October 22-25, 2026 I Sheraton Boston Hotel

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10/23/2026
3:45 pm - 4:45 pm

Four Property Concepts Every Agent Should Understand

Mapfre Insurance

Four Property Concepts Every Agent Should Understand

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Our Four Topics

- Actual Cash Value
- Depreciation of Labor
- The Matching Issue
- Vacancy

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What is Actual Cash Value?

How does the Building and Personal Property Coverage Form (CP 00 10 10 12) define Actual Cash Value?

It Doesn't!

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What is Actual Cash Value?

What most of us learned:

ACV = Replacement Cost minus Depreciation

My refrigerator has a useful life of 10 years.

Five years ago, I purchased my refrigerator for $5,000.

Today, I can purchase that same refrigerator for $4,000.

What is the RC of the refrigerator?

$4,000

What is the ACV of the refrigerator?

$2,000 ($4,000 RC - $2,000 depreciation)

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What is Actual Cash Value?

Other Possible Definitions

Fair Market Value

- The difference between the fair market value of the property before and after the loss
- "the amount which in all probability would be arrived at by fair negotiations between an owner willing to sell and a purchaser desiring to buy."

Butler v. Aetna Ins. Co. of Hartford, 256 N.W. 214 (ND 1934).



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What is Actual Cash Value?

Other Possible Definitions

Broad Evidence Rule

May consider factors such as: market value, RC, physical depreciation, original cost, useful life factors, condition of the property, location, use, intended use, assessed value, offer to sell value, offers to purchase amounts





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Broad Evidence Rule

Agoos Leather Cos. v. American & Foreign Ins. Co., 342 Mass. 603, 174 N.E.2d 652 (1961) - Massachusetts Supreme Judicial Court

[T]he words "actual value" do not import that recovery is limited to market value.... [M]arket value does not in all cases afford a correct measure of indemnity.... In some cases there is no market value, properly speaking, and in others, if there is, it plainly would not of itself afford full indemnity.... [E]ven where market value will not afford the indemnity for which the ... insurance provides, the cost of replacement, less depreciation, is not conclusive as to the actual value.... But it is important evidence of such value to be considered with other evidence.... Both fair market value and replacement cost are permissible standards for determining ... losses but they are standards and not shackles.



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You Be the Judge

O'Connor v. Merrimack Mut. Fire Ins. Co., 73 Mass. App. Ct. 205, 897 N.E.2d 593 (2008)

- Insured bought ACV building coverage with a limit of $800,000 based on his previous policy.
- Insurer inspected and determined the ACV was $1,456,202 based on RC less 10% depreciation. Insurer insisted limit be increased to $1.3m which the insured ultimately agreed to.
- The policy did not define ACV
- Several years later, when the limit was $1,476,730, the property was destroyed by fire. Insurer stated amount due as ACV was $1,146,248. Insurer based this amount on an average of various values, including replacement cost less depreciation, an appraisal based on the income approach, and an appraisal based on the sales comparison approach.
- Insured filed suit.



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You Be the Judge

O'Connor v. Merrimack Mut. Fire Ins. Co., 73 Mass. App. Ct. 205, 897 N.E.2d 593 (2008)

- Breach of contract claim – Insurer's initial letter and the attached Value Estimate assigned a definition and means of calculating the actual cash value of the property for purposes of the policy.

Appellate court - The letter could not amend the terms of the policy, particularly when the policy itself provided that its terms could only be amended or waived by written endorsement.





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You Be the Judge

O'Connor v. Merrimack Mut. Fire Ins. Co., 73 Mass. App. Ct. 205, 897 N.E.2d 593 (2008)

- Promissory estoppel claim

  The doctrine that a party may recover on the basis of a promise made when the party's reliance on that promise was reasonable, and the party attempting to recover detrimentally relied on the promise.

Appellate court - The letter and Value Estimate did not establish an obligation extraneous to the policy.





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You Be the Judge

O'Connor v. Merrimack Mut. Fire Ins. Co., 73 Mass. App. Ct. 205, 897 N.E.2d 593 (2008)

Other claims rejected by the court

- Breach of the covenant of good faith and fair dealing
- Intentional misrepresentation
- Negligent misrepresentation
- Insurer violated G.L. c. 93A, § 11, a Massachusetts statute which provides redress for unfair or deceptive acts, including extreme and egregious negligent misrepresentation.

