



Leadership and Funding for Justice in Florida

# **Florida's Legal Assistance Disaster Manual**

**June 2006**

## ACKNOWLEDGMENTS

The Florida Bar Foundation wishes to acknowledge the contributions of time, effort and expertise made by many individuals, and organizations to the development and writing of this manual. Many of these same persons and organizations also provided invaluable assistance in the annual disaster training conferences

As consultants to the Foundation, Terry Coble, formerly disaster project manager for Legal Services of Greater Miami after Hurricane Andrew, and Alice Nelson, formerly Executive Director of Southern Legal Counsel, played the critical role of initially developing and pulling together the manual. They also contributed several sections of the manual, with Terry and Alice working together on the sections on program disaster plans, the chronological disaster timeline of tasks and the list of federal and state contacts (updated by Cindy Huddleston, staff attorney of Florida Legal Services, for the 2006 version of the Manual) and Terry writing the sections on legal representation of clients regarding FEMA matters. The Foundation has been fortunate to have the continued consultative services of Terry Coble for the updating and expansion of the Manual for 2007, including the contribution of a new section on disaster recovery issues for mobile home residents by Lisa Carmona, staff attorney with the Florida Equal Justice Center.

Florida's Pro Bono Coordinators' Association and the Young Lawyers Division of The Florida Bar were the driving forces behind the section on utilization of pro bono resources. We especially wish to thank Rob Johnson, Executive Director of Brevard

County Legal Aid for the writing of this section.

J.R. Phelps, Director of The Florida Bar's Law Office Management Assistance Service, provided valuable assistance to the section on program disaster plans.

Charles Elsesser, staff attorney with Florida Legal Services, contributed leadership and guidance to the overall development of the manual. Further, Chuck provided his invaluable expertise in writing about long term effects of hurricane disasters on the availability of affordable housing in the long term recovery section.

We wish to acknowledge and thank Richard Benrubi, of the law firm of Luggio, Benrubi, & Williams, P.A., in West Palm Beach, Florida for his important pro bono contribution, the writing of the section, A Primer for Handling Homeowners' Insurance Claims in Florida.

Terry Coble contributed and Deborah Schroth, staff attorney of Florida Legal Services, reviewed the section on Education Rights of Children.

Lisa Carmona of Florida Equal Justice Center and lead attorney for the Southeast Florida Hurricane Wilma Collaborative, Christine Larson, Deputy Director of Florida Rural Legal Services and Michelle Trunkett of Florida Rural Legal Services contributed the manual section on Landlord/Tenant Issues.

April Charney, consumer attorney for Jacksonville Area Legal Aid, contributed the section on Home Repair/Solicitation, which was carefully edited and supplemented by Alice Vickers, staff attorney of Florida Legal Services.

Sample brochures and flyers were contributed by several programs, including Legal Services of North Florida and Florida Rural Legal Services. We particularly wish

to recognize the assistance of Kristine Knab, Executive Director of Legal Services of North Florida and Christine Larson of Florida Rural Legal Services. Terry Coble produced the flyer regarding FEMA benefits and edited the flyers regarding Food Stamps, Disaster Unemployment Assistance and tenant's rights. Cindy Huddleston provided updated information for the 2006 manual versions. We also wish to thank Florida Immigrant Advocacy Center for providing the Creole and Spanish translations of the flyers for the 2006 manual.

Andrea Horne, Grants Coordinator for The Florida Bar Foundation, prepared the manual for publication and deciphered and organized a wealth of material from different sources and in different forms. Thanks, Andrea.

Many others provided guidance, support and expertise to the development and writing of this manual, and to the training provided on the manual. We particularly want to thank Kent Spuhler, Executive Director of Florida Legal Services, for his guidance and leadership regarding disaster legal assistance.

## PREFACE

After the devastation of Hurricane Andrew in South Florida in 1992, the state enjoyed a twelve year respite in serious hurricane damage. This lull came to a crashing halt with the arrival of Hurricanes Charley, Jeanne, Frances, and Ivan in 2004, which hit or threatened almost all of Florida, but brought particular devastation to the East and West Coasts, Central Florida and the Panhandle. The lull was then put to rest for the foreseeable future by Hurricanes Dennis and Wilma in 2005 and the “expert” predictions of increased hurricane activities for the foreseeable years. Wilma also demonstrated that it doesn’t take a category four or five storm to do serious damage to the physical capacities of legal aid programs and low income housing. The overwhelming tragedy of Katrina in Louisiana, Mississippi and Alabama and the revelations of lack of government and resident preparedness and the incompetence of government recovery efforts highlights the vulnerability of low income communities in Florida.

The recent resumption of hurricane fury revealed anew that while all sectors of communities experiencing hurricanes can suffer mightily, it is low income families and the elderly whose lives are often devastated, sometimes lost and forever changed, both by the hurricane damage itself and the lack of effective government preparedness and recovery programs. As a new awareness of the long-term effect of hurricanes on housing for low income families and elderly unfolds, a re-energized resolve to combat such effects has emerged in the legal assistance community in Florida. Thus, after the

2004 hurricane season, Florida's legal assistance for the poor community and The Florida Bar Foundation undertook the preparation of this manual with annual updates and disaster assistance training, emphasizing preparedness of legal assistance programs to ensure that they can provide post disaster representation to clients, individual and systemic. Major expansion and updating of this manual were completed for the 2006 hurricane season, with further updating and expansion for 2007.

The goal of this manual, and the training which accompanies it, is to enable the legal assistance community to be prepared for disasters and to effectively and quickly respond to the legal needs of low income families and communities.

FLORIDA'S LEGAL ASSISTANCE  
DISASTER MANUAL

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## INTRODUCTION

When a catastrophic disaster strikes, a local legal aid program is faced with a vast number of problems in addition to the ones it deals with ordinarily. Some of these problems may be old ones, such as clients' lack of income, food and housing, but in far greater numbers and possibly more intractable situations than previously encountered. Other problems will be new, such as how to deliver legal services in an area in which all of the buildings have been destroyed and there is no electricity, and how to make sure that people are advised of their legal rights when none of the usual means of mass communication are functioning. Some of these problems will call for new applications of familiar legal rights, such as tenant and consumer protection statutes. Other problems will call for poverty law practitioners to learn a whole new body of law known as disaster benefits law.

In the past, each legal aid office impacted by a hurricane has reacted to the disaster on an *ad hoc* basis. However, the 2004 hurricane season which engendered four severe disasters within a one-month span and impacted legal aid programs throughout Florida, taught us that we need to have a concerted plan. Following statewide consultation with legal aid staff, the Florida Bar Foundation decided to compile this loose-leaf manual to serve as the basis for development of a disaster plan by each legal aid organization, as well as the primary resource guide for training attorneys in advance of the hurricane season (annual training) and following

catastrophic disasters (post-disaster training).

This manual therefore sets out issues that Florida legal aid programs should consider in developing their own disaster plan including the post-disaster steps that a legal aid office located in a disaster impacted community should take to address the needs of its clients. The manual contains material on administrative and service delivery issues, describes the ABA Young Lawyers' Division (YLD) *pro bono* disaster program, provides the names of contact people and agencies, lists the staffing and resource issues facing legal aid offices after a disaster, describes the annual and post-disaster training provided by the Florida Bar Foundation, and comprises a chronological checklist of disaster-related tasks for legal services staff. In addition, the manual sets out a synopsis of federal disaster assistance law and an outline of long-term rebuilding legal issues, and contains sections on the rights of tenants after a disaster, insurance law and consumer protection measures, particularly regarding home repair contracts. The materials on substantive law may be used to train both legal aid attorneys and private attorneys willing to provide *pro bono* services for disaster victims.

## II

### YOUR PROGRAM'S DISASTER PLAN

When disaster strikes there are two groups of challenges to legal aid programs: the continuation/restoration of the office(s) and equipment, and services to clients. To be prepared it is imperative that each program have an updated disaster plan in place before each new hurricane season. While a disaster plan may be modeled on those of other programs, an effective response requires each program to assess its own needs and those of its clients. Although management plays a major role in the formulation of any plan, it is essential that all segments of the staff be involved in the process because disasters affect the entire program in all of its functions. All staff should be knowledgeable regarding the implementation of the plan.

At a minimum, a legal aid program's disaster plan should address the following :

- A. Staffing and Personnel;
- B. Office Space and Equipment;
- C. Communication;
- D. Baseline Housing Survey; and
- E. Delivery of Legal Services.

#### **A. Staffing and Personnel**

A legal aid program's disaster plan should include the following related to staffing and personnel:

1. Identify at least two<sup>1</sup> disaster "point" people who will lead the disaster team:

one for administrative issues and another for issues regarding the delivery of legal services. These point people will attend the annual pre-disaster-season training, participate in the FLS disaster listserv, and will serve as the main communicators of information regarding disaster issues internally with program staff and externally with FLS, the Florida Bar Foundation and others.

2. Identify such additional program staff as are needed to develop and implement all parts of the plan, and list their responsibilities.

3. Address who has the authority to close and re-open office(s) and whether the closing/opening of offices is tied to other events, such as local courthouse operations.

4. Specify disaster personnel policies with regard to postponement of scheduled vacations, personal leave for personal issues arising from disaster such as day care and transportation, and cash assistance for impacted staff.<sup>2</sup>

5. Include copies of any disaster-contingent cooperative agreements with other legal aid programs or private firms for borrowing/lending clerical assistance and/or printing of community education flyers.

## **B. Office Space and Equipment**

A legal aid program's disaster plan should include the following related to office space and equipment:

1. Include copies of all insurance policies, and contain an updated determination that insurance coverage is adequate in the event of disaster damage or destruction of buildings, equipment and continuation of business as appropriate.<sup>3</sup>

2. Include an updated inventory of office equipment that contains the date of

purchase and any maintenance contracts, as well as a current vendor list. In addition, the computer equipment inventory ( including desktops, laptops, servers, peripherals, printers, and network devices) should contain serial numbers, model, brand, assignment, and physical location.

3. Describe the program's protocol for backing up computer files and maintaining backed-up files offsite.

1. Describe the disaster-preparation protocol for protection of office(s), computers, other office equipment and files.<sup>4</sup>

5. Include copies of any cooperative agreements with other legal aid programs or law firms for borrowing/lending computer and telephone equipment, and/or borrowing/lending of office space.

### **C. Communications**

A legal aid program's disaster plan should include the following related to communications:

1. Describe an emergency communication plan, listing key personnel and alternates responsible.

2. List any arrangements with other legal aid programs and/or law firms for forwarding calls in the event an office is destroyed or disabled, and include copies of any cooperative agreements.

3. If available and desirable, outline how to arrange a voice mail system with two mail boxes on which messages can be left: one for staff and one for clients and others.

4. Include an updated staff contact list that contains cell phones and emergency contacts.

5. Include a list of public service announcement contacts at local radio, television and print media outlets, and identify staff responsible for making these contacts.

**D. Baseline Housing Survey:**

A legal aid program's disaster plan should include the following related to baseline housing survey:

1. Include an updated survey of affordable housing in the geographical area covered by the program. Please see section on Long-Term Recovery for resources and an explanation of how to conduct the survey.

**E. Delivery of Legal Services:**

A legal aid program's disaster plan should include the following related to delivery of legal services:

1. Outline responsibilities and a protocol for maintaining a program wide docket and calendar containing at least basic information regarding each case.

2. Contain a list of local resources, including voluntary agencies, religious organizations, local emergency management agencies, the local FIND group, the contact person from each, and the legal aid staff person who has established a relationship with each.

3. Contain a list of agencies to receive post-disaster consumer flyers, such as law enforcement, clerks' offices, local offices of state agencies, local government

offices, and the above listed resource organizations.

4. Include model clientconsumer flyers in the appropriate languages regarding disaster issues.<sup>5</sup>

5. Establish a disaster team headed by an experienced attorney,<sup>6</sup> and Assign responsibilities among staff or via referrals for handling the additional caseload caused by a disaster, i.e., FEMA and other disaster benefits cases, landlord/tenant, insurance, and building contractor problems.

6. Assign responsibility among staff for handling the issue of long-term rebuilding.

7. Assign responsibility among staff for coordination of people who volunteer to help the program after a disaster.

## ATTACHMENT A

### SIGNIFICANT PRE-DISASTER ACTION STEPS

1. Designate “point” persons
2. Prepare disaster plan
3. Attend annual training
4. Inform and train all program staff regarding disaster plan
5. Participate in local Florida Interfaith Network in Disaster (FIND) or similar local disaster-preparedness network in your program’s geographic area
6. Enter into cooperative agreements with other legal aid programs and/or law firms re: sharing computers, telephones, and office space after a disaster
7. Complete pre-disaster survey of affordable housing in your program’s geographic area
8. Complete:  
List of local disaster resources;  
Distribution list for post-disaster consumer flyers; and  
Public service announcement contact list.



## ATTACHMENT B

### SAMPLE COVER LETTER TO COMMUNITY ORGANIZATIONS

Date

Address

Dear **[Agency Head]**:

**[Program name]**, is a private nonprofit 501(c)(3) corporation that provides free civil legal assistance to low-income people in **[DESCRIBE PROGRAM SERVICE AREA]**.

**[Program name]** has a plan to provide legal services to people who have legal problems resulting from the storm. We have enclosed some flyers for disaster victims and ask that you make them available to visitors at your workplace. These flyers provide information regarding **[LIST SUBJECT MATTERS]**. We also ask that you refer to us anyone with whom your agency has had contact who may need legal help. Contact information for our program is listed in the enclosed flyers.

In addition, if you are aware of particular disaster-related needs of low-income people that are not being met, please contact **[INSERT NAME AND EXTENSION OF CONTACT PERSON]** in our office as soon as possible. Thank you for helping us provide free legal assistance to low-income people in **[Program service area]**.

Sincerely,

Executive Director

## ATTACHMENT C

### SAMPLE LIST OF LOCAL RESOURCES

Agency	Agency Contact Person	Phone	Program Staff Liaison	Website
County Emergency Management Preparedness				
Cit(ies) Police Department(s)				
Sheriff (or County Law Enforcement)				
Fire Department (City(ies) and/or County)				
Health Department				
Local Offices of DCF				
Local Offices of Agency for Developmental Disabilities				
Public School System				
Red Cross				
Salvation Army				
Other voluntary agencies				
Local Faith Based Groups				

Local FIND Network				
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# <sup>1</sup>ATTACHMENT D

## SAMPLE COMPUTER AND OFFICE CLOSING PLAN

### 1. Designate Protected Locations and for Hardware Equipment

Rooms which are walled with strong doors with no false ceilings and no windows are the best option for storage of the equipment.

To protect equipment from flooding a shelf or furniture must be brought into the rooms that will hold all servers and computer components (which have been wrapped with double plastic bags and sealed with packing tape).

#### Labeling Users Computer Equipment

Before the users pack and wrap their computer equipment, all computer devices (CPU BOX, MONITOR, MOUSE, KEYBOARD, SPEAKERS, POWER STRIPS/BATTERY BACKUP, AND PRINTER) must be labeled with the user's name, and office room where they are located.

#### Backup Tape

Before closing the office and leaving, make sure you take the backup tape from the previous night is taken off site. Make sure any other backup tapes safely stored off-site.

Any work done the day of the closing should be saved on diskettes, CDs, or memory sticks, and the C drives of the individual computers, in addition to network folders. This is because there will be no backup of the work done the day of closing. If there is some damage to the hardware, then with the backup tapes that cover through the previous night, and the current day's work saved on the external media and the C: hard drives will provide a much higher likelihood that everything can be restored.

These precautions apply to all files including financial and personnel records.

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<sup>1</sup> Adopted from LSGMI's manual.

Your Logo

# Your Legal Services Program Name

## FEMA DISASTER RELIEF FREQUENTLY ASKED QUESTIONS

### **1. What kind of benefits does FEMA provide?**

The Federal Emergency Management Agency (FEMA) is an umbrella agency that coordinates state and federal government benefits for disaster victims. FEMA also decides who is eligible for the **Individual and Household Program (IHP)**. IHP has two parts: **Housing Assistance** and **Financial Assistance to Address Other Needs**.

### **2. How much money can I get from FEMA?**

You cannot receive more than \$27,200 altogether from the IHP program, including Disaster Housing Assistance and "Financial Assistance to Meet Other Needs." Most people receive much less. To apply, call FEMA at **1-800-621-FEMA (3362)** (hearing/speech impaired **TTY 1-800-462-7585**). You can also apply on-line at <http://www.fema.gov/assistance/register.shtm>.

### **3. Do I have to be a U.S. citizen to get FEMA benefits?**

No. Qualified aliens are also eligible to apply for FEMA benefits. If you are an immigrant who has not yet become a U.S. citizen, you will qualify if you are a permanent resident with a green card, a refugee, an asylee (an asylum applicant who has been granted asylum), a parolee for at least 1 year, a Cuban/Haitian entrant, a person whose deportation has been withheld, or a victim of domestic violence. If you qualify, you can apply on behalf of your family even if not all family members qualify.

### **4. Who is eligible for Disaster Housing Assistance (DHA)?**

You are eligible if your primary residence has been made unlivable because of the disaster. If you have insurance you must also show that you have made reasonable efforts to obtain insurance benefits and that you have not been successful. You must also agree to repay FEMA if you later get insurance benefits.

### **5. What kind of Housing Assistance help can I get?**

Disaster Housing Assistance is usually a check to cover the cost of rent for a 3 month period. If you own your home, you can also get money for repairs if the damage is not covered by insurance and the cost of the repairs is not more than \$5,400. When there is no housing available to rent, FEMA may also give out mobile homes or trailers.

### **6. Who is eligible for "Financial Assistance to Meet Other Needs"?**

"Financial Assistance to Meet Other Needs" is for people who have disaster related necessary expenses or serious needs that are not covered by any other means, including insurance and a disaster loan from the SBA. If FEMA decides that you may qualify for a disaster loan from the SBA, you will have to apply for this and be denied before you can get "Financial Assistance to Meet Other Needs."

**7. What kind of help can I get from the “Other Needs” program?**

“Financial Assistance to Meet Other Needs” is a check to cover necessary expenses or serious needs for:

- A. Disaster caused medical and dental expenses
- B. Funeral expenses for disaster related deaths
  
- C. Repair or replacement of personal property damaged or destroyed through the disaster
- D. Repair or replacement of a car that was damaged or destroyed through the disaster, or payment for public transportation
- D. Other expenses such as disaster-related moving and storage expenses, or the cost of a Group Flood Insurance Policy

**8. Will IHP benefits affect my eligibility for SSI, TANF, Medicaid, or Food Stamps?**

No. Individual and Household Program benefits cannot be counted either as income or resources in determining your eligibility for any income-tested programs supported by the federal government.

**9. If I owe money, can my IHP benefits be taken by my creditor?**

No. IHP benefits are protected by federal law from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release, or waiver. They also cannot be assigned or transferred away from you to someone else.

