

# Legal Non-Conforming FAQ

## **Will my house be “grandfathered” if the Land Use Bylaw is amended to establish a maximum floor area?**

Yes, if a Local Trust Committee (LTC) amends the Land Use Bylaw (LUB) to establish a maximum floor area for dwellings a dwelling that was lawfully constructed before the date of the adoption of the bylaw, and which would exceed the new maximum floor area, would be considered legally non-conforming.

Section 529 of the Local Government Act (LGA) provides legal non-conforming protection for buildings or structures that exceed new siting, size or dimensions regulations. That section states that buildings or structures may be maintained, extended or altered, but only to the extent that the repair, extension or alteration involves no further contravention of the bylaw. In other words, you could renovate, maintain or repair your non-conforming house, but you could not put on an addition that would increase the floor area.

## **What if my house burns down more than 75%, is my house still grandfathered?**

The reference to a building that is destroyed to 75% or more of its value is from Section 532 of the Local Government Act, and applies only to situations where there is a **non-conforming use** (for example a residential use in an area only zoned for commercial use). This section would not apply to a dwelling that has been legally constructed but becomes non-conforming as the result of changes to setback or floor area regulations.

If a dwelling was damaged beyond 75%, it may still be possible to be repaired, provided the repair would not increase the floor area of the house. The words “repair” and “maintain” are not defined or limited by the LGA and so what would be considered “repair” would include anything that could commonly and reasonably be considered repairs.

## **What if I need to build a new house?**

A new dwelling would have to meet the current regulations in the Land Use Bylaw. However, an owner could apply for a Development Variance Permit or make an application to the Board of Variance if they felt that they needed a larger floor area. See links below for information regarding variance applications.

## **What if I sell my house, and the house size is greater than the maximum floor area?**

Legal non-conforming protection is not limited to a specific owner (it “runs with the land”).

## **Do I need to apply for legal non-conforming status?**

No, it is legal protection that exists because of provincial legislation. But if an owner needed to repair or maintain a dwelling, it is the responsibility of the owner to demonstrate that it is legal non-conforming. A building permit or other documentation could provide proof of non-conforming status.

*Local Government Act:* [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/r15001\\_00](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/r15001_00)  
*DVP or BOV Applications:* <http://www.islandstrust.bc.ca/media/184556/sgivariancefactsheetjul2011.pdf>  
and <http://www.islandstrust.bc.ca/islands/land-use-planning/application-guides-forms/>