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What is Depreciated?

Estimate to replace a roof damaged in a windstorm - $25,500

- $10,000 labor
- $10,000 materials
- $4,000 overhead and profit
- $1,500 tax

Roof has a useful life of 30 years and is 15 years old. What is the ACV of the Roof?

It Depends

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Labor Can be Depreciated

Basham v. United Servs. Auto. Ass'n, Civil Action No. 16-cv-03057-RBJ, 2017 U.S. Dist. LEXIS 118729 (D. Colo. 2017)

> "[c]overed property, such as a roof, is often the product of both materials and labor. Accordingly, repair and replacement costs comprise the cost of materials (e.g., shingles and nails), and the cost of labor (e.g., roofing contractors). Both the cost of materials and the cost of labor are therefore subject to a depreciation deduction."

Graves v. American Family Mut. Ins. Co., 686 F. App'x 536 (10th Cir. 2017)

> "if American Family could depreciate only the cost of materials in determining the actual cash value of Graves' loss, she [the insured] would receive a windfall based on labor costs she never incurred."



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Labor Cannot be Depreciated

Adams v. Cameron Mut. Ins. Co., No. CV-13-456, 2014 Ark. LEXIS 10 (2014)

Supreme Court of Arkansas held that the term "actual cash value" was ambiguous, and, therefore, the insurer could not depreciate labor.

> Note: In Shelter Mut. Ins. Co. v. Goodner, 2015 Ark. 460, 477 S.W.3d 512 (2015), the same court held that the insurer could depreciate labor. That policy expressly provided that "when calculating depreciation, we will include depreciation of the materials, labor, and the tax."



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Labor Cannot be Depreciated

Riggins v. American Family Mut. Ins. Co., 106 F. Supp. 3d 1039 (W.D. Mo. 2015)

The policy defined ACV as the cost "to repair or replace property with property of like kind and quality less depreciation for physical deterioration and obsolescence."

Court said "phrase 'for physical deterioration and obsolescence' limits the type [of] depreciation that may be factored into a calculation of 'actual cash value." Labor isn't subject to physical deterioration so can't be depreciated.

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Some Labor Can be Depreciated

Branch v. Farmers Ins. Co., 311 F.3d 1241 (10th Cir. 2002),

Damages in Question:

- The cost to tear off damaged shingles – Not subject to depreciation
- The labor cost of installing shingles – Subject to depreciation

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What can be depreciated?

Things to Consider:

- What does the policy language say?
- Is there a state statute that applies?
- Are there any state insurance department regulations?
- If the policy doesn't specifically allow for labor to be depreciated, are there court decisions in the state?
- If labor can be depreciated, will pure labor items also be depreciated?

  e.g. Debris removal vs. labor to replace siding

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Depreciation of Labor Policy Language

Sample Policy Language

Actual cash value means the cost to repair or replace property with new materials of like kind and quality, less an adjustment for physical depreciation, deterioration, obsolescence and depreciation of the cost of labor associated with the repair or replacement of covered property at the time of loss.

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Depreciation of Labor Policy Language

Sample Policy Language

Actual cash value is calculated as the lesser of the following:

1. The amount it would cost to repair, rebuild or replace the property less a fair and reasonable deduction for physical depreciation of the components of the building or structure that are normally subject to repair or replacement during its useful life. Physical depreciation is based upon the condition of the property at the time of the loss; or

2. The Limit of Insurance applicable to the property.

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New ISO endorsements effective 7/1/2027

- **CP 12 76 05 27** Actual Cash Value With Depreciation Of Materials And Supplies
- **CP 12 77 05 27** Actual Cash Value With Depreciation Of Materials And Supplies And Labor And Services
- **CP 12 78 05 27** Actual Cash Value With Depreciation Of Materials And Supplies, And Labor And Services, And Contractor Overhead And Profit

ACV is defined, and what is to be depreciated is described.

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What do we pay for?



"But if we just replace the damaged siding, the building won't look right" says your insured.

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What Does the Policy Say?

Building and Personal Property Coverage Form (CP 00 10 10 12)

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

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What Does the Policy Say?