**10. Who is eligible for Small Business Administration (SBA) disaster loans?**

The SBA gives personal loans as well as business loans after a disaster, to people and businesses that were affected by the disaster. To qualify for a low interest loan, you must show that the home you own, your personal property, or your business was damaged by the disaster, and that you have the ability to repay the loan.

**Other Important Things You Should Know:**

- **APPLY RIGHT AWAY! FEMA has a 60-day deadline for disaster applications, so someone in your household *must* apply within 60 days after the disaster (unless the deadline has been extended)!**
  
- **MAKE SURE YOU GET A COPY OF YOUR APPLICATION! FEMA should mail you a copy of your application soon after you call to apply. If you *don't* receive this copy, DON'T APPLY AGAIN! Please contact FEMA or our office.**
  
- **ONLY ONE PERSON FROM YOUR HOUSEHOLD SHOULD APPLY! FEMA benefits are given to *households*, not to *individuals*. If more than one person living at your same address applies for benefits, FEMA will try to get the money back from the person who applied later.**

If you have other questions, please contact our nearest office for more information.

# Your Legal Services Office Contact Information

Your Logo

# Your Legal Services Program Name

## ÈD FEMA POU SIKLÒN KÉKSION YO MANDE ANPIL

### 1. **Ki kalité bénéfis FEMA bay?**

FEMA sé yon sant protèksion ki anchajé zafè bénéfis éta-a ak gouvènman fédéral pou moun ki viktim nan siklòn. FEMA désidé tou ki moun ki kalifié pou program **pou Individu ak Moun ki responsab yon kay**. Program sa-a gen 2 pati: **Asistans pou kay** ak **Asistans Finansyé pou Lòt Bezwen**.

### 2. **Konbé lajan mwen kapab résévwa nan men FEMA?**

Ou kapab résévwa plis pasé 27,000 dola ansanm nan program sa-a, ladan genyen Asistans pou kay ak

“Asistans Finansyé pou Lòt Bezwen.” Anpil moun résévwa pi piti pasé sa-a. Pou ou apliké, rélé FEMA nan **1-800-621-FEMA (3362)** (moun ki pa tandé osinon ki pa kapab palé ben) rélé **TTY 1-800-462-7585**. Ou kapab apliké tou sou Entènèt nan <http://www.fema.gov/assistance/register.shtm>.

### 3. **Eské mwen dwé you sitwayen mériken pou mwen résévwa bénéfis FEMA?**

Non. Etranjé kapab kalifié tou pou yo apliké pou bénéfis FEMA. Si ou sé yon imigran ki ponkò vin'n sitwayen mériken, ou kapab kalifié si ou gen rézidans pèmanant (Grenn Kat), réfijé, si yo té ba ou azil, si yo té lagé ou sou pawòl pou yon lané, si ou té antré sou program Kiben/Ayisien, si yo té anilé dépòtasyon ou, osinon yon viktim violans domestik. Si ou kalifié, ou kapab apliké ak tout fanmi ou menm si sé pa tout manb fanmi lan ki kalifié.

### 4. **Ki moun ki kalifié pou Asistans pou Kay apré Siklòn?**

Ou kalifié si kay koté ouap viv la depafini akòz siklòn nan. Si ou gen asirans, ou dwé moutré ou fè anpil éfò pou ou jwenn bénéfis asirans lan men ou pat réisi. Ou dwé dakò tou pou renmèt FEMA lajan sa-a si pita ou ta vin'n jwenn bénéfis asirans lan.

### 5. **Ki kalité Èd Asistans pou Kay mwen ka résévwa?**

Asistans pou Kay pou Siklòn sé toujou yon chèk pou kouvri frè lwayé pou yon périod 3 mwa.

Si kay la sé pou ou, ou kapab jwenn lajan tou pou ou réparé'l si asirans pa kouvri domay yo épi si lajan réparasyon yo pa dépasé 5,400 dola.

Si pa gen kay ki disponib pou ou lwé, FEMA kapab bay kay mobil osinon trèlè.

### 6. **Ki moun ki kalifié pou “Asistans Finansyé pou Lòt Bezwen”?**

“Asistans Finansyé pou Lòt Bezwen” sé pou moun ki gen dépans nésésé ki gen pou wè ak siklòn nan osinon moun ki gen kèk lòt bézwen sérié ki pa kouvri ditou, menm asirans, ni okenn lòt fason pou jwenn lajan prêté nan men Admimistrasyon pou Ti Biznis. Si FEMA pansé ou kapab kalifié pou ou jwenn lajan prêté nan men Admimistrasyon pou Ti Biznis, ou va gen pou ou apliké, épi si yo réfizé ou kapab résévwa “Asistans Finansyé pou konblé Lòt Bézwen.”

### 7. **Ki kalité èd mwen kapab résévwa nan program pou “Lòt Bézwen”?**



“Asistans Finansyé pou Lòt Bézwen” sé yon chèk pou kouvri depans nésésè osinon bézwen sérié pou:

- A. Dépans médikal ak depans pou dan akòz siklòn nan
- B. Dépans finéray pou moun ki mouri nan siklòn nan.
- C. Réparasion osinon ranplasman bagay pèsònèl ou ki domajé osinon dépéri nan siklòn nan
- D. Réparasion osinon ranplasman yon vwati ki domajé osinon dépéri nan siklòn nan, osinon lajan pou transpò piblik.
- D. Lòt depans tankou broté ak mété nan dépo akòz siklòn nan, osinon lajan pou kouvri Asirans pou Dlo.

**8. Eské bénéfis profram pou Individu ak Mèt kay kapab yon problèm pou mwen kalifié pou SSI, TANF, Medicaid, osinon Food Stamps?**

Non. Program bénéfis pou Individu ak Mèt kay pa kapab konté ni kòm Révni ni kòm lòt Résous pou kapab wè si yon moun kalifié pou bénéfis gouvènman fédéral la sipòté.

**9. Si'm dwé lajan, èské yo kapab pran bénéfis mwen nan program sa-a pou péyé moun mwen dwé yo?**

Non. Gouvènman fédéral protéjé bénéfis sa yo, yo pa kapab ni sézi yo, ni fè ou péyé taks sou yo, ni lagé yo bay lòt moun. Ou menm tou, ou pa kapab pasé yo soti sou ou bay lòt moun.

**10. Ki moun ki kalifié pou jwenn lajan prété pou Siklòn nan men Administrasion pou Ti Biznis?**

Administrasion Ti Biznis prété moun lajan pou zafè pèsònèl osinon pou fè biznis apré yon siklòn, men sé pou moun siklòn sa-a té afekté. Pou ou kapab kalifié pou jwenn lajan prété pou yon ti entèrè tou piti, ou dwé moutré kay ou, osinon bagay pèsònèl ou, osinon biznis ou té domajé akòz siklòn nan, épi tou ou gen abilté pou ou kapab renmèt lajan sa-a.

**Lòt Bagay Enpòtan Ou Dwé Konnen:**

- **APLIKÉ LAMENM! FEMA gen yon dèlé 60 jou pou aplikasion siklòn, kidonk yon moun lakay ou dwé apliké nan périod 60 jou sa-a apré siklòn nan (sòf si yo prolonjé dèlé sa-a)!**
- **SÉ POU OU FÈ SI OU RÉSÉVWA YON KOPI APLIKASION OU-A! FEMA ta dwé posté ba ou yon kopi aplikasion ou-an apré ou rélé osinon apré ou apliké. Si ou pa résévwa kopi sa-a, PA APLIKÉ ANKÒ! Tanpri kontakté FEMA osinon biwo nou.**
- **SÈLMAN YON MOUN NAN KAY OU DWÉ APLIKÉ! Bénéfis FEMA sé pou tout yon kay, men sé pa pou chak grenn moun ki nan yon kay. Si gen plis pasé yon moun kap viv nan menm adrès ki apliké pou bénéfis, FEMA ap éséyé fè moun ki apliké andènié-a renmèt lajan-an.**

Si ou gen lòt kéksion, tanpri kontakté biwo nou ki pi pré ou pou plis enfòmasyon.

# Your Legal Services Office Contact Information

Your Logo

# Your Legal Services Program Name

## Ayuda por Desastres FEMA Preguntas Frecuentes

### 1. ¿Que tipo e beneficios provee FEMA?

La Agencia Federal de Manejo de Servicios de Emergencia (FEMA) es la agencia principal que coordina al gobierno estatal y federal para brindar beneficios a las víctimas de los desastres. FEMA también decide quien es elegible para el programa Individual y Hogar (IHP). IHP tiene os partes: Asistencia para la vivienda y ayuda financiera para cubrir otras necesidades.

### 2. ¿Cuánto dinero puedo recibir e FEMA?

No puede recibir más de \$27,200 todo junto del programa IHP, incluyendo asistencia e vivienda por desastres y ayuda financiera para cubrir otras necesidades. La mayoría de las personas reciben mucho menos. Para aplicar, llamar a FEMA al 1-800-621-FEMA (3362) (sordos/mudos TTY 1-800-462-7585). También puede aplicar por Internet en <http://www.ema.gov/assistance/register.shtm>

### 3. ¿Tengo que ser un ciudadano americano para recibir beneficios de FEMA?

No. Inmigrantes que califican también son elegibles para aplicar a los beneficios de FEMA. Si es un inmigrantes que todavía no es ciudadano americano, califica si es residente permanente con una tarjeta de residencia (green card), refugiado, asilado (un aplicante que se le ha otorgado el asilo), una persona que tiene un parole por un año, un entrante cubano-haitiano, una persona con orden de deportación cancelada o una víctima de violencia doméstica Si usted califica, puede aplicar por su familia aun cuando no todos los miembros califiquen.

### 4. ¿Quién califica para la ayuda de vivienda en caso de desastres (DHA)?

Usted califica si su residencia principal no está en condiciones de ser habitada por causa del desastre. Si tiene seguro debe mostrar que hizo esfuerzos razonables para obtener los beneficios del seguro y que no ha podido obtenerlos. También debe estar de acuerdo en devolverle el dinero a FEMA si le otorgan beneficios de su seguro más adelante.

### 5. ¿Qué tipo de ayuda para la vivienda puedo obtener?

La ayuda para la vivienda por causa de desastres es por lo general un cheque para cubrir el costo de la renta por un periodo de tres meses. Si usted es propietario, también puede obtener dinero para reparaciones si el daño no es cubierto por el seguro y el costo el arreglo no es mayor a \$5,400 dólares. Cuando no hay vivienda disponible para rentar, FEMA provee casas móviles o trailer.

### 6. ¿Quién es elegible para la “Ayuda Financiera Para Cubrir Otras Necesidades”?

La “Ayuda Financiera Para Cubrir Otras Necesidades” es para gente que tiene necesidades relacionadas al desastre que tiene que pagar y necesidades serias que no pueden ser cubiertas, incluyendo seguros y préstamos de desastre de SBA. Si FEMA decide que puede calificar para

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préstamos de desastre de SBA, deberá aplicar para esto y ser negado este beneficio antes de poder obtener “Ayuda Financiera Para Cubrir Otras Necesidades”.

### 7. ¿Qué tipo de ayuda puedo obtener del programa “Otras Necesidades”?

“La Ayuda Financiera Para Cubrir Otras Necesidades” es un cheque para cubrir necesidades necesarias o necesidades serias para:

- A. Si el desastre causó gastos médicos o dentales
- B. Gastos de funeral por muertes a causa del desastre
- C. Reparaciones o reemplazo de propiedad personal dañada o destruida en el desastre
- D. Reparaciones o reemplazo de un carro que fue dañado o destruido en el desastre, o pago de transporte público
- E. Otros gastos como gastos de mudanza y de almacenamiento o el costo de un seguro de grupo para inundaciones

### 8. ¿Si recibo estos beneficios, puede afectar mi elegibilidad para SSI, TANF, Medicaid o cupones de alimentos?

No. Los servicios individuales o de hogar no pueden ser considerados como ingreso o recursos para determinar su elegibilidad para cualquier programa de ingresos apoyado por el gobierno.

### 9. ¿Si debo dinero, mis acreedores pueden quitarme el dinero de los beneficios IHP?

No. Los beneficios IHP están protegidos por la ley federal contra garnición, captura, gravamen, recaudación, ejecución, acuerdo, liberación, o perdón. Tampoco pueden ser asignados o transferidos de usted a otras personas.

### 10. ¿Quién es elegible para los préstamos por desastres para La Administración de la Pequeña Empresa (SBA)?

La SBA otorga préstamos personales y de negocios después de un desastre, para personas y negocios que fueron afectados. Para calificar para un préstamo de bajos intereses, debe mostrar que la casa de la que es dueño, su propiedad personal o su negocio fueron dañados a causa del desastre y que usted tiene la habilidad de poder pagar la deuda.

### Otras Cosas Importantes Que Usted Debe Saber

- APLICAR DE INMEDIATO! FEMA tiene un límite e 60 días para las aplicaciones por desastre, así que alguien en su familia debe aplicar dentro de los 60 días después del desastre (a menos que el tiempo haya sido extendido)!
- ASEGÚRESE DE TENER UNA COPIA DE SU APLICACIÓN! FEMA le debe enviar una copia por correo al poco tiempo de haber aplicado. Si no la recibe NO APLIQUE DE NUEVO! Contacte a FEMA o a nuestra oficina
- SOLO UNA PERSONA EN SU HOGAR DEBE APLICAR! Los beneficios de FEMA son dados por hogar no por individuo. Si más de una persona en su hogar aplica para los beneficios, FEMA tratará que le devuelvan el dinero de la persona que aplicó después.

Si tiene otras preguntas, por favor comuníquese con nuestra oficina más cercana para mayor información.

# Your Legal Services Office Contact Information

**Your Logo**

# **Your Legal Services Program Name**

## **FREQUENTLY ASKED QUESTIONS – FOOD STAMPS**

### **Who Is Eligible for Food Stamps After a Disaster**

After a disaster, there are 3 different kinds of food stamps that you may be able to get:

**Replacement Food Stamps** to replace lost or spoiled food;

**Disaster Food Stamps** because you were caught in the disaster; and

**Expedited Food Stamps** because you are in immediate need.

Depending on your circumstances and the kind of food stamps that are made available, you may be eligible for only one kind, or you may be eligible for two kinds, all three, or none.

### **Replacement Food Stamps**

**1. I am getting Food Stamps, but all my food spoiled when the power went out during the disaster. What can I do?**

You may be eligible for Replacement Food Stamps to help you replace the spoiled food or to buy hot food from the grocery store. Please contact your case worker at your local DCF office or call DCF's toll-free number at 1-866-762-2237 for more information on how to get Replacement Food Stamps.

### **Disaster Food Stamps**

**1. What are Disaster Food stamps?**

The federal government can decide to give out Disaster Food Stamps when grocery stores are open for business again, after a disaster has kept food from being delivered to them.

**2. Who is eligible for Disaster Food Stamps?**

That depends on what the government decides after each disaster. Households in the disaster area may be eligible for Disaster Food Stamps even if they would usually not be eligible for Food Stamps.

**3. How do I apply for Disaster Food Stamps?**

Call DCF's toll-free number at 1-866-762-2237 to find out where to apply, or contact your local Disaster Recovery Center. You may also be able to apply on-line at [www.dcf.state.fl.us/ess/](http://www.dcf.state.fl.us/ess/). Be sure to tell DCF that you are applying for Disaster Food Stamps.

## **Expedited Food Stamps**

### **1. What are Expedited Food Stamps?**

Expedited Food Stamps are for very needy people, and are given within 7 days after they apply. When you apply for regular Food Stamps, you will be asked questions to see if you qualify for Expedited Food Stamps.

### **2. How do I know if I am eligible for Expedited Food Stamps?**

To be eligible for Expedited Food Stamps you must show either that:

- A. Your household has less than \$150 in monthly income before taxes and \$100 or less in cash and in bank accounts; or
- B. You are a migrant or seasonal farmworker household with \$100 or less in cash and you will not be getting any more income during the month you apply; or
- C. Your household's monthly rent or mortgage and utilities are more than your combined monthly income before taxes and the amount you have in cash and bank accounts.

### **3. Are immigrants eligible for Expedited Food Stamps?**

Many immigrants including refugees, asylees, Cuban/Haitian entrants, lawful permanent residents (green card holders) with 40 quarters of work in the U.S., members of federally recognized Indian tribes, veterans, and members of the armed services are eligible.

### **4. What verification do I need to get Expedited Food Stamps?**

You must be able to verify that you are who you say you are by showing documents with your name on them, or by having someone say they know you.

### **5. Do I have to meet any other eligibility requirements?**

You will be asked for verification of your immigration status, your social security number, your income and your expenses at the time you apply. But even if you cannot give all of the verification, you will be eligible for Expedited Food Stamps within 7 days after you apply.

### **6. If I do not qualify for Expedited Food Stamps, can I still get regular Food Stamps?**

Yes, your Food Stamp application must be processed and you must receive a written decision within 30 days stating whether you are eligible, and the amount of benefits you will get. If you are denied benefits, but you believe you are entitled to them, contact the Legal Services office closest to you.

For more information or assistance, please contact our nearest office.

## **Your Legal Services Office Contact Information**

Your Logo

# Your Legal Services Program Name

## KEKSION YO MANDE ANPIL SOU FOOD STAMPS

### Kimoun ki kalifié pou Food Stamps apré yon Siklòn

Apré yon siklòn, gen 3 kalité food stamps ou kapab jwenn:

**Food Stamps kòm ranplasman** pou ranplasé manjé ou pèdi osinon ki gaté;

**Food Stamps pou Siklòn** paské ou té frapé pa yon siklòn; ak

**Food Stamps pou ka ljans** paské ou gen yon bézwen ljan.

Dépann nan ki sikonstans ou tonbé épi ak ki kalité food stamps ki disponib, ou kapab kalifié pou yon sèl kalité, osinon 2 épi menm 3, osinon ou ka pa kalifié pou youn menm.

### Food Stamps kòm Ranplasman

#### 1. **Mwen ap résévwa Food Stamps, men tout manjé mwen té gaté lè kouran-an té koupé pandan siklòn nan. Kisa mwen kapab fè?**

Ou kapab kalifié pou Food Stamps kòm Ranplasman pou ou ranplasé manjé ki gaté osinon pou ou acheté lòt manjé nan makèt. Tanpri kontakté travayè sosyal ou-a nan biwo lokal DCF osinon rélé DCF nan niméwo gratis sa-a 1-866-762-2237 pou plis enfòmasyon sou kouman ou kapab jwenn Food Stamps kòm Ranplasman.

### Food Stamps Pou Siklòn

#### 1. Kisa Food stamps pou Siklòn yé?

Gouvènman fédéral ka désidé bay Stamps apré Siklòn lè makèt yo rérouvè apré yon siklòn ki té anpéché yo délivré manjé ba yo.

