged determination.

Use the form below to ask questions.

FEMA related Acronyms and Abbreviations

- **ACV** actual cash value
- **BFE** base flood elevation
- **CFR** Code of Federal Regulations
- **FEMA** Federal Emergency Management Agency
- **FIRM** Flood Insurance Rate Map
- **FMA** Flood Mitigation Assistance (grant program)
- **GIS** geographic information system
- **HMGP** Hazard Mitigation Grant Program
- **HVAC** heating, ventilation, and air conditioning
- **ICC** Increased Cost of Compliance
- **NFIP** National Flood Insurance Program
- **PDM** Pre-Disaster Mitigation (grant program)
- **RCV** replacement cost value
- **SDE** Substantial Damage Estimator
- **SFHA** Special Flood Hazard Area
- **SI/SD** substantial improvement and substantial damage

Miscellaneous Acronyms and Abbreviations

- **ARV** after-repair value
- **BAV** Bank Appraised Value

FEMA Resource References:

- [Substantial Improvement / Substantial Damage Desk Reference FEMA P-758 / May 2010](#)
- [Answers to Questions About Substantially Improved / Substantially Damaged Buildings FEMA 213 / August 2018](#)
- January 26, 2021 "[You Got a Substantial Damage Determination Letter, Now What?](#)"

TruckAndTools.Com Resource Links

- [Livingston Parish RE: Notification of Substantial Damage and NFIP Non-Compliance](#)

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