Building and Personal Property Coverage Form (CP 00 10 10 12)

4.Loss Payment

a. *In the event of loss or damage covered by this Coverage Form, at our option, we will either:*

(1) *Pay the value of lost or damaged property;*

(2) *Pay the cost of repairing or replacing the lost or damaged property, subject to* ***b.*** *below;*

(3) *Take all or any part of the property at an agreed or appraised value; or*

(4) *Repair, rebuild or replace the property with other property of like kind and quality, subject to* ***b.*** *below.*

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.

Note: b. below address Ordinance or Law



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What Does the Policy Say?

Building and Personal Property Coverage Form (CP 00 10 10 12)

Replacement Cost Optional Coverage

e. *We will not pay more for loss or damage on a replacement cost basis than the least of* ***(1), (2)*** *or* ***(3),*** *subject to* ***f.*** *below:*

(1) *The Limit of Insurance applicable to the lost or damaged property;*

(2) *The cost to replace the lost or damaged property with other property:*

(a) *Of comparable material and quality; and*

(b) *Used for the same purpose; or*

(3) *The amount actually spent that is necessary to repair or replace the lost or damaged property.*

If a building is rebuilt at a new premises, the cost described in ***e.(2)*** *above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.*

Note: f. below addresses Ordinance or Law



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NAIC - UNFAIR PROPERTY/CASUALTY CLAIMS SETTLEMENT PRACTICES MODEL REGULATION

Section 9. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage

A. When the policy provides for the adjustment and settlement of first party losses based on replacement cost, the following shall apply:

(1) When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacement not otherwise excluded by the policy, shall be included in the loss. The insured shall not have to pay for betterment nor any other cost except for the applicable deductible.

(2) When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace all items in the area so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The insured shall not bear any cost over the applicable deductible, if any.



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The Matching Issue

Fla. Stat. Ann. § 626.9744

626.9744 Claim settlement practices relating to property insurance.—Unless otherwise provided by the policy, when a homeowner's insurance policy provides for the adjustment and settlement of first-party losses based on repair or replacement cost, the following requirements apply:

……

(2) When a loss requires replacement of items and the replaced items do not match in quality, color, or size, the insurer shall make reasonable repairs or replacement of items in adjoining areas. In determining the extent of the repairs or replacement of items in adjoining areas, the insurer may consider the cost of repairing or replacing the undamaged portions of the property, the degree of uniformity that can be achieved without such cost, the remaining useful life of the undamaged portion, and other relevant factors.

……



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The Matching Issue

Wisconsin
Farmers Auto. Ins. Ass'n v. Union Pac. Ry. Co., 768 N.W.2d 596 (Wis. 2009)

> "Of like kind and quality" does not mean identical match. If a policy calls for "like kind and quality," this means something that is reasonably comparable



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The Matching Issue

Iowa
Iowa Admin. Code § 191-15.44 (507B)- Standards for determining replacement cost and actual cost values

When a loss requires replacement of items and the replaced items do not match in quality, color or size, the insurer shall replace as much of the item as is necessary to result in a reasonably uniform appearance within the same line of sight. This subrule applies to interior and exterior losses. Exceptions may be made on a case-by-case basis…





The Matching Issue

Edelman v. Certain Underwriters at Lloyds, London, 2017-02471-F (Mass. Super. May 7, 2019)

- The Court ruled that the subject commercial policy affords coverage for the matching of all four elevations and slopes of a property's siding and roofing.
- Case of first impression



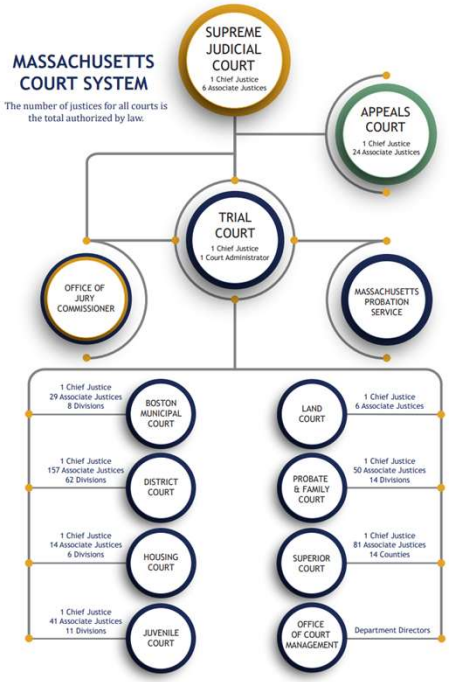
The Matching Issue

New England Prop. Services Group v. Bunker Hill Preferred Ins. Co., No.2284CV2019 (Mass. Super. Apr. 22, 2024).