#### 2. Kimoun ki kalifié pou Food Stamps apré Siklòn?

Sa dépann sa gouvènman désidé apré chak siklòn. Kay ki nan zòn koté siklòn nan té pasé kapab kalifié pou Food Stamps menm lè yo pat kapab kalifié pou lòt kalité Food Stamps yo.

#### 3. Kouman pou mwen apliké pou Food Stamps apré Siklòn?

Rélé DCF nan niméwo gratis sa-a 1-866-762-2237 pou ou chaché konnen ki koté pou ou apliké, osinon kontakté Sant Lokal Réparasion pou Siklòn (Disaster Recovery Center). Ou kapab apliké tou sou Entènèt nan [www.dcf.state.fl.us/ess/](http://www.dcf.state.fl.us/ess/). Ou gen pou fè DCF konnen ou apliké pou Food Stamps apré Siklòn



## Food Stamps Pou Ka Ijans

### 1. Kisa Food Stamps Pou Ka Ijans yé?

Food Stamps pou ka Ijans sé pou moun ki nan gwo bézwen, épi yo bay li sou 7 jou apré yo apliké. Lè ou apliké pou Food Stamps Régilié, yo ap mandé kéksion pou yo wè si ou kalifié pou Food Stamps pou ka Ijans.

### 2. Kouman pou'm fè konnen si mwen kalifié pou Food Stamps pou ka Ijans?

Pou ou kalifié pou Food Stamps pou ka Ijans, ou dwé moutré youn nan bagay sa yo anba-a.

- A. Kay ou touché pi piti pasé 150 dola chak mwa anvan taks, épi nou gen pi piti pasé 100 dola nan men nou osinon labank; osinon
- B. Ou sé yon migran osinon ou sé tèt fanmi lan ki travay nan jaden kèk sézon épi ki gen pi piti pasé 100 dola nan men ou épi tou ou pa gen pou ou résévwa plis lajan nan mwa ou apliké-a; osinon
- C. Lajan tout moun ki nan kay la péyé chak mwa pou mògèj ak lòt bil plis pasé sa nou touché chak mwa anvan taks mété ansanm ak lajan nou gen nan men nou osinon labank.

### 3. Eské imigran kalifié pou Food Stamps pou ka Ijans?

Anpil imigran, genyen tou réfiyé, moun ki gen azil, moun ki antré sou program Kiben/Ayisien, moun ki gen rézidans pèmanant légal (grenn kat) ki travay nan péyi Etazini pou yon total 120 mwa, manb tribi Endien gouvènman fédéral rékonèt, vétèran ak manb Sèvis Lamé, moun sa yo kalifié.

### 4. Ki prèv mwen bézwen pou'm jwenn Food Stamps nan ka Ijans?

Ou dwé kapab bay prèv ou sé moun ou di ou yé-a, sa vlé di moutré dokiman ki gen nom ou sou yo, osinon fè kèk moun ki konnen ou prezanté pou di sé ou menm.

### 5. Eské map gen pou'm ranpli kèk lòt kondision pou'm kalifié?

Yo ap mandé prèv papié imigrasion ou, niméwo sékirité sosial ou, konbé kòb ou touché ak ki dépan ou genyen lè ouap apliké. Men, menm si ou pa ka bay tout prèv yo, ouap kalifié pou Food Stamps pou ka Ijans nan 7 jou konsa apré ou apliké.

### 6. Si mwen pa kalifié pou Food Stamps pou ka Ijans, eské mwen kapab toujou jwenn Food Stamps Régilié?

Wi, yo ap analizé aplikasion Food Stamps ou-a épi ou dwé jwenn yon désizyon ékri nan 30 jou ki ap fè ou konnen si ou kalifié épi ki kantité bénéfis ouap jwenn. Si yo réfizé ba ou bénéfis sa yo épi ou kwè ou gen dwa pou ou jwenn yo, kontakté Biwo Sèvis Légal ki pi pré ou-a.

Pou plis enfòmasyon osinon asistans, tanpri kontakté biwo nou ki pi pré ou.

# **Your Legal Services Office Contact Information**

**Su Logo**

# Nombre de su programa de servicios legales

## **PREGUNTAS FRECUENTES - CUPONES DE ALIMENTOS**

### **Elegibilidad para Cupones de Alimentos después del desastre**

Después de un desastre, hay 3 tipos de cupones de alimentos que usted puede obtener: **Cupones de alimentos de reemplazo** para reemplazar la comida podrida; **Cupones de alimentos por desastre** porque estuvo en el desastre; y **Cupones de alimentos inmediatos** porque se encuentra en una necesidad inmediata.

Dependiendo de las circunstancias y el tipo de cupones de alimentos que estén disponibles, podría ser elegible para un tipo de cupones, dos tipos, o los tres tipos de cupones de alimentos, o ninguno.

### **Cupones de Alimentos de Reemplazo**

#### **1. Estoy recibiendo cupones de alimentos, pero toda mi comida se pudrió cuando se fue la luz durante el desastre. Que puedo hacer?**

Puede ser elegible para cupones de reemplazo para ayudar a reponer la comida perdida o para comprar comida caliente en los supermercados. Por favor comuníquese con su trabajador social en el Departamento de Niños y Familias o llamando al: 1-866-762-2237 para más información de como obtener cupones de reemplazo.

### **Cupones de Alimentos por Desastre**

#### **1. Que son los cupones de alimentos por desastre?**

El gobierno federal puede decidir otorgar cupones por desastre cuando los supermercados reabran sus operaciones después del desastre pues la comida no les era distribuida durante el desastre.

#### **2. Quien califica para los cupones de alimentos por desastre?**

Depende de lo que el gobierno decida después de cada desastre. Los hogares en el área del desastre pueden ser elegibles para los cupones por desastre aún cuando usualmente no califican para los cupones de alimentos.

#### **3. Como aplico para los cupones de alimentos por desastre?**

Llamando al Departamento de Niños y Familias al: 1-866-762-2237 para averiguar donde aplicar o comuníquese con su centro de recuperación del desastre. También pudiera aplicar

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por internet en: [www.dcf.state.fl.us/ess/](http://www.dcf.state.fl.us/ess/). Asegúrese de decirle al Departamento de Niños y Familias que está pidiendo cupones por desastre.

### **Cupones de Alimentos Inmediatos**

#### **1. Que son los cupones de alimentos inmediatos?**

Los cupones inmediatos son para gente muy necesitada y son otorgados 7 días después de aplicar por ellos. Cuando usted aplica para los alimentos de comida regulares, le preguntarán varias cosas para saber si califica para los cupones de alimentos inmediatos.

#### **2. Como saber si califico para los cupones de alimentos inmediatos?**

Para ser elegible deberá probar lo siguiente:

- A. Su hogar tiene un ingreso de menos de \$150 al mes antes de impuestos y \$100 o menos en efectivo o en alguna cuenta de banco; o
- B. Usted es un hogar de campesino temporal con \$100 o menos en efectivo o no ganará nada adicional durante el mes que aplica; o
- C. La renta o pago de su hogar más los servicios son más que todo el ingreso antes de impuestos y que la suma de dinero que tiene en efectivo o en un banco.

#### **3. Son los inmigrantes elegibles para los cupones de alimentos inmediatos?**

Muchos inmigrantes incluyendo refugiados, asilados, entrantes cubano-haitianos, residentes legales permanentes (con la tarjeta green card), con 40 cuartos de trabajo en los Estados Unidos, miembros de tribus indias reconocidas federalmente, veteranos, y miembros de las fuerzas armadas son elegibles.

#### **4. Que verificación necesito para obtener los cupones de alimentos inmediatos?**

Deberá verificar que usted es quien dice que es, mostrando documentos con su nombre, o alguien que confirme su identidad.

#### **5. Tengo que obtener otros requisitos de elegibilidad?**

Para la verificación se le preguntará su estado migratorio, su número de seguro social, sus ingresos y gastos en el momento que aplique. Aún cuando no pueda dar toda la verificación, usted será elegible para los cupones inmediatos 7 días después de aplicar.

#### **6. Si no califico para los cupones de alimentos inmediatos, puedo recibir los cupones de alimentos regulares?**

Sí, su aplicación deberá ser procesada y deberá recibir una notificación por escrito dentro de 30 días diciendo si es elegible, y la cantidad que le corresponde. Si le niegan estos beneficios pero usted piensa que califica para ellos, comuníquese con la oficina de Servicios Legales más cercana a usted.

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Para más información o ayuda, por favor comuníquese con nuestra oficina más cercana.

# Información sobre su programa de servicios legales

# Your Legal Services Program Name

## **DISASTER LEGAL INFORMATION** **FREQUENTLY ASKED QUESTIONS – RENTERS**

**1. The apartment I live in is in really bad shape from the hurricane, but the landlord told me that if I want to stay I must pay full rent - what should I do?**

Your landlord may be having a hard time financially until his/her insurance company pays out money for repairs. Talk to your landlord to see if the rent can be reduced until the apartment is repaired. See if the landlord will allow you to move to another unit in the building that is in better shape.

**2. What if my landlord won't negotiate?**

You have the right to reduce your rent in proportion to the damage to the unit. If your apartment is unlivable, you can move out. In either case, you should send a certified letter to your landlord telling him/her what you are doing. Please contact Florida Rural Legal Services for more information on what you can do based on your specific situation.

**3. All my stuff was destroyed when the roof fell in on the place I rent - what help can I get?**

If you had renter's insurance at the time of the hurricane, contact your insurance company. If your situation is desperate, make sure you describe your situation to the insurance company. If the insurance company agrees your loss is covered, you can ask for an advance payment to cover a part of your loss.

**4. What if I do not have any insurance on my property?**

If you did not have renter's insurance, see if your landlord had insurance to cover your belongings. If your losses are not covered by any insurance policy, you may be able to get Individual and Household Program (IHP) money from FEMA to replace necessary items of personal property such as clothing, household items, furnishings and appliances. You may apply for these benefits through FEMA at 1-800-621-3362 (hearing/speech impaired 1-800-462-7585).

**5. My landlord told me to move out the next day because he wants the apartment for his daughter who lost her house in the hurricane, and told me if I wasn't out, he'd change the locks - do I have to move?**

Florida law does not allow a landlord to just lock you out or turn off the utilities or to use any other "self help" means to get you to leave. The landlord must file an eviction action in court and, then you only have to move out after the judge in your eviction case enters a final judgement of eviction. Also, the landlord must first give you some type of written notice to move before filing an eviction case against you in court.

If you get any eviction court papers, you can call Legal Services for information on how to file your answer to the eviction lawsuit. If the landlord does lock you out, you can call the police, and you should consult a lawyer to find out about an action for damages.

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**6 . My apartment is so bad I cannot live in it and I am going to move. I want my security deposit returned - what are my rights?**

If you have a written lease, read your lease to see what it says. If you do not have a written lease, or your lease does not say anything about deposits, then the landlord must either return your deposit within 15 days after you move out or send you a letter, by certified mail, within thirty (30) days, saying why he will not return your deposit. You then have fifteen (15) days to object in writing, or the landlord will be allowed to keep the security deposit.

Before you leave your apartment, **you must give your landlord your new address**. If you and your landlord disagree about whether you should get your deposit back, you can call Legal Services. We can explain how you can take your landlord to small claims court to get back your security deposit.

If you have additional questions, please call our nearest office for more information.

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# Your Legal Services Program Information

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# Your Legal Services Program Name

## ENFÒMASION LEGAL POU SIKLÒN

### KÉKSION YO RENMEN POZÉ – LOKATÈ

**1. Apatman koté map viv la nan mové kondision apré siklòn nan, men mè kay la di si mwen vlé rété ladan, sé pou mwen péyé lwayé-a anplen - ki sa mwen ta dwé fè?**

Mèt kay la kapab gen problèm finansyé jouktan konpayi asirans li bay lajan pou li fè réparasion. Palé ak mè kay la pou ou wè si li kapab rétiré sou lajan lwayé-a jouktan apatman-an réparé. Gadé wè si mè kay la kapab penmèt ou janbé nan yon lòt apatman ki nan pi bon kondision.

**2. É si mè kay la pa vlé négosyé?**

Ou gen dwa pou rétiré nan lajan lwayé-a pou kantité domay ki gen nan apatman-an. Si pa gen mwayen pou ou rété nan apatman-an, ou kapab déplasé alé yon lòt koté. Ninpòt kouman, ou dwé voyé yon lèt sètifié bay mè kay la pou ou fè li konnen sa ouap fè. Tanpri kontaké Florida Rural Legal Services pou plis enfòmasyon sou sa ou kapab fè nan sitiasion ou.

**3. Tout bagay mwen té krazé lè rouf koté mwen lwé-a té tonbé - ki èd mwen kapab jwenn?**

Si ou té gen asirans pou lwayé pandan siklòn nan, kontaké konpayi asirans ou. Si ou nan yon sitiasion dézespéré, ou bézwen dékri sitiasion ou bay asirans konpayi-an. Si asirans konpayi-an dakò pou kouvri sa ou pèdi, ou kapab mandé pou yo ba ou yon avalwa pou kouvri yon pati nan bagay ou pèdi.

**4. É si mwen pa gen okenn asirans pou bagay mwen genyen?**

Si ou pat gen asirans lokatè, gadé wè si mè kay la gen asirans pou kouvri bagay ou genyen. Si pa gen okenn asirans ditou ki kouvri bagay ou pèdi, ou kapab jwenn lajan FEMA nan program pou individi ak mè ki résponsab kay pou ranplasé bagay pèsonèl ou ki nésésè, tankou rad, atik pou kay, founiti ak récho epi frijidè. Ou kapab apliké nan FEMA pou bénéfis sa yo nan 1-800-621-3362 (osinon 1-800-462-7585 pou moun ki pa tandé ben ak moun ki palé klè).

**5. Mèt kay la di'm pou'm soti démen paské li bézwen apatman-an pou pitit fi li ki pèdi kay li nan siklòn nan, épi tou li di si mwen pa soti lap chanjé lòk yo - eské mwen dwé soti?**

Lalwa Florida pa penmèt yon mè kay fèmen ou déyò osinon fèmen itilite yo osinon itilizé okenn lòt mwayen pou fòsé ou soti. Mèt kay la kapab ranpli yon aksion nan tribinal pou mandé ou soti, épi tou ou gen pou ou soti sèlman lè jij la bay yon jijman final sou ka-a. Mèt kay la dwé ba ou yon notis ékri anvan li rantré yon aksion kont ou nan tribinal pou mandé pou ou soti.

Si ou résévwa papié tribinal ki mandé pou ou soti, ou kapab rélé Sèvis Légal pou ba ou

enfòmasyon sou kijan ou kapab voyé yon répons sou kalité prosé sa-a. Si mèt kay la fèmen ou déyò, ou kapab rélé polis, épi tou ou kapab konsilté yon avoka pou ou chaché konnen ki aksion ou kapab pran pou domay sa kozé sou ou.

*(Kontinié nan do-a)*

(Kontinié.)

**6 . Apatman mwen an nan yon kondision tèlman mal, mwen pa kapab rété ladan, épi mwen prèt pou soti. Mwen bézwen pou yo ban mwen lajan sékirité mwen - ki dwa mwen genyen?**

Si ou gen yon kontra lwayé ékri, li kontra sa-a pou wè sa li di. Si ou pa gen yon kontra ékri, épi si nou pat di anyen sou lajan dépozit la, mèt kay la kapab rétownen dépozit ou ba ou nan 15 jou apré ou soti, osinon li kapab voyé yon lèt sètifié ba ou nan 30 jou pou di ou pouki rézon li pap renmèt ou lajan dépozit la. Lè sa-a, ou gen 15 jou sèlman pou ou bay yon répons ékri, san sa mèt kay la ap gen dwa kenbé lajan dépozit la.

Anvan ou kité apatman-an, **ou dwé bay mèt kay la nouvo adrès ou.** Si ou ak mèt kay la pa dakò sou kéksion dépozit la, ou kapab rélé Sèvis Légal. Yo kapab ékspliké ou kouman ou kapab mennen mèt kay la nan tribinal pou ou réklamé lajan dépozit ou.

**Si ou gen kèk lòt kéksion, tanpri rélé biwo ki pi pré ou-a pou plis enfòmasyon.**

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# Your Legal Services Program Information

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# Nombre de su programa de servicios legales

## **INFORMACION LEGAL SOBRE DESASTRES**

### **PREGUNTAS FRECUENTES - INQUILINOS**

**1. El apartamento donde vivo se encuentra en muy mal estado a causa del huracán, pero el dueño me dijo que si me quiero quedar debo pagar la renta completa - Que debo hacer ?**

La persona que le alquila el apartamento puede tener problemas financieros hasta que la compañía de seguros le pague el dinero para las reparaciones. Hable con el dueño de su apartamento para ver si le puede reducir el costo de la renta hasta que se reparen los daños. Puede ver si lo deja a usted mudarse a otro apartamento dentro del edificio hasta que el suyo se encuentre en mejor estado.

**2. Si el dueño del apartamento no quiere negociar?**

Usted tiene el derecho de reducir la renta en proporción al daño que exista en el apartamento. Si su apartamento está en condiciones de no poder vivir en el, usted se puede mudar. En cualquier caso, debe redactar una carta certificada al dueño indicando lo que está haciendo. Comuníquese con los servicios legales rurales para más información en que puede hacer basado en su caso específico.

**3. Todas mis pertenencias fueron destruidas cuando el techo se cayó en el lugar que alquilo - Que ayuda puedo obtener?**

Si usted tenía seguro de inquilinos contacte a su compañía de seguros. Si su situación es de emergencia asegúrese de describir bien su situación a la aseguradora. Si la compañía de seguros está de acuerdo en cubrir su pérdida puede pedir un pago por adelantado.

**4. Si no tengo ningún tipo de seguro en mi vivienda?**

Si no tenía seguro para inquilinos, verifique si el dueño del apartamento tiene seguro que cubra sus pertenencias. Si sus pertenencias no están cubiertas por ninguna póliza de seguro, usted podría recibir dinero individual y de hogar con el programa (IHP) de FEMA para poder reemplazar objetos personales como ropa, artículos del hogar, muebles y artefactos eléctricos.

**5. El dueño de mi apartamento me pidió que me mudara porque su hija perdió la casa durante el huracán y se lo quiere dar a ella, me dijo que si no me iba, cambiaría las cerraduras - Tengo que cambiar de apartamento?**

La ley de la Florida no permite que la persona que renta una propiedad cambie las cerraduras o desconecte los servicios con el fin de desalojar a sus inquilinos, es decir, para que se vayan de la propiedad. El dueño deberá poner una acción de desalojo en la corte y luego usted deberá mudarse únicamente si el juez le otorga al dueño una orden final de desalojo. También, el dueño deberá entregarle una notificación por escrito antes de iniciar el proceso del desalojo en la corte.