- The Court ruled that the policy's phrase "of like kind and quality and for like use" is not defined and, as such, is ambiguous.
- If there are no materials of like kind and quality available to repair the damage to an insured's property, the only way an insurer could fulfill its obligation to repair the damage with materials of like kind and quality is to replace both the damaged and undamaged portion's of the insured's property.

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The Matching Issue – Insurer Language

Undamaged material

We will not pay to repair or replace undamaged material due to mismatch between undamaged material and new material used to repair or replace damaged material. We do not cover the loss in value to any property due to mismatch between undamaged material and new material used to repair or replace damaged material.

Siding and/or Roofing Restoration

We will cover reimbursement for cost to replace all of the undamaged vinyl or aluminum siding (including soffit and fascia) and/or composition shingle roofing of the building with materials of like kind and quality that are substantially similar to those materials that were damaged by a peril insured against. This coverage applies if the same siding and/or roofing material is no longer available. This coverage does not apply to mismatches caused by weathering, fading, oxidizing, or wear and tear.

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Vacancy Defined
CP 00 10 10 12

For a tenant:

The unit or suite rented or leased to the tenant does not contain enough business personal property to conduct customary operations.

For a building owner (or general lessee)

31% of the entire building must be rented and used by a tenant to conduct its customary operations and/or it must be used by the building owner to conduct customary operations.

Buildings under construction or renovation are not considered vacant.

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Effect of Vacancy on Coverage

Vacancy Clause applies when the premises has been vacant for more than 60 consecutive days.

No coverage for:

- Vandalism
- Sprinkler leakage (unless system is protected against freezing)
- Building glass breakage
- Water damage
- Theft or
- Attempted theft

Payment for damage by all other covered causes of loss is reduced by 15%.

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Vandals start a Fire in a Vacant Building

Fire Damage is Covered

Nationwide Mut. Fire Ins. Co. v. Nationwide Furniture Co. 932 F. Supp. 655 (E.D. Pa. 1996)

The term vandalism is ambiguous. The insurer could have defined vandalism to include non-accidental fire to clarify, but did not.

Fire Damage isn't Covered

Botee v. Southern Fid. Ins. Co., 162 So. 3d 183 (Fla. Dist. Ct. App. 5th Dist. 2015)

Webster's defines vandalism as "willful or malicious destruction or defacement of public or private property." Arson is similarly defined. Vandalism unambiguously encompasses arson.



Watch for Policy Specific Language

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CP 01 09 10 00 Massachusetts Changes

If loss or damage is caused by fire or lightning, the Vacancy Loss Condition is replaced by the following:

VACANCY OR UNOCCUPANCY

If the building where loss or damage occurs, whether intended for occupancy by owner or tenant, has been vacant or unoccupied for more than:

1. 60 consecutive days for residential premises of 3 units or less; or

2. 30 consecutive days for all other premises;

immediately before that loss or damage, we will not pay for the loss or damage.

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VACANCY PERMIT ENDORSEMENT (CP 04 50 07 88)

- Suspends the vacancy condition for specified locations for a stated period of time
- Allows coverage to continue at full value when a building is vacant beyond 60 days
- Can be written to specifically exclude vandalism and/or sprinkler leakage

VACANCY CHANGES ENDORSEMENT (CP 04 60 10 12)

- Used to redefine the minimum percentage that must be rented or used to avoid a vacancy condition
- Allows the 31% rented criteria to be reduced to as low as 10%

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VACANT BUILDING POLICIES

Things to watch for:

- Non-admitted carriers
- Valuation – ACV instead of RC
- Causes of Loss – Basic or Broad instead of Special
- Exclusions for Sprinkler Leakage, Water Damage, Vandalism, Theft
- Warranties – e.g.
  - Maintenance of heat
  - Locked/secured building
  - Central station alarms
  - Certain security measures
  - Others

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Thank You For Attending!

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