Si recibe documentos de desalojo, puede llamar a Servicios Legales para ayuda de como contestar a dichos documentos de desalojo. Si el dueño le cambia las cerraduras, puede llamar a la policía, y

deberá contactar con un abogado para iniciar una acción por daños.

(Cont.)

## **6 . Mi apartamento está en tan malas condiciones que no puedo vivir ahí y me tengo que mudar. Quiero mi mes de depósito devuelto - Cuales son mis derechos?**

Si usted tiene un contrato por escrito, leálo para ver que dice. Si no tiene un contrato por escrito, o su contrato no especifica los depósitos, el dueño del apartamento debe devolver el depósito en quince días después de usted mudarse o enviarle una carta por escrito, certificada, en treinta días indicando por que no le devuelve el mes de depósito. Es cuando usted tiene quince días por cualquier objeción por escrito o el dueño podrá quedarse con su mes de depósito.

Antes de dejar el apartamento, **deberá dar su nueva dirección al dueño.** Si usted o el dueño del apartamento no están de acuerdo con quien debe quedarse con el depósito, puede llamar a Servicios Legales. Podemos explicarle como puede usted llevar al dueño del apartamento a la corte de reclamos menores y obtener su mes de depósito.

Si tiene preguntas adicionales, por favor comuníquese con nuestra oficina más cercana para obtener más información.

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# Información sobre su programa de servicios legales

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**Your Logo**

# **Your Legal Services Program Name**

## **DISASTER UNEMPLOYMENT ASSISTANCE FREQUENTLY ASKED QUESTIONS**

1. I lost my job after the disaster. Am I eligible for Disaster Unemployment Assistance (DUA)?

If you are unemployed because of the disaster, you may be eligible for Disaster Unemployment Assistance (DUA) even if you do not qualify for regular Unemployment Compensation (UC). For example, you may be eligible for DUA if:

- A. You became unemployed as a direct result of the disaster; or
  - B. You are unable to reach your workplace because of the disaster; or
  - C. You were supposed to start work at a new job, but you lost the job because of the disaster; or
  - D. You became the breadwinner for your household after the head of household died because of the disaster; or
  - E. You cannot work because of an injury caused by the disaster.
2. Can I qualify for Disaster Unemployment Assistance if I am self-employed?

Yes, if you are self-employed, you may qualify for DUA if:

- A.. You became unemployed as a direct result of the disaster; or
- B. You are unable to reach the place where you perform your services; or
- C. You were supposed to start self-employment but you don't have a place to perform the work because of the disaster; or
- D. You cannot work because of an injury caused by the disaster.

- 3. What else do I need to show to be eligible for DUA benefits?**

You will also need to show that:

- A. You worked enough during the last calendar year; and.
  - B. You have registered for work at your local One-Stop Center and are able and available for work, unless:
    - 1. You were injured as a result of the hurricane and are unable to work because of the injury; or
    - 2. You were self-employed before the hurricane, and you are trying to get your business back in order.
4. Are immigrants eligible for DUA?

Yes, if you have valid work papers and are a U.S. citizen, lawful permanent resident (green

card holder),  
refugee, asylee, Cuban/Haitian entrant, parolee for one year or more, conditional entrant, victim  
of  
domestic violence, or you have been granted withhold of deportation.

5. Where do I apply for Disaster Unemployment Assistance?

There are three ways to apply, but the internet or telephone methods are better than mail or fax:

- a. By telephone - Call 1-800-204-2418.
- b. On the internet - at [www.fluidnow.com](http://www.fluidnow.com). You can apply using a computer at the One-Stop Center nearest you.
- c. By mail or fax - Call 1-866-724-5470 to get an application. Fax it to 1-954-730-2642, or mail it to Agency for Workforce Innovation, P.O. Box 5608, Ft. Lauderdale, FL 33310-5608.

Whatever way you choose, make sure to let them know that you are filing a **disaster-related** claim.

6. When should I apply for DUA?

**You must file for DUA within 30 days after the disaster**, unless the application deadline is extended. You should apply as soon as possible since you may have to wait three weeks before your first check is sent to you. If you were not able to apply before the deadline, you still may be able to apply if you have a good reason for not applying sooner. If you think you have a good reason, but you were told you cannot apply because it is more than 30 days after the disaster, please contact our office for help.

7. How long can I receive DUA benefits?

You can only receive DUA benefits for 26 weeks (6 months) after a disaster.

8. What if I am told that I am not eligible for DUA benefits?

You have the right to appeal the decision within twenty (20) days from the date on the Notice of Determination. Your case will be scheduled for a hearing before an Appeals Referee. If you need a translator, you should ask for one right away. At the hearing, you will need to explain to the Appeals Referee why the decision was wrong and you are entitled to DUA. You should bring witnesses and documents with you to prove your case.

If you have other questions or would like help with your unemployment claim, please contact our nearest office.

## Your Legal Services Office Contact Information



**Your Logo**

# **Your Legal Services Program Name**

## **ASISTANS CHOMAY APRÉ SIKLÒN KÉKSION YO MANDÉ ANPIL**

1. Mwen pèdi travay mwen apré siklòn nan. Eské mwen kalifié pou Asistans Chomay apré Siklòn?

Si ou pèdi travay ou akòz siklòn nan, ou kapab kalifié pou Asistans Chomay apré Siklòn, menm si ou pa tap kalifié pou Bénéfis Chomay Régilié. Mé yon ékzanp: ou kapab kalifié pou Asistans Chomay apré Siklòn si:

- A. Sé siklòn nan dirèktéman ki lakòz ou pèdi travay ou; osinon
  - B. Siklòn nan lakòz ou pa kapab alé nan travay ou; osinon
  - C. Ou té dwé alé koumansé yon travay, men siklòn nan lakòz ou pèdi travay sa-a; osinon
  - D. Sé ou ki vini gen chay pou pran swen kay la, paské moun ki té konn pran swen kay la mouri akòz siklòn nan; osinon
  - E. Ou pa kapab travay akòz yon frakti ou té résévwa nan siklòn nan.
2. Eské mwen kapab kalifié pou Asistans Chomay apré Siklòn si map travay ak tèt mwen?

Wi, si ouap travay ak tèt ou, ou kapab kalifié pou Asistans Chomay apré Siklòn si:

- A.. Sé siklòn nan dirèktéman ki lakòz ou pèdi travay ou; osinon
- B. Ou pa kabap alé nan zòn koté ou konn bay sèvis yo; osinon
- C. Ou ta dwé koumansé pwòp travay pa ou, men ou pa gen you koté pou ou établi ou akòz siklòn nan; osinon
- D. Ou pa kapab travay akòz yon frakti ou té résévwa nan siklòn nan.

**3. Ki lòt bagay mwen bézwen pwouvé pou mwen kapab kalifié pou Asistans Chomay apré Siklòn?**

Ouap gen pou ou moutré tou:

- A. Ou té travay asé pandan dènyé ané ki pasé-a; épi tou
  - B. Ou réjistré pou travay nan yon Sant Lokal épi ou disponib pou ou travay sòf:
    - 1. Si ou té domajé nan siklòn nan épi domay la lakòz ou pa kapab travay; osinon
    - 2. Si ou tap travay ak tèt ou anvan siklòn nan, épi ouap éséyé mété biznis ou sou pié ankò.
4. Eské imigran kalifié pou Asistans Chomay apré Siklòn?

Wi, si ou gen papié travay valab épi ou sé sitwayen mériken, si ou gen rézidans pèmanant légal (Grenn Kat), refijé, si ou gen azil, si ou té antré sou program Kiben/Ayisien, si ou té jewnn pawòl pou yon lané osinon plis, si ou té antré sou kondision, viktim violans domestik, osinon yo

té anilé depòtasyon ou.

5. Ki koté pou mwen apliké pou Asistans Chomay apré Siklòn?

Gen 3 fason pou ou apliké, men mwayen Entènèt osinon nan telefòn pibon pasé lapòs osinon faks:

- a. Nan telefòn - Rélé 1-800-204-2418.
- b. Sou Entènèt - nan [www.fluidnow.com](http://www.fluidnow.com). Ou kapab apliké nan Konpitè nan yon Sant ki tou pré ou.
- c. Lapòs osinon Faks - Rélé 1-866-724-5470 pou ou jwenn yon aplikasyon. Faks li nan 1-954-730-2642, osinon posté li bay Agency for Workforce Innovation, P.O. Box 5608, Ft. Lauderdale, FL 33310-5608.

Ninpòt mwayen ou chwazi, sé pou ou fè yo konnen ou ranpli yon **réklasyon ki gen rapò ak siklòn**.

6. Kilè mwen ta dwé apliké pou Asistans Chomay apré Siklòn?

**Ou dwé apliké pou Asistans Chomay pandan 30 jou apré yon siklòn**, sòf si yo prolonjé dat yo dwé résévwa aplikasyon-an. Ou dwé apliké pwésé pwésé paské ou ka gen pou tann 3 sémèn konsa anvan pou ou résévwa premyé chèk la. Si ou pat kapab apliké anvan dat yo ékzijé-a, ou kapab toujou apliké si ou ka bay yon bon rézon poukisa ou pat apliké davans. Si ou pansé ou gen yon bon rézon, men yo té di ou ou pa kapab apliké paské gen plis 30 jou ki pasé apré siklòn nan, tanpri kontakté biwo nou pou nou ka édé ou.

7. Pou konbé tan mwen kapab résévwa bénéfis Asistans Chomay apré Siklòn?

Ou kapab résévwa bénéfis Asistans Chomay sèlman pou 26 sémèn (6 mwa) apré yon siklòn.

8. Sak ka rivé si yo di mwen mwen pa kalifié pou bénéfis Asistans Chomay apré Siklòn?

Ou gen dwa fè yon apèl nan 20 jou soti nan dat ki sou papié désizyon an. Yo ap ba ou yon randévou pou yon jijman dévan yon abit Apèl. Si ou bézwen yon entèprèt, ou ta dwé mandé pou youn lamenn. Nan jijman sa-a, ouap gen pou ou ékspliké abit Apèl la poukisa désizyon an pa bon épi tou ou gen dwa pou jwenn bénéfis sa yo. Ou ta dwé menmen témwen épi poté dokiman ansanm ak ou pou ou kapab prouvé ka ou.

Si ou gen kéksion osinon si ou ta renmen jwenn èd ak réklasyon chomay ou-a, tanpri kontakté biwo nou ki pi pré ou.

## Your Legal Services Office Contact Information

**Su Logo**

# Nombre de su programa de servicios legales

## **INFORMACION LEGAL SOBRE DESEMPLEO**

### **PREGUNTAS FRECUENTES**

1. Perdí mi trabajo después del desastre. Soy elegible para (DUA) Ayuda En Caso De Desempleo Por Desastres?

Si quedó desempleado a causa del desastre, podría calificar para la Ayuda En Caso De Desempleo Por Desastres (DUA) aún cuando usted no califique para la compensación por desempleo (UC). Por ejemplo, puede ser elegible para DUA si:

- A. Queda desempleado como resultado directo del desastre; o
  - B. No puede llegar a su lugar de trabajo a causa del desastre; o
  - C. Estaba supuesto a empezar un nuevo trabajo, pero lo perdió a consecuencia del desastre; o
  - D. Usted se convirtió en el proveedor de la familia, ya que el antiguo jefe de familia murió en el desastre; o
  - E. No puede trabajar por haberse herido en el desastre.
2. Califico para la Ayuda En Caso De Desempleo Por Desastres si trabajo por mi cuenta?

Sí, si usted trabaja independientemente puede calificar para DUA si:

- A.. Queda desempleado como resultado directo del desastre; o
- B. No puede llegar a su lugar de trabajo a causa del desastre; o
- C. Estaba supuesto a empezar a trabajar por su cuenta, pero no tiene un lugar donde trabajar por culpa del desastre; o
- D. No puede trabajar por haberse herido en el desastre.

### **3. Que más necesito mostrar para ser elegible para los beneficios de DUA?**

También necesitará mostrar que:

- A. Trabajó lo suficiente el año anterior; y.
- B. Se ha registrado para trabajar en el centro One-Stop más cercano a su residencia y está dispuesto y disponible a trabajar, a menos que:

- 1. Se ha herido como resultado del huracán y no puede trabajar; o

2. Usted trabajaba por su cuenta antes del huracán, y ahora está tratando de organizar de nuevo su negocio.

4. Son los inmigrantes elegibles para DUA?

Sí, si usted tiene papeles de trabajo válidos y es ciudadano americano, residente legal permanente (tiene una green card), refugiado/a, asilado/a, entrante cubano-haitiano, parolee por un año o más, entrante condicional, víctima de violencia domestica, o le ha sido otorgado un permiso para evitar la deportación.

5. Donde puedo aplicar para la Ayuda en Caso de Desempleo Por Desastres?

Hay tres maneras de aplicar pero el internet y el teléfono son los mejores métodos y son mejores que el correo y el fax:

- a. Por teléfono - Llame al 1-800-204-2418.
- b. En el Internet - en [www.fluidnow.com](http://www.fluidnow.com). Puede aplicar usando la computadora en el centro One-Stop más cercano a usted.
- c. Por correo o fax - Llame al 1-866-724-5470 para recibir una aplicación. Mándelo por fax al: 1-954-730-2642, o por correo al: "Agency for Workforce Innovation", P.O. Box 5608, Ft. Lauderdale, FL 33310-5608.

Lo que sea que usted elija, asegúrese de hacerles saber que está aplicando para un reclamo relacionado a un desastre.

6. Cuando debo aplicar para DUA?

**Debe aplicar para DUA dentro de los 30 días después del desastre**, a menos que el límite para la aplicación sea extendida. También debe aplicar tan pronto le sea posible ya que podría tener que esperar tres semanas para su primer cheque. Si no pudo aplicar dentro del límite de tiempo, todavía puede aplicar si tuviese una buena excusa de por que no aplicó antes. Si piensa que tiene una buena razón, pero le dijeron que no puede aplicar porque se han pasado los treinta días después del desastre, por favor comuníquese con nuestra oficina para más ayuda.

7. Por cuanto tiempo puedo recibir beneficios DUA?

Solo puede recibir beneficios DUA por 26 semanas (6 meses) después del desastre.

8. Que pasa si me dicen que no soy elegible para beneficios DUA?

Tiene derecho a apelar la decisión dentro de veinte (20) días de la fecha de la notificación con la determinación tomada. Su caso será programado para una audiencia frente a un árbitro de apelaciones. Si necesita un traductor, deberá solicitar uno de inmediato. En la audiencia, necesitará explicar al arbitro de apelaciones por que la decisión está equivocada y si califica para beneficios DUA. Deberá llevar testigos y documentos que prueben su caso.

Si tiene otras preguntas o si desea mas ayuda con un reclamo de desempleo, por favor comuníquese con nuestra oficina más cercana.

# Información sobre su programa de servicios legales

### III

## BEFORE AND AFTER A DISASTER: CHRONOLOGICAL CHECKLIST OF TASKS

### WHAT TO DO - AND WHEN TO DO IT

#### PRE-HURRICANE PROCEDURES - BY JUNE 1 OF EACH YEAR:

##### **Program Administration:**

Identify staff (including "point" persons) to serve on disaster team  
Schedule meeting(s) of disaster team & prepare or update disaster plan  
Schedule full staff meeting(s) for presentation of disaster plan by disaster team  
Meet with other legal aid programs to enter into or update cooperative disaster agreements  
Participate in annual Florida Bar Foundation disaster training or update as assigned

##### **Program Staff:**

Participate in annual Florida Bar Foundation disaster training or update as assigned  
Participate in disaster team meeting(s) & help prepare or update disaster plan as assigned  
Update client disaster flyers as assigned

#### IMMEDIATELY BEFORE DISASTER STRIKES:

##### **Program Administration:**

Ensure office(s), computer equipment and hard files are secured  
Ensure all work is backed-up and back-up tapes are secured off-site  
Distribute updated staff contact list and office re-opening protocol

##### **Casehandlers:**

Ensure list of all active cases & deadlines is complete & download hard copy  
Ensure all computer files are backed-up off-site  
Ensure personal office space, computer equipment and hard files are secured

#### IMMEDIATELY AFTER DISASTER:

##### **Program Administration:**

Contact staff to determine injury/damage to staff and their homes  
Assess damage to office(s) and equipment, and feasibility of re-opening office(s)

Give staff instructions re: returning to work  
Activate Disaster Team and appoint head of Disaster Team

**Disaster Team:**

Contact courts and administrative agencies re: their functioning  
Contact FLS to obtain copy of Presidential Declaration of Disaster & names and contact information of federal & state disaster officials  
Begin surveying client community to determine how impacted by disaster

**FIRST WEEK AFTER THE HURRICANE**

**Program Administration:**

Provide necessary support to staff whose personal lives have been impacted  
Take steps to salvage office files and equipment in damaged offices  
Contact FLS & FBF to give them a picture of disaster's impact on program and clients

**Disaster Team:**

Survey low-income communities to determine:  
    Extent of damage to low-income housing, in particular public housing and trailer parks  
    If information re: disaster assistance is reaching them  
    If additional forms of assistance (e.g. food stamps, mobile homes) are needed  
In concert with FLS, contact federal & state disaster officials, voluntary agencies, and Fla. Bar Young Lawyers' Division  
Contact local voluntary agencies  
Coordinate volunteers

**WEEKS 2 TO 4**

**Program Administration:**

Coordinate with Florida Bar Foundation to arrange for post-disaster training  
Assess need for additional staff, office space and/or equipment & begin necessary arrangements  
Activate cooperative agreements with other legal aid programs or law offices as necessary  
In collaboration with other impacted legal aid programs, seek additional funding

**Disaster Team:**

Revise, Pprint and distribute clientconsumer disaster flyers & activate public service announcement network  
Visit DRCs and Voluntary Agencies & meet with federal officials & voluntary agencies as needed  
In concert with FLS, advocate for additional types of disaster assistance as needed  
Assess need for outreach intake for legal aid clients (can clients get to legal aid

program offices?)

Receive post-disaster training from Florida Bar Foundation

## **WEEKS 5 TO 13**

### **Program Administration:**

Work collaboratively with other programs to obtain additional funds as needed

Hire, house and equip additional staff as needed

Locate additional and/or substitute working space and/or repair damaged space as needed

Furnish and equip new or damaged office space as needed

### **Disaster Team:**

Establish outreach intake schedule if needed and publicize among client community  
Disseminate disaster assistance information to clients via flyers and public service announcements

Assess need for extension of application deadlines & work with FLS to advocate for extensions

Represent individual clients on disaster related issues

Identify & contact groups forming in community to rebuild

## **FOLLOWING WEEKS:**

### **Program Administration:**

Meet with Disaster Team to assess need for additional staff for long-term rebuilding effort

Work collaboratively with other programs to obtain additional funds as needed

Hire, house and equip additional staff as needed

### **Disaster Team:**

Participate in community groups dealing with long-term rebuilding

Represent individual clients on disaster related issues

Assess need for extension of application deadlines and advocate for extension through FLS

Assess need for disaster Section 8 vouchers and advocate for issuance as needed



## IV

### DEVELOPMENT AND COORDINATION OF DISASTER RESOURCES

Development and coordination of additional resources to cope with the immediate and long-term needs of disaster victims is crucial to an adequate response to a catastrophic disaster by legal assistance programs for low-income people. Depending on the needs engendered by a particular disaster and the form of help available, legal assistance offices may increase their ability to provide services to disaster victims in two ways: through pro bono attorneys and via additional program staff.

#### **A. Pro Bono Resources**

In Florida, there are two institutionalized sources of pro bono attorneys following a disaster: The Florida Bar YLD program which is mobilized through FEMA, and the existing statewide network of pro bono attorneys coordinated through Florida Legal Services and the Florida Pro Bono Coordinators Association, with assistance from the Florida Bar and the Florida Bar Foundation.

##### **1. Young Lawyers Division**

As discussed in Part VII, federal disaster assistance is provided under the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. § 5121 *et seq.* Legal assistance is one of the services available to disaster victims under the Stafford Act and administered by the Federal Emergency Management Agency

(FEMA). 42 U.S.C. § 5182; 44 CFR § 206.164. Since 1980, FEMA has contracted with the Young Lawyers' Division of the ABA to provide these legal services, which are restricted to non-fee generating cases<sup>1</sup> and are provided to low-income people free of charge. *Id.* The services provided are limited to assisting disaster victims in securing benefits under the Stafford Act and in resolving claims arising out of the disaster. 44 C.F.R. § 206.164(e). The services provided usually include the following:

- Assistance with insurance claims (life, medical, property, etc.);
- Counseling on landlord-tenant and other housing problems;
- Assistance with home repair contracts;
- Assisting in consumer protection matters, remedies, and procedures;
- Counseling on mortgage foreclosure problems;
- Replacement of wills and other important legal documents destroyed in a major disaster;
- Drafting of powers of attorney;
- Estate administration;
- Preparation of guardianships and conservatorships; and
- Referring individuals to local or state agencies that might be of further assistance (e.g., consumer affairs).

Under its agreement with FEMA, ABA YLD mobilizes young lawyers when a disaster is declared and FEMA requests assistance. In Florida, the ABA YLD works cooperatively with The Florida Bar and its Young Lawyers Division to provide these

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<sup>1</sup> Fee-generating cases are defined in federal disaster regulations as ones “which would not ordinarily be rejected by local lawyers as a result of lack of potential remunerative value.” 44 C.F.R. § 206.164(b)

services. While the program is under the auspices of the YLD, volunteers may be drawn from all segments of the Bar across all age and experience levels.

After a disaster, the YLD establishes a toll-free number that is answered by a Florida Bar staff person. FEMA distributes the number in disaster areas and the YLD advertises the free service in the media. This occurred during the 2004 hurricanes. The YLD estimates that approximately 11,000 calls were handled. Callers initially speak with a staff person at the Florida Bar. In 2004, about half of the callers got the informational assistance they needed from Bar staff. The other half needed to talk to an attorney and were directed to one of the volunteers recruited by the YLD. About half of those (around 2,500) needed further assistance. Many disaster victims begin their quest for legal assistance with the YLD hotline. In order to provide as much service as possible to as many people as possible, coordination between the YLD and other statewide pro bono resources is necessary and is taking place.

## **2. Florida's Pro Bono Delivery System**

In 1993, the Florida Supreme Court established Florida's statewide pro bono plan. Committees in each judicial circuit were created to report on pro bono efforts across the state and a Standing Committee on Pro Bono Legal Services was formed to assist the circuit committees and report annually on the implementation of the plan.

Several groups including the Florida Pro Bono Coordinators Association (FPBCA), Florida Legal Services (FLS), the Florida Bar and the Florida Bar Foundation have, to some extent, been involved in the development and initiation of statewide pro bono projects. Development and support are coordinated through FLS. FLS also provides staffing for the Standing Committee on Pro Bono. Additionally, the FPBCA, a

statewide organization, includes pro bono coordinators from around the state. The FPBCA meets quarterly to share information on best practices, new developments and pro bono projects. The Florida Project Directors Association recently approved the creation of a new standing committee, its Pro Bono Committee, thus establishing a process for making ongoing reports and recommendations on statewide pro bono efforts of the organizations and groups described above.

### **3. Bringing the YLD and Pro Bono Systems Together After a Disaster**

The Florida Pro Bono Coordinators Association in collaboration with the Florida PDA's Pro Bono Committee, has developed a plan for coordinating efforts with the YLD following a disaster. The plan seeks to address the issue of continued service to those whom the YLD is unable to assist. To that end, a regional contact list<sup>2</sup> has been provided to the YLD which contains the names and numbers of Pro Bono Coordinators in each of the seven regions identified in Florida's State Plan.<sup>3</sup> Because disasters might limit availability of a contact person in a particular region, some regions have assembled disaster "teams" and additional contacts are identified for YLD to contact in the alternative. The FPBCA will update the regional contact list each year in June and provide a copy to the YLD. Regional contacts and pro bono coordinators will be provided with training materials (including the sections in this manual that address substantive legal topics) to share with pro bono attorneys and in-house staff.

Additionally, a sample press release<sup>4</sup> to assist in recruitment of volunteer attorneys will

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<sup>2</sup> Regional Contact List is attached.

<sup>3</sup> Florida's Regional Legal Services Delivery Map is attached.

<sup>4</sup> Sample press release is attached.

be distributed to all programs and disaster legal assistance will be included as an option on annual recruitment materials.

The procedure for obtaining additional help for a disaster victim starts with a request for assistance communicated by a YLD representative to the local regional contact from the region where the disaster victim is seeking help. Assuming the YLD representative is able to reach the regional contact, at that point, the contact will review the request for assistance and make a determination as to whether: (a) they are able to provide assistance, or (b) another referral needs to be made. If the YLD representative is unable to reach the regional contact (or a member of the regional team) or, if for any reason assistance has still not been provided, then the FPBCA Executive Committee may be contacted for further assistance. The FPBCA is committed to providing assistance to disaster victims to the fullest extent possible recognizing however, that pro bono participation levels and the existence of successful pro bono projects vary widely within the state. It is also likely that quick response by legal assistance staff in regions that are hard-hit may be challenging and contacts could become inundated. Cooperation and support from programs that are unaffected by the disaster will be necessary to achieve positive results.

#### **4. Recommendations**

To further the availability of pro bono legal assistance to disaster victims and collaboration among the providers of such assistance it is recommended that:

1. Each judicial circuit pro bono committee have a spring or early summer meeting with local pro bono providers to review the pro bono disaster preparedness plans and to ensure effective recruitment of volunteers for short and long term legal

assistance has been/will be undertaken. Further, the committee should ensure there has been communication among the providers, the YLD and the local bar associations in the circuit.

2. The YLD should annually advise the Pro Bono Coordinators Association of its disaster leadership and plans for volunteer recruitment. The YLD and the Pro Bono Coordinators Association should seek to coordinate and design recruitment of volunteers to maximize the availability of volunteer lawyers to respond to both short term and long term legal assistance needs of disaster victims.

3. Staffed legal assistance providers should recognize and include pro bono coordinators as an integral part of disaster preparedness and evaluate and provide the necessary resources to provide an effective pro bono assistance response to a disaster.

## **B. Potential Funding Resources for Responding to a Disaster**

No one can anticipate all possible sources of potential funding for legal aid programs in the event of a disaster. Each disaster produces its own unique cast of organizations, agencies, businesses and individuals who seek to respond to needs generated by the disaster. The following will provide some basic information about some known potential resources, based upon previous experiences.

### **1. General Legal Aid/Legal Services Funders**

The Florida Bar Foundation has established an annually recurring set-aside of funds that will be available to legal aid programs whose service area experiences a Presidentially-declared disaster. The initial level of funds available, both to assist

programs with internal damage and to help provide disaster legal assistance to clients, is \$250,000. At the writing of this section, the Foundation is considering a significant increase in the annual level of disaster funding. The Foundation has established a streamlined the process for consideration of disaster-related applications for assistance. Legal assistance disaster grants are renewable subject to available funding. Legal aid providers in Florida can contact the Foundation for specific information or visit its website, [www.flabarfndn.org](http://www.flabarfndn.org).

The Foundation has also provided laptop loans to programs to support the provision of legal assistance to disaster victims. Further, it offered scholarships to attend disaster planning training. The Foundation welcomes suggestions and ideas as to how it may further assist programs dealing with disasters.

The Legal Services Corporation has historically maintained a modest reserve to assist its grantees in times of disaster. In 2004 it made several grants to programs in Florida from its reserve. LSC has adopted regulations governing its process for accepting disaster applications from its grantees. That process and those regulations can be accessed through the LSC website, [www.lsc.gov](http://www.lsc.gov).

## **2. Funding for Legal Assistance to Victims**

- **Florida Department of Elder Affairs** - After the 2004 hurricanes, the Florida Department of Elder Affairs received special Title III funding to serve victims of the hurricanes. Several legal aid/legal services programs received special grants through their Area Agency on Aging to provide hurricane relief legal assistance to seniors. Unfortunately, such special funding was not made available in response to the 2005 hurricanes, so the availability of this special funding will have to be monitored after each disaster.
- **Florida Hurricane Relief Fund** - This fund is administered by the Volunteer Florida Foundation and is used primarily to fund community based efforts at

providing disaster relief services, both short and long term. Funding for legal assistance to victims could most easily be obtained as a part of a collaboration with the community based effort. More information on this fund can be found on their web site, [www.flahurricanefund.org](http://www.flahurricanefund.org).

- **United Way, Community Foundations and other local funding** - In many communities, the local United Way, community foundation or other local funding sources will provide special funding opportunities to serve victims of a hurricane. Again, the likelihood of gaining this kind of funding is enhanced if the application is in collaboration with local recovery efforts like the local long term recovery organizations that have been formed in some 33 of Florida's counties..

### **3. Funding for Physical Plant of Legal Aid/Legal Services Programs:**

- **Florida Hurricane Relief Fund** - Please see above for information about this fund and for contact information. This fund is also available to programs to help pay for damages caused by a hurricane to buildings and equipment owned by the program. Community Legal Services of Mid-Florida was successful in obtaining funding from this source to repair damage to its Osceola County office.
- **FEMA Public Assistance** - These funds are available from FEMA primarily to fund recovery of government infrastructure after a disaster. Typically these funds are available in more counties than eligibility for individual assistance. These funds are also available to certain nonprofit organizations for property and equipment repair or replacement. The general eligibility requirement in the law is "other private nonprofit facilities which provide essential services of a governmental nature." There is no example to provide of a legal aid/legal services program seeking or obtaining funding from this source.



More information can be obtained from the FEMA website,  
<http://www.fema.gov/rrr/pa/>.

- **Small Business Administration Disaster Loans** - Any business that is located in a declared disaster area and has incurred damage during the disaster may apply for a loan to help repair or replace damaged property to its pre-disaster condition. The SBA makes physical disaster loans of up to \$1.5 million to qualified businesses. If the SBA determines that the business (or nonprofit organization) is unable to obtain credit elsewhere (considering the cash flow and assets of the business, its principals and affiliates), the law sets a maximum interest rate of 4 percent per year. The maximum maturity for such business disaster loans is 30 years. However, the actual maturity is based on the ability to repay the loan. More information can be obtained from the SBA website, [http://www.sba.gov/disaster\\_recov/loaninfo/dloanassit.html](http://www.sba.gov/disaster_recov/loaninfo/dloanassit.html).

By: Rob Johnson, Esquire  
Executive Director  
Brevard County Legal Aid

Kent Spuhler, Esquire  
Executive Director  
Florida Legal Services

Paul Doyle, Esquire  
Director of Legal Assistance Grant Programs  
The Florida Bar Foundation

June, 2006

**ATTACHMENT A**

**REGIONAL CONTACTS LIST**

Region I:

<p>John J. Fenno Private Bar Involvement Coordinator</p>	<p><b>Legal Services of North Florida</b> 2119 Delta Blvd. Tallahassee, FL 32303</p>	<p>850-385-9007  <a href="mailto:john@lsnf.org">john@lsnf.org</a> <a href="http://www.lsnf.org">www.lsnf.org</a></p>	<p>2<sup>nd</sup> Circuit, 14<sup>th</sup> Circuit, Okaloosa and Walton of 1<sup>st</sup> Circuit  Region 1</p>
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<p>Sybil Sahuque Pro Bono Coordinator</p>	<p><b>Northwest Florida Legal Services</b> 701 South "J" Street Pensacola, FL 32501</p>	<p>850-432-2336  <a href="mailto:ahuques@nwfls.org">ahuques@nwfls.org</a></p>	<p>Escambia County  Region 1</p>
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Region II:

<p>Marcia G. Lockhart Pro Bono Coordinator</p>	<p><b>Three Rivers Legal Services, Inc.</b> 901 NW 8 Avenue, Suite D-5 Gainesville, FL 32601</p>	<p>352-372-0519, x110 352-375-1631 fax  <a href="mailto:marcia.lockhart@trls.org">marcia.lockhart@trls.org</a></p>	<p>Alachua, Baker, Bradford, Columbia, Dixie, Lafayette, Levy, Madison, Suwannee, Taylor, Union, Gilchrest, Madison Counties Region 2</p>
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**Region III:**

Catherine A. Tucker Pro Bono Coordinator	<b>Legal Aid Society of the Orange County Bar Association</b> 100 East Robinson Street Orlando, FL 32801	407-841-8310, ext. 3151 legal assistant x3133 407-648-9240 fax <a href="mailto:ctucker@legalaidthcoba.org">ctucker@legalaidthcoba.org</a>	Orange County Region 3
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Rob Johnson Executive Director	<b>Brevard County Legal Aid</b> 1017 South Florida Avenue Rockledge, FL 32955	321-639-2933 321-633-4822 fax <a href="mailto:brevardlegalaidth@yahoo.com">brevardlegalaidth@yahoo.com</a>	Brevard County Region 3
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**Region IV:**

Sheila Seig Executive Director	Bay Area Legal Services 829 W. Martin Luther King, Jr. Blvd. Second Floor Tampa, FL 33603	941-366-0038 941-364-8855 fax <a href="mailto:sseig@bals.org">sseig@bals.org</a>	Hillsborough, Pasco Region 4
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Jane Helms Pro Bono Coordinator	<b>Gulfcoast Legal Services</b> 314 S. Missouri Ave., Room #109 Clearwater, FL 33756	727-443-0657 727-461-9160 fax <a href="mailto:janeh@gulfcoastlegal.org">janeh@gulfcoastlegal.org</a>	Pinellas County Region 4
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**Region V:**

Kim Rommel-Enright Pro Bono Coordinator	<b>Legal Aid Society of Palm Beach County</b> 423 Fern Street, #200 West Palm Beach, FL 33401	561-655-8944, ext. 265 or ext.272 561-655-5269 <a href="mailto:kenright@legalaidpbc.org">kenright@legalaidpbc.org</a>	Palm Beach County Region 5
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Margery Greulich Executive Director	<b>Heart of Florida Legal Aid Society</b> 550 East Davidson St. Bartow, FL 33830	863-519-5663 863-519-5674 <a href="mailto:mgreulich@hofla.org">mgreulich@hofla.org</a>	Hardee, Polk, and Highlands Region 5
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**Region VI:**

AnneElena Foster Pro Bono Coordinator	<b>Legal Aid Service of Broward County</b> Legal Aid Service of Collier County 4125 East Tamiami Trail Naples, Florida 34112	239.775.4555 <a href="mailto:afoster@legalaid.org">afoster@legalaid.org</a>	Collier County Region 6
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**Region VII:**

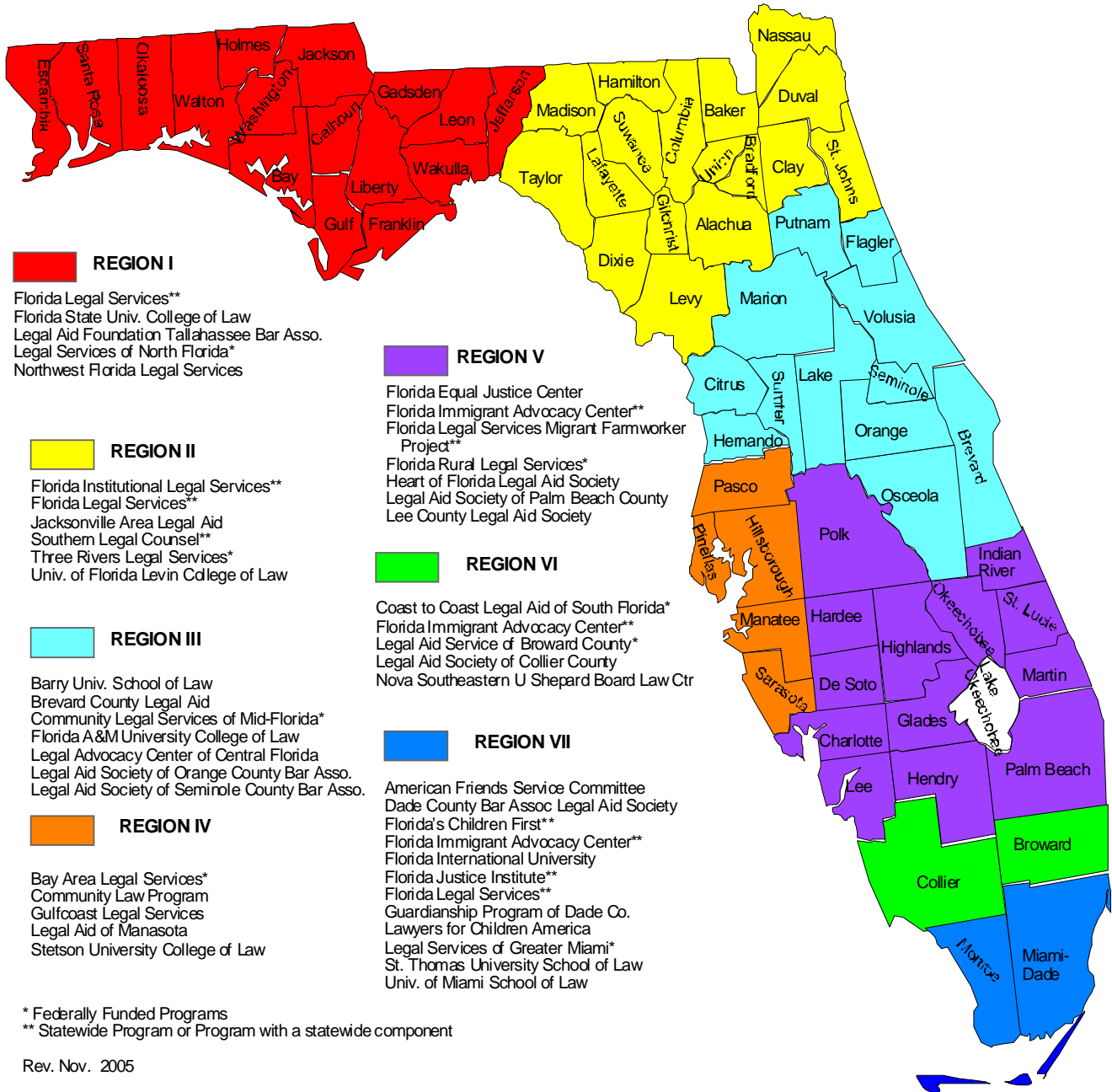
Bruce Levine	<b>Put Something Back</b> 123 NW First Avenue Miami, FL 33128	305-579-5733, ext. 2246 305-372-7693 – fax <a href="mailto:blevine@dadelegalaid.org">blevine@dadelegalaid.org</a>	Dade County Region 7
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Carol Lombardi	<p><b>Legal Services of Greater Miami</b>  3000 Biscayne Blvd., Suite 500  Miami, FL 33137</p>	305-576-0080 305-576-5800— fax	Dade County Region 7
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Nancy Sutton	<p><b>Legal Services of Greater Miami</b></p>	305-292-3566	Monroe County Region 7
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## ATTACHMENT B

# Florida's Regional Legal Services Delivery System



**ATTACHMENT C**  
**PRESS RELEASE**

Dear

With pictures of Hurricane Katrina's wrath streaming out of the Northern Gulf, residents of Florida are remembering the devastation that hit virtually every region of our own state last year.

Even as those newly displaced by Katrina's devastation are flowing into Florida seeking refuge, there remain so many victims of Charley, Frances, Ivan and Jeanne who continue to struggle with the chaos those storms wrought in our own communities. We're seeing again what so many Floridians discovered in that painful season: weather may not discriminate, but Mother Nature is not an equal opportunity destroyer. Those with means can better protect themselves before disaster strikes, and they have more resources to help them recover after. With both poverty and calamity, the working poor and indigent are doubly devastated.

Thankfully, throughout Florida last year, there were pro bono attorneys who stepped up to assist the victims of the hurricanes, helping them recover homes, jobs, benefits, assets and documentation, guiding them through the ancillary crises that emerged months later. Long after the Red Cross was gone, Florida's volunteer attorneys were on the job. Because after the initial food, water and shelter issues are addressed, *that's* when the real recovery work begins. And Florida's volunteer attorneys were there. You ARE the reinforcements.

You are needed today. You can help Katrina evacuees recover. You can help Florida residents still struggling to recover. And in ways that really no one else is able to offer, you can help others be adequately prepared for next time.

Please, call (or fill out the enclosed form, go online, etc.) \_\_\_\_\_  
to volunteer your special expertise to those in need.



## ATTACHMENT D

*In cooperation with FEMA, the American Bar Association's Young Lawyer's Division is charged with coordinating disaster-related legal services. After calamity strikes, the YLD establishes a toll-free number that is distributed in stricken areas. In Florida, calls to the number are answered by Florida Bar staff. After the 2004 hurricanes, about 11,000 calls came in. About half the callers received the help they needed directly from Bar staff, but the rest actually needed to speak to an attorney, and these callers were directed to volunteer attorneys recruited by the YLD. About half of those referred (around 2,500) needed further assistance after speaking with one of those pro bono attorneys. And they got it— from you, from your friends and colleagues. The Florida Pro Bono Coordinators Association is now assisting in recruitment efforts for volunteer attorneys willing to lend their unique abilities to the relief effort. The FPBCA contact in Collier County is AnneElena Foster, with Collier Lawyers Care, the pro bono coordination program of the Collier County Bar and Legal Aid Service of Collier County. To make your abilities count, please call her at 239-775-4555.*



 **LegalAid**  
SERVICE OF COLLIER COUNTY  
4125 East Tamiami Trail, Naples, Florida 34112



# ACCOUNTABILITY



# Accountability.

It comes up after every calamity. Since Katrina hit, it's up as never before. There is painful personal soul-searching. Policy makers and government leaders at all levels are being held to account. The insurance industry has come under review. Even venerable non-profit relief agencies are being scrutinized, as donors wonder if their gifts and assistance are truly going to serve those in need.

As a Florida attorney, if you want real accountability from the relief effort you give to, you've got a unique option. You can make your own abilities count.

Because once the initial needs for food, clothing and shelter are addressed, the real recovery work begins. Long after the disaster is off page one and the evening news, the victims of calamities continue to struggle to rebuild their lives. And you have the ability to render aid that no relief agency and no emergency service can offer, and the ability to ensure the job's done right, efficiently and effectively.

Immediate, first-response assistance might come from a variety of resources, but there are critical needs that only a lawyer can address, whether it's assisting with insurance claims and home repair contracts, consumer protection remedies, estate administration or even just replacing important legal documents that have been lost or destroyed. These call for a lawyer's abilities.

So sure, you could write a check to any number of respected organizations and just trust that your dollars are being well-spent. But when you give directly through your own pro bono efforts, you know exactly how your resources are being distributed, you know who is benefiting from your contribution, and you know they're being served professionally and effectively. You can't get better accountability than that.

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Join Collier Lawyers Care today to put your unique abilities to work in the relief and recovery effort. Just fill out the form below and return by mail to 4125 E. Tamiami Trail, Naples, 34112, or call pro bono coordinator AnneElena Foster at 239-775-4555.

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Name

Firm

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Address

Phone

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Area of law

Bar No.

## V

### **DISASTER TRAINING**

#### **WHO, WHAT & WHEN**

The Florida legal aid community's Disaster Plan includes regular training for program administrative and legal staff. Programs are asked to identify disaster point persons from their legal and administrative staff who will commit to (1) attending yearly training sessions and (2) providing initial coordination of the program's response following a disaster.

#### **A. Annual Trainings**

Annual trainings and/or updates will be provided by June 30<sup>th</sup> of each year to legal staff and a deputy director or other administrative person from programs throughout the state who will act as disaster point persons. Trainings will be held yearly to account for staff turnover and changes in the law, and will be held by June 30<sup>th</sup> so that programs will be prepared before major hurricanes are expected.

Annual trainings will include sections from the following areas: Federal disaster assistance law and long-term rebuilding efforts, the rights of tenants following a disaster, insurance law, and consumer protection law regarding home repairs, as well as suggestions on how legal aid programs can best prepare for and handle their work should a disaster strike. Attending staff will be given an updated disaster manual for use in upgrading their program's disaster plan and as a resource following a disaster. Annual trainings will also serve as opportunities for regional collaborative meetings, a

refresher on administrative considerations for disaster preparedness, a forum for programs to rethink their program-specific disaster plans, and an opportunity to update regional understandings and agreements. Programs will be reminded of the necessity of working together to meet the needs of disaster victims, of updating hurricane brochures and staff contact lists, and of making an inventory of functioning portable equipment such as laptops, portable printers, and cell phones.

### **B. Post Disaster Trainings and Support**

Post-disaster trainings will be provided regionally to staff of disaster-impacted legal aid programs. Trainings will be held at sites convenient to the impacted programs and will ideally serve as a one-day mini-retreat to help the program(s) move forward in a constructive and unified way to rebuild their community(ies) for the benefit of clients. Post-disaster trainings will include more in-depth presentations of federal disaster assistance law and long-term rebuilding efforts, tenants' rights following a disaster, insurance law, and consumer protection law regarding home repairs.

Post-disaster trainings will also help programs assess the impact of the catastrophe on their office(s) and the client community, muster their resources (including assistance from other legal services providers within the region), and comprise a problem-solving session that culminates in a disaster work plan. Trainers will lend their experience and expertise to the process, provide information regarding the disaster list-serv, and identify experts for further assistance in particular legal areas. Written training materials will be provided to all attendees, and electronic copies of the client flyers and brochures will be shared.

VI

**HELPFUL FEDERAL AND STATE CONTACTS**

During the 2005 Hurricane season there were many websites established. Every effort has been made to update the following list for the 2006 hurricane season. Please communicate any updated information to Terry Coble at [terryarose@bellsouth.net](mailto:terryarose@bellsouth.net).

**Federal Resources:**

Agency	Phone	Website	Comment
Federal Emergency Management Agency	800-621-FEMA (3362)  Disaster Information  Helpline: 800-525-0321  Teleregistration for assistance: 800-621-FEMA (3362) hearing/speech impaired TTY 800-462-7585  Regional Office: 3003 Chamblee-Tucker Rd Atlanta, GA 770- 220 - 5200 Fax: 770-220-5230	<a href="http://www.fema.gov">www.fema.gov</a>  <a href="http://www.fema.gov/about/process/">www.fema.gov/about/process/</a>  <a href="http://www.fema.gov/about/regions/regioniv/">www.fema.gov/about/regions/regioniv/</a>	Can apply for relief on line. Follow links from main site  Applicant guide in English and Spanish  A line answered by a person
Department of Health and Human Services		<a href="http://www.hhs.gov">www.hhs.gov</a>	Numerous links to information on wide range of disasters

			and services
Government Benefits Search		<a href="http://www.govbenefits.gov/govbenefits/benefits">www.govbenefits.gov/govbenefits/benefits</a>	Includes links to Florida benefits including eligibility criteria
Center for Disease Control	800-CDC-INFO (232-4636)	<a href="http://www.bt.cdc.gov">www.bt.cdc.gov</a>	Numerous links to information related to personal and public health
Administration on Aging	202-619-0724  Regional Administrator: Percy Devine Atlanta Federal Center 61 Forsyth Street, SW - Suite 5M69 Atlanta, GA 30303-8909 Tele: 404-562-7600 Fax: 404-562-7598	<a href="http://www.aoa.gov">www.aoa.gov</a>	Follow links at bottom of Home Page - Topics - Disaster Assistance
Small Business Administration	800-659-2955	<a href="http://www.sba.gov">www.sba.gov</a>	
Rural Development Department of Agriculture	800-414-1226  TDD:  800-438-1832	<a href="http://www.rurdev.usda.gov/rd/disasters/disassistance.html">www.rurdev.usda.gov/rd/disasters/disassistance.html</a>	Disaster assistance in rural areas
USDA Food and Nutrition Services	Website has numerous telephone numbers including administrators of programs	<a href="http://www.fns.usda.gov/fns">www.fns.usda.gov/fns</a>	Useful information about various programs
Federal Information Center	800-333 -4636	<a href="http://www.info.gov/">www.info.gov/</a>	General Information and

			links to federal agencies
Social Security Administration	1-800-772-1213	<a href="http://www.ssa.gov">www.ssa.gov</a>	Significant information about social security benefits
Veterans Affairs	800-414-1226 (Benefits)  TDD: 800-827-1000	<a href="http://www.index.va.gov/v/">www.index.va.gov/v/</a>	Search disasters for information on health and mental health services
National Volunteer Organizations Active in Disaster (NOVAD)	Florida contact:  <b>Florida VOAD</b> Glenn A. Kasper, Sr., Chair Contact: Florida State Director Christian Contractors Association, Inc. PO Box 15615 Brooksville, FL 34604 Tele: 352-799-7856 Fax: 352-799-8391 E-mail: <a href="mailto:glennk@christiancontractorsassociation.org">glennk@christiancontractorsassociation.org</a>	<a href="http://www.nvoad.org">www.nvoad.org</a>	Numerous links to helpful information

**Florida Resources:**

Florida Legal Services	850-385-7900	<a href="http://www.floridalegal.org">www.floridalegal.org</a>	See the disaster information tab
State of Florida		<a href="http://www.myflorida.com">www.myflorida.com</a>	Links to all Florida governmental agencies
Florida Division of	During 2004 there	<a href="http://www.floridadisaster.">www.floridadisaster.</a>	Much information

Emergency Management	was a volunteer donation line. Presumably one will open if necessary	<a href="#">org</a>	and many links
Department of Children and Families - Economic Services		<a href="http://www.dcf.state.fl.us/ess">www.dcf.state.fl.us/ess</a> <a href="http://www.myflorida.com/accessflorida/">www.myflorida.com/accessflorida/</a>	Information on state benefits  Apply on-line for TANF, Food Stamps and Medicaid
Florida Department of Financial Services	800-342-2762	<a href="http://fldfs.com">fldfs.com</a>	Insurance information
Agency for Workforce Innovation	(850) 245-7105	<a href="http://www.floridajobs.org">www.floridajobs.org</a>	Emergency information as well as general information
Attorney General Price Gouging Information	Hotline 1-866-966-7226	<a href="http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/e73752ffc1a191af85256cc9005dc192!OpenDocument">http://myfloridalegal.com/pages.nsf/4492d797dc0bd92f85256cb80055fb97/e73752ffc1a191af85256cc9005dc192!OpenDocument</a>	Report "price gouging"
Florida Department of Agriculture and Consumer Services	Hotline: 1-800-HELP-FLA (435-7352)	<a href="http://www.800helpfla.com/price_gouging.html">www.800helpfla.com/price_gouging.html</a>	Report "price gouging" or file a complaint on-line
Florida Department of Transportation	866-374-FDOT (3368).	<a href="http://www.dot.state.fl.us">www.dot.state.fl.us</a>	Travel information

**Non-Profit Agencies:**

American Red Cross	Information for disaster victims	<a href="http://www.redcross.org">www.redcross.org</a>	Significant information and links
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	866-GET-INFO (428-4636)		
Salvation Army - Florida	813- 962-6611	<a href="http://www.salvationarmyflorida.org">www.salvationarmyflorida.org</a>	Disaster tab
Red Cross - Tallahassee	850-878-6080	<a href="http://www.tallytown.com/redcross">www.tallytown.com/redcross</a>	Comprehensive disaster information
Florida Interfaith Networking in Disaster	Jody Hill, Executive Director tele: 866-286-2232 fax: 407-317- 7051 email: <a href="mailto:JodyHill@findflorida.org">JodyHill@findflorida.org</a> Florida Interfaith Networking in Disaster 934 North Magnolia, Suite 239 Orlando, FL 32803	<a href="http://www.findflorida.org">www.findflorida.org</a>	Coalition of faith- based organizations that promotes disaster preparation and facilitates spiritual and long term practical aid after disasters  Links to local FIND participants



**Legal Resources:**

The Florida Bar	Disaster Hotline not in effect. Presumably will be reactivated if necessary.	<a href="http://www.flabar.org">www.flabar.org</a>	
Young Lawyers Division - Florida Bar	President: John M. Stewart Stewart & Evans, P.A. P.O. Box 3345 Vero Beach, FL 32964-3345 Tele: 772-231-3500 Fax: 772-231-9876 email: <a href="mailto:jms@st-ev.com">jms@st-ev.com</a>	<a href="http://www.flayld.org">www.flayld.org</a>	

## VII

### LEGAL REPRESENTATION IN DISASTER ASSISTANCE CASES

Revised May 2007

The following materials provide an overview of disaster assistance under the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act),<sup>1/</sup> the steps that a legal assistance program should take to help ensure that this assistance reaches low-income disaster victims, and practice pointers to guide the advocate in representing clients.

#### I. INITIAL ADVOCACY

Low income people are usually the individuals most severely affected by disasters. FEMA is prohibited by federal law from discriminating based on race, ethnicity and income in administering the Stafford Act.<sup>2/</sup> However, FEMA is not always sensitive to the realities of the living situations and the needs of low-income people, or to those of racial and language minorities. Much of the responsibility for ensuring that disaster benefits are made equally available to low-income people and people of racial or language minorities will therefore fall on legal assistance programs.

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<sup>1/</sup> 42 U.S.C. §§5121, *et seq.*

<sup>2/</sup> 42 U.S.C. §5151; 44 C.F.R. §206.11.

Following a disaster, the legal aid advocate can safeguard the rights of low-income people by (1) getting to know the officials and other players involved in providing disaster assistance, (2) advocating quickly for emergency and other programs needed by low-income disaster victims, (3) ensuring that helpful information and services are reaching low-income disaster victims, (4) advocating for needed extensions of application deadlines, and (5) providing legal representation to enforce the rights of low-income disaster victims to disaster assistance.

### **A. Contacting Officials and Other Players**

Immediately after the Declaration of Disaster, Florida Legal Services (FLS) will contact the FEMA Regional Office to determine the name(s) and telephone numbers(s) of the Federal Coordinating Officer (FCO) and the Disaster Recovery Manager (DRM). FLS will obtain the name(s) and telephone number(s) of the State Coordinating Officer (SCO) and the Governor's Authorized Representative (GAR) from the Governor's office.

Finally, FLS will secure the name and telephone number of the attorney from the Young Lawyer's Division (YLD) of the American Bar Association (ABA) who is responsible for coordinating volunteer lawyers from either the local YLD or YLD headquarters in Virginia. FLS will transmit all of this information to the director of each impacted legal aid program and to the program's identified disaster point persons.

#### **1. Obtaining Background Information**

FLS will also obtain and transmit to local programs a copy of the Declaration of Disaster, and any amendments, along with a copy of the FEMA-State

Agreement which is required to be published in the Federal Register.<sup>3/</sup> From these documents, local legal aid programs can obtain: The date of the Declaration, the incident period (losses must be sustained during this period of time in order to be compensable under disaster relief programs), the geographical area of the disaster, and the types of disaster assistance authorized. If the Declaration states that Financial Assistance to Address Other Needs will be available, FLS will also determine whether FEMA or the state will be administering this program.<sup>4/</sup> If the state will be administering this program, FLS will obtain and provide to you a copy of the State Administration Plan (SAP), and the name and telephone number of the official who will be responsible for its overall administration.

## **2. Additional Necessary Contacts**

FLS will also obtain the name and telephone number of the state official(s) responsible for setting up the Disaster Food Stamp program, the Disaster Unemployment Assistance program, and the Crisis Counseling program. Since there is considerable latitude in setting up these programs, either FLS will or local legal aid programs should contact the identified state officials as quickly as possible in order to determine the manner in which they intend to implement the programs in the disaster

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<sup>3/</sup> Additional likely sources are the FEMA Regional Office, the FEMA website, [www.fema.gov](http://www.fema.gov), the Governor's office, and the website of the Florida Division of Emergency Management, [www.floridadisaster.org](http://www.floridadisaster.org).

<sup>4/</sup> As of the 2004 hurricane season, FEMA is administering the Financial Assistance to Meet Other Needs program.

area(s). The most important data to obtain are (1) the eligibility criteria, (2) any deadlines for applying, (3) the way in which the benefits will be publicized, (4) where people can apply, and (5) how the benefits will be distributed. The local legal aid program will obtain the name and telephone number of the local official(s) responsible for setting up and/or administering the Disaster Food Stamp program, the Disaster Unemployment Assistance program, and the Crisis Counseling program in their localities. Since there is considerable latitude in setting up these programs, the local program should contact the identified local officials as quickly as possible in order to determine the manner in which they intend to implement the programs in their areas.

In addition, the local legal aid program should contact the local Public Housing Authority and HUD to find out what types of disaster housing programs, such as Section 8 Disaster Vouchers, will be authorized for residents of public housing and for other disaster victims. If public housing has been destroyed or damaged, the legal aid program should also find out from the appropriate public housing authority what arrangements will be made for providing emergency shelter to these residents.

## **B. Advocating for Emergency and Other Disaster Programs**

### **1. Assessing Your Community's Needs**

Legal aid programs will need to begin surveying the community as soon as possible to assess the community's needs for the various types of disaster assistance available under the Stafford Act. For instance, as staff travels around the disaster area, they should begin noting the condition of low-income and public housing, with the goal of compiling a list of destroyed or uninhabitable units, as well as remaining

habitable units.<sup>5/</sup> While driving, staff should also note whether grocery stores and convenience stores within the disaster area are open, and determine whether any large employers are closed due to disaster caused destruction. Also, when interviewing clients, legal aid staff should ask them about the condition of the housing in which they live and of the housing around them, as well as whether they are in need of food, and whether they have lost a job as a result of the disaster.

With respect to establishing the need for disaster Food Stamps, legal aid staff should find out how long electricity has been interrupted and in what geographic area(s) (to determine the need for Replacement Food Stamps by documenting spoilage of food due to loss of refrigeration). Staff should also ascertain the extent of interruption in the usual means and corridors of transportation, e.g., road passability, bus service, destruction of automobiles, operation of vehicle repair shops as well as the extent of interruption in basic communication channels such as newspaper delivery and radio and television broadcasts (to document the need for Disaster Food Stamps, the need for DCF to advertise the program, and the need to extend the Disaster Food Stamp program).

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<sup>5/</sup> See section IV.A. for suggestions and resources in conducting a census of affordable housing.

Also, when interviewing clients, legal aid staff should ask them about the condition of the housing in which they live and of the housing around them, as well as whether they are in need of food, and whether they have lost a job as a result of the disaster.

Immediately after obtaining the most basic information, local programs should begin to work with FLS to advocate on behalf of low-income disaster victims to obtain appropriate emergency assistance. In particular, legal aid programs should address any issues arising under Disaster Food Stamps immediately, since these benefits are generally awarded within the first few days after the disaster.<sup>6/</sup>

***a. Advocacy for Additional Programs***

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<sup>6/</sup> See section III.A.4. re: advocating for Disaster Food Stamps.

As soon as the local program has information regarding the unmet needs of low-income disaster victims, staff should work in conjunction with FLS to advocate for the implementation of any program that will meet these needs but has not yet been authorized by FEMA or some other agency. Low-income housing in particular is likely to have suffered extensive damage. Local programs should therefore immediately begin documenting (1) the extent to which low-income housing has been destroyed or rendered uninhabitable, and (2) whether there is sufficient habitable affordable housing within reasonable commuting distance to meet the needs of dislocated low-income families. If the answer to (2) is no, legal aid staff should begin advocating as soon as possible for mobile homes to provide temporary housing for low-income disaster victims.<sup>7/</sup> If sufficient housing is available nearby, but it is not affordable, legal aid staff should advocate for Section 8 Disaster Vouchers to be made available to low-income disaster victims.

Requests for additional types of assistance must be addressed to the Governor's Authorized Representative(GAR), since such assistance must be requested from FEMA by the Governor or the GAR.<sup>8/</sup> The request must be justified by verified assessments by state and local governments as to the need for the assistance and the inability of state and local government to meet the need.<sup>9/</sup> Because of its knowledge of the low-income community, the legal aid program may be able to provide valuable information

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<sup>7/</sup> See section III.D.4.a, *infra* re: the criteria used by FEMA to determine the necessity for mobile homes and travel trailers.

<sup>8/</sup> 44 C.F.R. §206.40(c)

<sup>9/</sup> *Id.*



to assist the state in requesting additional assistance. Intervention by federal legislators may also be helpful.

***b. Advocacy Regarding the DRCs***

Legal aid programs should visit the Disaster Recovery Centers (DRCs) as soon as possible after they begin to open, and make contact with the FEMA DRC Coordinator. Issues of immediate concern are the locations of the DRCs (FEMA may tend to locate the DRCs outside of low-income communities), publicity regarding the location of the DRCs (FEMA may not provide publicity in a form or in locations accessible to low-income people), and, if there are a significant number of language minorities, the number and training of bilingual staff or translators provided at the DRCs (even if staff fluent in a minority language is hired, such staff may not be adequately trained either with respect to their responsibilities as translators, with respect to disaster benefits, and/or regarding FEMA's administrative process).

**C. Ensuring that Low-Income People Receive Information**

**1. Advocacy Regarding Publicity**

Ordinary means of communication are often severely disrupted by a disaster. Since low-income people are likely to be especially badly affected by this, legal aid programs should carefully examine the manner in which FEMA publicizes disaster benefits. Depending on how each type of medium has been affected by the disaster, legal aid staff may need to watch for newspaper, television and radio announcements concerning disaster assistance to make sure that FEMA's public information campaign addresses the needs of the community's low-income people. For

example, if a large portion of the low-income community speaks another language besides English, FEMA should make announcements in their language and use radio and television stations listened to or viewed by them. Also, if the housing of many low-income people has been destroyed, they will have little ability to access information through mass media. In this case, FEMA should distribute flyers at mass feeding sites, tent cities or other sites at which displaced low-income residents gather.

Legal aid programs may also want to make their own public service announcements on radio or television, and to develop and disseminate their own informational flyers. In affected rural areas, it may be necessary to distribute flyers in several languages on a door-to-door basis, something that FEMA is unlikely to do. Since FEMA typically does not widely publicize information regarding application deadlines or the types of disaster assistance that are available, legal aid program flyers that include such information can be very useful to the low-income community.

## **2. Notice Regarding Disaster Housing Assistance**

It is particularly crucial that low-income disaster victims are aware of the types of housing assistance that are available. FEMA can provide either cash rental assistance or mobile homes if both types of housing assistance are allowed under the Declaration of Disaster. But FEMA issues mobile homes only if the disaster victim would be unable to make use of rental assistance.<sup>10/</sup> If much of the affordable housing stock within the community has been rendered uninhabitable, it is crucial that low-income disaster victims be told of the mobile home option and the need to show that

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<sup>10/</sup> 44 C.F.R. §206.117(1)(ii).

they would be unable to use cash rental assistance because of the lack of available housing.

### **3. Development of Written Informational Material**

Information regarding the range of disaster benefits is one of the most important services a legal assistance office can provide to its client population immediately after a catastrophic disaster. As soon as legal aid staff have gathered some of the most necessary information, they should begin preparing disaster flyers outlining the availability of benefits, and pamphlets regarding legal rights. Included in this manual are model flyers.

### **4. Dissemination of Materials**

Legal aid programs should distribute the flyers and pamphlets they develop as soon as possible at shelters, mass feeding sites, DRCs, and through community and volunteer agencies and churches. In largely destroyed areas, it may require a great deal of effort just to locate these sites. People in rural areas may be particularly isolated and in need of information.

Legal aid programs should also rely on local media such as radio, newspapers and television stations, especially ethnic radio and television stations and ethnic community newspapers in order to better reach more insular communities such as immigrants.

Local programs may also want to use the large number of people who often volunteer to assist after a disaster. These volunteers can (1) go out into the low-income communities to locate mass distribution sites as well as isolated communities, and (2)

physically deliver the flyers and pamphlets to these sites.

## **II. APPLICATION FOR DISASTER ASSISTANCE**

To apply for disaster assistance, people must either go to a FEMA Disaster Recovery Center (DRCS) or apply by telephone. In either case, a FEMA interviewer takes information from the disaster victim, and fills out a one-page application which the applicant is required to sign. The applicant is then given a copy of the application for his/her records. If the application is taken by telephone, a copy is mailed to the applicant. The FEMA application is the basis for determinations of eligibility for the Individual and Household Assistance program. Applicants are referred to other agencies located at the DRC as determined appropriate by the FEMA interviewer.

### **A. Application Deadlines**

A disaster victim must usually “register” for Individual and Household Assistance within 60 days after the Declaration of Disaster; however, FEMA accepts late registrations for an additional 60 days beyond the deadline, if the registrant produces documentation to justify the delay.<sup>11/</sup> The application deadlines for other programs may be shorter. The application deadline and other standards of eligibility for Disaster Food Stamps are established by the Secretary of Agriculture soon after the disaster.<sup>12/</sup> Disaster Unemployment Assistance must be applied for within 30 days of the Declaration, but can be applied for later if the applicant shows good cause for late

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<sup>11/</sup> 44 C.F.R. §206.112.

<sup>12/</sup> 7 C.F.R. §280.1.

filing.<sup>13/</sup> The application deadline for the Disaster Loan program administered by the SBA is published in the Federal Register following the disaster. The SBA will accept applications beyond the deadline based on a finding of substantial causes beyond the control of the applicant.<sup>14/</sup>

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<sup>13/</sup> 20 C.F.R. §625.8(a).

<sup>14/</sup> 13 C.F.R. §123.3(b).

All application deadlines may be extended, unless this would result in an extension of the application deadline beyond the benefit period. The Regional Director or Disaster Recovery Manager (DRM) may extend the registration deadline for Individual and Household Assistance when the state requests more time, or to establish the same deadline for contiguous counties or states.<sup>15/</sup> Generally, the Governor's Authorized Representative (GAR) must request a modification of the FEMA-State Agreement in order to extend filing deadlines. Modifications must be approved by the FEMA Regional Director, or the Disaster Recovery Manager (DRM).

### **B. Inspection of the Disaster Dwelling**

The homes of all disaster victims who apply for Individual and Household Assistance must be inspected by FEMA-hired inspectors to determine if they can be lived in, and the extent of any damage to the dwelling and/or personal property. In addition to determining the condition of the dwelling and its contents, the inspector also makes a determination as to whether the applicant is an owner or a renter, and whether the applicant is the "head of household." The registration and the inspection report are the sole documents used to make initial determinations of eligibility and the type and amount of assistance for Individual and Household Assistance.

### **C. Eligibility of Immigrants**

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<sup>15/</sup> 44 C.F.R. §206.112(b).

Written FEMA policy requires that applicants for disaster food stamps, disaster unemployment benefits, disaster housing assistance and assistance to meet other needs must be either U.S. citizens or “qualified aliens” as defined under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).<sup>16/</sup> A copy of FEMA’s policy is attached as Appendix A.

As anyone who has dealt with the “qualified alien” definition in the welfare context will acknowledge, making a determination that someone meets the definition of “qualified alien” is an extremely complex and often time consuming process. It is particularly ill-suited to the type of quick ad-hoc decision making required in a disaster setting. FEMA, which directly administers the disaster housing assistance and usually the assistance to meet other needs as well, is organized to get help to those in need and is antagonistic to rules that hinder that service. As a result, the workers on the ground often used various generalized interpretations of the rule to provide assistance. For example, it was generally accepted by many FEMA workers that a social security card was proof of “qualified alien status” while absence of a social security card/number demonstrated failure to achieve the status. Similarly FEMA instructed workers that they could help an entire family (at least with in-kind assistance) if any member of the family, including a child was eligible. Certainly these were all well intentioned efforts to help families in desperate need. Whether FEMA will make any attempt to recoup the benefits provided in these situations remains to be seen.<sup>17/</sup>

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<sup>16/</sup> Codified at 42 U.S.C. §§601, *et seq.*

<sup>17/</sup> Please see Section III.D.4.d. below for a discussion of FEMA’s recoupment process.

### III. TYPES OF DISASTER ASSISTANCE AND SPECIFIC LEGAL ISSUES

#### A. FOOD STAMPS

Food stamps are available in three different situations following a disaster. First, people who are destitute or whose housing expenses are greater than their gross income are entitled to **expedited food stamps**.<sup>18/</sup> Second, households are entitled to **replacement food stamps** if they were participating in the Food Stamp Program at the time of the disaster and their food was destroyed as a result of the disaster.<sup>19/</sup> And, third, disaster victims may be eligible for **disaster food stamps** following a disaster, under criteria developed for that particular disaster.<sup>20/</sup> All three types of food stamps are provided through the state welfare agency.

The availability of **replacement food stamps** and **disaster food stamps** is governed by decisions made by the Food and Nutrition Service of the U.S. Department of Agriculture in conjunction with the state welfare agency following each disaster. In order for Department of Agriculture to authorize issuance of replacement and disaster food stamps, it must find that: (1) the disaster has disrupted commercial channels of food distribution, (2) disaster victims are in need of temporary food assistance, and (3)

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<sup>18/</sup> 7 U.S.C. §2020(e)(9); 7 C.F.R. §273.2(i).

<sup>19/</sup> 7 U.S.C. §2014(h)(3)(A); 7 C.F.R. §280.1.



commercial channels of food distribution have again become available.<sup>21/</sup>

Administrative decisions regarding whether to make **replacement food stamps** and **disaster food stamps** available are made within the first few days after the disaster. Because the time frame is so short, FLS will take the lead role in working with state and federal agencies to advocate for this type of assistance. However, local legal aid offices will need to provide FLS with as much background information regarding local conditions as necessary to support FLS advocacy efforts. In addition, because many decisions on implementing the **replacement** and **disaster food stamp** programs are left to local agency discretion, local legal aid programs will need to take the lead role in advocating with local agencies for replacement and disaster stamps in their area(s), for effective notice to potentially eligible households, and for adequate time frames for disaster victims to respond and obtain the food stamps.

### 1. Expedited Food Stamps

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<sup>20/</sup> 7 U.S.C. §2014(h)(1); 7 C.F.R. §280.1.

<sup>21/</sup> *Id.*

Expedited food stamps are available to needy people, whether or not a disaster has occurred. An eligible applicant must receive food stamps within seven calendar days of application.<sup>22/</sup> To be eligible, a person must either have less than \$150 in gross monthly income and \$100 or less in liquid resources, have a combined gross household income that is less than the household's housing expenses, or be a destitute migrant or seasonal worker.<sup>23/</sup>

## **2. Replacement Food Stamps**

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<sup>22/</sup> 7 C.F.R. §273.2(i)(3)(i).

<sup>23/</sup> 7 C.F.R. §273.2(i)(1); *see also* 7 C.F.R. §273.10(e)(3)(describing destitute migrant or seasonal farm worker households).

Following a declaration of disaster, the Secretary of Agriculture must provide for issuance of replacement food stamps to households receiving food stamps at the time of the disaster to replace food destroyed during the disaster.<sup>24/</sup> Replacement food stamps should be at least equal to the amount of food lost but may not be greater than the applicable maximum monthly allotment for the household's size.<sup>25/</sup>

### **3. Disaster Food Stamps**

After consultation with the Federal Coordinating Officer (FCO), the Secretary may also authorize issuance of food stamps to all disaster victims in households found to be in need of temporary food assistance.<sup>26/</sup> The eligibility criteria for this type of food stamps are determined by the Secretary after the disaster and may be very broad, so that persons who would not ordinarily be eligible for food stamps are rendered eligible for disaster food stamps.<sup>27/</sup> The Secretary typically dispenses with normal income and resource criteria and authorizes the maximum food stamp allotment to each disaster-affected household based on its size. The Secretary is also required to

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<sup>24/</sup> 7 U.S.C. §2014(h)(3); 7 C.F.R. §280.1.

<sup>25/</sup> *Id.*

<sup>26/</sup> 7 U.S.C. §2014(h)(1); 7 C.F.R. §280.1.

<sup>27/</sup> *Id.* During a Disaster Food Stamp program, DCF often suspends strict verification requirements because identity papers, including immigration documents, are unavailable after a disaster.

establish a Food Stamp Disaster Task Force to assist states in implementing and operating the disaster food stamp program, and may send members of the Task Force to the disaster area.<sup>28/</sup>

#### **4. Advocacy Issues**

Since the Department of Agriculture has broad authority to establish standards of eligibility for disaster food stamps for each disaster, it is important to have input into decision-making process as early as possible. The local legal aid program should immediately assess the need for them, collaborate with local officials and agencies to advocate for Disaster Food Stamps, and collaborate with FLS to contact the U.S. Department of Agriculture and the Federal Coordinating Officer as soon as possible to assure that the needs of low-income disaster victims are considered in whether and how to make these benefits available.

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<sup>28/</sup> 7 U.S.C. §2014(h)(2).

Once these benefits are authorized, legal aid staff should work closely with local officials and agencies and with the USDA's Food and Nutrition Service to ensure that the Disaster Food Stamp program is adequately advertised, available for a meaningful time, and administered in a manner that low-income people learn about and receive the food stamps for which they are eligible. Federal law requires the Secretary to adjust issuance methods and other application requirements in accordance with conditions in the disaster area.<sup>29/</sup> In particular, the Secretary must consider conditions that make reliance on electronic benefit transfers impracticable, and any disruption in transportation and communications.<sup>30</sup> Since flyers in the appropriate language may be the only effective means of getting information out to low-income people after a catastrophic disaster, legal aid staff may want to advocate for their dissemination, and/or attempt to disseminate them themselves.

Finally, local legal aid programs should work collaboratively with FLS as needed to press the state coordinating officer to request an extension of the Disaster Food Stamp program because of difficulties in disseminating and receiving information, transportation problems, and the need for disaster victims to take care of more immediate needs, such as shelter.

## **B. DISASTER UNEMPLOYMENT ASSISTANCE**

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<sup>29/</sup> 7 U.S.C. §2014(h)(3)(B).

<sup>30/</sup> *Id.*

Disaster Unemployment Assistance (DUA) may be made available following a major disaster to anyone who has become unemployed as a result of the disaster but who is not eligible for ordinary unemployment compensation benefits (UCB).<sup>31/</sup> Legal aid advocates should check the Declaration of Disaster to determine if DUA was designated as a disaster benefit. If it was not, staff should begin gathering information to establish the need for these benefits, and work through FLS to urge the governor to request that this assistance be authorized.

In Florida, at the current time, DUA is administered by the state employment security office the Agency for Workforce Innovation (AWI). It is available for the length of time prescribed in the Declaration of Disaster, but for a period no longer than 26 weeks following the declaration, as long as the applicant's disaster-caused unemployment continues.<sup>32/</sup> A disaster victim must apply to the state employment security office for DUA within 30 days of the declaration of disaster, but can apply beyond the deadline if s/he shows good cause for late filing.<sup>33/</sup> However, the victim cannot apply after the expiration of the DUA benefit period.

## **1. Eligibility**

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<sup>31/</sup> 42 U.S.C. §5177(a).

<sup>32/</sup> 42 U.S.C. §5177(a).

<sup>33/</sup> 20 C.F.R. §625.8(a).

Applicants for DUA must show that their unemployment is a direct result of the disaster.<sup>34/</sup> As with ordinary UC, applicants must generally be able and available to work.<sup>35/</sup> However, both individuals who are unable to work because of an injury caused by the disaster and self-employed individuals performing activities for the purpose of enabling them to resume self-employment are deemed to meet this requirement.<sup>36/</sup> In addition, an applicant is considered unemployed for purposes of DUA if any of the following occur: (a) the applicant lost a job as a result of the disaster (whether the job had already begun or did not commence as a result of the disaster); (b) the applicant is unable to reach the place of employment because of the disaster; or (c) the applicant has become the family breadwinner as a result of the disaster-caused death of the head of the household.<sup>37/</sup>

## **2. Re-employment Assistance**

Federal law also requires a State to provide re-employment assistance

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<sup>34/</sup> 20 C.F.R. §625.4(d); 20 C.F.R. §625.5(c).

<sup>35/</sup> 20 C.F.R. §625.4(g).

<sup>36/</sup> 20 C.F.R. §625.4(g); 20 C.F.R. §625.5(a)(5).

<sup>37/</sup> 20 C.F.R. §625.5(a)(2)-(4).

services to people rendered unemployed by a major disaster,<sup>38/</sup> whether or not they apply for DUA.<sup>39/</sup>

### **3. Advocacy Issues**

There are three areas of systemic advocacy that require attention: publicity regarding DUA and re-employment assistance, and extensions of the application deadline. First, because DUA eligibility criteria are much broader than for ordinary UC, legal aid clients must be notified that they may be eligible for these benefits. Legal aid programs may wish to distribute flyers widely and to urge the state unemployment compensation office that administers the benefits to publicize them on available local media.

Second, the 30-day deadline for applications is extremely short, especially if a catastrophic disaster has occurred. Local legal aid programs should work collaboratively with FLS to press the state coordinating officer to request an extension of this deadline because of difficulties in disseminating and receiving information, transportation problems, and the need for disaster victims to take care of more immediate needs, such as food and shelter.

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<sup>38/</sup> 42 U.S.C. §5177(b).

<sup>39/</sup> 20 C.F.R. §625.3.



Third, even disaster victims who do not qualify for DUA are eligible for re-employment services if they have become unemployed because of the disaster.<sup>40/</sup> Services that must be provided include counseling, job referrals, and training to assist unemployed disaster victims to obtain re-employment as soon as possible.<sup>41/</sup> It is therefore important to widely disseminate information on the availability of these services to low-income disaster victims.

### **C. ASSISTANCE TO LOW-INCOME MIGRANT/SEASONAL FARM WORKERS**

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<sup>40/</sup> 42 U.S.C. §5177(b); 20 C.F.R. §625.3(a).

<sup>41/</sup> 20 C.F.R. §625.3(a).

Following a federal state or local emergency or disaster, the Secretary of Agriculture may make grants to provide emergency services to low-income migrant and seasonal farm workers.<sup>42/</sup> The grants must be awarded to public agencies or private nonprofit organizations that have experience in providing emergency services to low-income migrant and seasonal farm workers.<sup>43/</sup> Before awarding grants, the Agriculture Department must first determine that an emergency or disaster has caused low-income migrant or seasonal farm workers either (1) to lose income, (2) to be unable to work, or (3) to stay home or return home in anticipation of work shortages.<sup>44/</sup> “Low-income migrant or seasonal farm workers” are people who (1) performed farm work for wages 12 consecutive months during the past 2 years, (2) had an annual family income during those 12 consecutive months less than the poverty level or 70 percent of the lower living standard income level, whichever is higher; and (3) received at least half of their income or worked at least half-time in farm work.<sup>45/</sup>

The authority to make grants, administer the grant program and determine the types of assistance to be provided to aid low-income migrant and seasonal farm workers

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<sup>42/</sup> 42 U.S.C. 5177a(a).

<sup>43/</sup> *Id.*

<sup>44/</sup> *Id.*

<sup>45/</sup> 42 U.S.C. §5177a(b).

impacted by an emergency or disaster has been delegated to the Administrator, Rural Housing Service.<sup>46/</sup>

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<sup>46/</sup> 7 C.F.R. §2.49(a)(3).

#### **D. SECTION 403 SHORT-TERM LODGING PROGRAM**

Because of the huge number of people displaced following Hurricane Katrina on August 29, 2005, FEMA initiated an emergency housing assistance program under Section 403 of the Stafford Act, 42 U.S.C. §5170b(a)(3)(B), also known as the Stafford Act's "public assistance" provision. This section of the law allows FEMA to perform "work or services essential to saving lives and protecting and preserving property or public health and safety, *including ... emergency shelter...*"<sup>47/</sup> Immediately after Hurricane Katrina, FEMA authorized the Red Cross to house displaced disaster victims in hotels and motels through the "Direct Payment Hotel/Motel Program" until they were able to find more permanent housing. However, since many of the communities to which the disaster victims had been relocated were overwhelmed by the influx of new residents, many were unable to find more permanent lodging.

On October 24, 2005, FEMA took over the Red Cross administered hotel and motel program, which became known as the "Short-Term Lodging Program." It is believed that this is the first time that FEMA has directly administered a hotel and motel housing program. Unlike FEMA's Temporary Housing Assistance program (THA - see *below*), there are no federal regulations and there were no written rules at the time the Short-Term Lodging Program was initiated.

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<sup>47/</sup> 42 U.S.C. §5170b(a)(3)(B).

On November 15, 2005, FEMA abruptly announced that it would cease funding its Section 403 Short-Term Lodging Program on November 30, 2005. A class action suit was filed to enjoin this immediate termination and seeking other relief. *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, Nov. 10, 2005). On plaintiffs' motion for preliminary relief, the federal district court found that the disaster victims remaining in the Short-Term Lodging Program were the most economically disadvantaged of the disaster victims and that by arbitrarily terminating this assistance, FEMA was discriminating against victims on the grounds of economic status in violation of the Stafford Act, 42 U.S.C. §5151.<sup>48/</sup> The court therefore ordered that FEMA continue assistance under the Short-Term Lodging Program at least until January 7, 2006, and also ordered that every disaster victim be given at least 2 weeks notice before termination of this assistance.

On June 16, 2006, the court entered an order permanently enjoining FEMA from terminating Section 403 assistance until at least 2 weeks following notice to disaster victims of their denial or eligibility for Section 408 Temporary Housing Assistance.<sup>49/</sup>

## **E. INDIVIDUAL AND HOUSEHOLD PROGRAM (IHP)**

The Individual and Household Program (IHP) contains two parts: Temporary Housing Assistance (THA),<sup>50/</sup> and Financial Assistance to Address Other

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<sup>48/</sup> *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, Dec. 12, 2005).

<sup>49/</sup> *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006).

<sup>50/</sup> 44 C.F.R. §206.117. This program was formerly known as the Temporary Housing Assistance (THA) Program.

Needs (ONA).<sup>51/</sup> The maximum amount of assistance that an individual or household may receive under both programs is \$25,000, adjusted yearly for inflation.<sup>52/</sup>

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<sup>51/</sup> 44 C.F.R. §206.119. This program was formerly known as the Individual and Family Grant (IFG) Program.

<sup>52/</sup> 44 C.F.R. §206.110(b).

To be eligible for IHP, a disaster victim must “register” either by calling the FEMA tele-registration number or applying in person at a disaster recovery center (DRC) within the registration period. The initial registration period is usually 60 days from the date of the disaster, but this period can be extended by FEMA.<sup>53/</sup> Although IHP assistance is a need-based benefit, there are no income or resource eligibility guidelines. In order to be eligible, applicants must establish that they have incurred a disaster-related serious need in the state in which the disaster has been declared.<sup>54/</sup> Residency in the state is not required,<sup>55/</sup> but in order to qualify for housing assistance, the applicant must show that the disaster-related damage is to the applicant’s primary residence.<sup>56/</sup>

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<sup>53/</sup> 44 C.F.R. §206.112.

<sup>54/</sup> 44 C.F.R. §206.113(a).

<sup>55/</sup> 44 C.F.R. §206.113(a)(1).

<sup>56/</sup> 44 C.F.R. §206.113(a)(8),(9).

Applicants who live in a special flood hazard area may not receive FEMA assistance for construction or repair of real property or to purchase insurable contents, unless the local community participates in the National Flood Insurance Program (NFIP).<sup>57/</sup> Applicants in a special flood hazard area who receive assistance due to flood damage must maintain flood insurance on the property at least in the amount of the disaster assistance.<sup>58/</sup> When assistance is received to repair or construct a home, the flood insurance requirement is transferred to any subsequent owner.<sup>59/</sup>

IHP assistance may not be counted as income or resources for purposes of determining eligibility for or the amount of benefits under federally-funded income assistance or resource-tested benefit programs.<sup>60/</sup> IHP assistance is exempt from garnishment, levy, seizure, encumbrance, execution, pledge, attachment, release, and waiver.<sup>61/</sup>

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<sup>57/</sup> 44 C.F.R. §206.110(k)(1), (2). If the community is not participating at the time of the disaster, but enters the NFIP during the six months following the declaration, FEMA may process assistance applications if the GAR requests a time extension.

<sup>58/</sup> 44 C.F.R. §206.110(k)(3).

<sup>59/</sup> 44 C.F.R. §206.110(k)(3)(i)(A).

<sup>60/</sup> 42 U.S.C. §5155(d); 44 C.F.R. §206.110(f).

<sup>61/</sup> 44 C.F.R. §206.110(g).



## 1. TEMPORARY HOUSING ASSISTANCE (THA)

The housing assistance portion (THA) of the Individual and Household Program is administered directly by FEMA. The program provides financial assistance or actual housing to victims whose primary residences were destroyed, made uninhabitable or inaccessible as a result of the disaster.<sup>62/</sup> There are four forms of THA: (1) money for renting alternate housing, (2) rent-free occupancy in federally provided temporary housing, (3) money for repair of owner-occupied housing, and (4) money for replacement of owner-occupied housing.<sup>63/</sup> FEMA determines the appropriate type of housing assistance based on cost effectiveness, convenience to the disaster victims, and the suitability and availability of assistance.<sup>64/</sup> Disaster victims are expected to accept the first offer of housing assistance, and unwarranted refusal can result in forfeiture of housing assistance.<sup>65/</sup>

### **a. Eligibility**

To obtain THA, applicants must show that (1) as a direct result of a major disaster or emergency, (2) their home was destroyed, made uninhabitable, or made inaccessible or unavailable, and (3) that the housing assistance needed (i.e., temporary rental assistance, mobile home, repair of the home, or its replacement) is

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<sup>62/</sup> 44 C.F.R. §206.113(a)(8),(9).

<sup>63/</sup> 42 U.S.C. §5174(c); 44 C.F.R. §206.117(b). Previously, FEMA administered a program of rental and mortgage assistance for individuals and households who remained in their pre-disaster housing but were unable to pay the rent or mortgage as a result of the disaster. That program no longer exists, and the mere inability to pay the mortgage or rent no longer qualifies a household for assistance. However, if the lack of money is due to loss of employment, they may qualify for disaster unemployment assistance (DUA).

<sup>64/</sup> 42 U.S.C. §5174(b)(2)(A); 44 C.F.R. §206.110(c).

<sup>65/</sup> *Id.*

either not covered by the applicant's insurance policy, or that the amount of insurance is insufficient to cover the damage.<sup>66/</sup>

Two federal district courts have held that disaster victims have a property interest in THA protected by the due process clause of the 5<sup>th</sup> amendment once FEMA has made the finding that they satisfy the above eligibility criteria.<sup>67</sup>

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<sup>66/</sup> 44 C.F.R. §206.113(a).

<sup>67/</sup> *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006); *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C. 2006), *appeal filed* (D.C.Cir., Dec. 5, 2006).

Federal specifically provides that it is **not** necessary for a disaster victim to apply for an SBA disaster loan in order to be eligible for THA.<sup>68/</sup> Despite this specific prohibition, following Hurricane Katrina, FEMA required many applicants to apply for an SBA loan, with the result that their THA assistance was either greatly delayed or denied. The federal district court in *McWaters v. FEMA*<sup>69/</sup> permanently enjoined FEMA from requiring disaster victims to apply for an SBA loan prior to receiving THA and ordered FEMA to notify disaster victims that this is not a requirement.

During the initial interview, the FEMA representative makes an initial determination of whether the applicant has insurance coverage and marks the application form accordingly. Applicants with insurance coverage must establish either that (1) the proceeds of the insurance policy are less than the amount of their disaster-related damages and also less than the maximum amount that FEMA can authorize, or (2) that they have been unable to obtain payment from their insurance company (denial of claim or significant delay in receiving proceeds).<sup>70/</sup> Applicants with adequate insurance

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<sup>68</sup> 42 U.S.C. §5174(a)(2).

<sup>69/</sup> Civ. No. 05-5488 (E.D. LA, June 16, 2006).

<sup>70/</sup> 44 C.F.R. §206.113(a)(2),(3),(4). Even fully insured disaster victims are eligible for IHP temporary housing assistance benefits if they have made reasonable efforts to secure payment from their insurance company but have been unable to do so, and they have agreed to repay FEMA from any insurance proceeds they later receive. 44 C.F.R. §206.113(a)(3).

coverage who refuse insurance proceeds are ineligible.<sup>71/</sup>

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<sup>71/</sup> 44 C.F.R. §206.113(b)(6).

During the initial interview, the FEMA representative also makes a determination of who is in the household. A “household” consists of all the people “who lived in the pre-disaster residence who request assistance,” as well as people “expected to return during the assistance period.”<sup>72/</sup> FEMA provides assistance for one temporary housing residence for each household unless they find that the size or the nature of the household requires more than one residence.<sup>73/</sup>

***b. Types of Assistance***

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<sup>72/</sup> 44 C.F.R. §206.111.

<sup>73/</sup> 44 C.F.R. §§206.117(b)(1)(i)(A); 206.117(b)(ii)(B).

(i) *Financial Assistance.* The primary type of housing assistance provided by FEMA following a disaster is money to rent alternate housing.<sup>74/</sup> FEMA typically provides eligible applicants with a check to cover rental housing for one to three months. The monthly amount of the THA rental benefit is required to be at least the amount of HUD's fair market rental value for the area of the applicant's residence.<sup>75/</sup> FEMA regulations provide that THA rental assistance may not be used to pay security deposits.<sup>76/</sup> Although FEMA regulations also state that THA may be used to pay utility costs only if the costs are part of the rental charge,<sup>77/</sup> the federal district court in *Watson v. FEMA*,<sup>78/</sup> found that by using the term "fair market rent" in the Stafford Act, Congress' intent was to require FEMA to apply this HUD concept, which includes utility costs as part of the rental amount, to disaster rental assistance. The court therefore entered a mandatory injunction requiring FEMA to reimburse THA recipients the full amount of HUD's fair market for their area of residence, and to allow recipients to use any THA benefits in excess of their rent to help pay the cost of utilities.<sup>79/</sup> The *Watson* court also required FEMA to notify THA rental assistance recipients that they could use the difference between HUD's fair market rent and their monthly rent to help pay for

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<sup>74/</sup> 44 C.F.R. §206.117(b)(1)(i). FEMA may also provide cash assistance to pay for transportation, utility hookups, or installation of manufactured housing units to be used for housing. *Id.*

<sup>75/</sup> 42 U.S.C. §5174(c)(1)(A)(ii); 44 C.F.R. §206.177(b)(1)(i)(B); *Watson v. FEMA*, Civ. No. H-06-1709, (S.D. TX, July 13, 2006).

<sup>76/</sup> 44 C.F.R. §206.117(b)(1)(i)(C).

<sup>77/</sup> *Id.*

<sup>78/</sup> Civ. No. H-06-1709 (S.D. TX, July 13, 2006).

<sup>79/</sup> *Watson v. FEMA*, Civ. No. H-06-1709 (S.D. TX, July 13, 2006).

utilities.<sup>80/</sup>

(ii) *Direct Assistance.* FEMA may provide temporary housing units, usually in the form of mobile homes, to disaster victims whose homes are destroyed or rendered uninhabitable and who would be unable to make use of cash rental assistance.<sup>81/</sup> In the past, FEMA has failed to provide handicapped accessible mobile homes equipped with wheelchair ramps, grab bars in bathrooms and wheelchair maneuvering room. This practice was challenged in *Brou v. FEMA*,<sup>82/</sup> by advocates of disabled Hurricane Katrina victims as violating Section 504 of the Rehabilitation Act, and the Fair Housing Act. Under the resulting court-approved settlement, FEMA agreed to ensure that 5 percent of FEMA trailers at group sites would meet Uniform Federal Accessibility Standards, and to provide various procedural safeguards to disabled disaster victims.<sup>83/</sup>

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<sup>80/</sup> *Id.*

<sup>81/</sup> 42 U.S.C. §5174(c); 44 C.F.R. §206.117(b)(1)(ii).

<sup>82/</sup> Civ. No. 06-0838 (E.D.LA, *filed* Feb. 16, 2006).

<sup>83/</sup> *Brou v. FEMA*, Civ. No. 06-0838 (E.D.LA, Sep. 26, 2006).

Mobile homes must be placed on FEMA approved sites.<sup>84/</sup> FEMA does not pay utility costs unless utility services are part of the site rental.<sup>85/</sup> This type of assistance is generally available only for a maximum of 18 months, but this period may be extended under extraordinary circumstances if an extension would be in the public interest.<sup>86/</sup> FEMA may charge fair market rent to people remaining in units after 18 months.<sup>87/</sup>

FEMA regulations provide that they may terminate the provision of actual housing if: (1) the 18 month period of assistance has expired and not been extended; (2) Adequate alternative housing has become available; (3) The occupant obtained the housing assistance through fraud or misrepresentation; (4) The occupant fails to comply with the lease or other site rules; or (5) The occupant fails to provide evidence showing that they are working toward a permanent housing plan.<sup>88/</sup> The regulations also state that FEMA will provide 15 days notice of the termination, and

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<sup>84/</sup> 44 C.F.R. §206.117(b)(1)(ii)(C), (E).

<sup>85/</sup> 44 C.F.R. §206.117(b)(1)(ii)(D).

<sup>86/</sup> 42 U.S.C. §5174(c)(1)(B)(ii); 44 C.F.R. §206.110(e).

<sup>87/</sup> 42 U.S.C. §5174(c)(B)(iii); 44 C.F.R. §206.117(b)(F).

<sup>88/</sup> 44 C.F.R. §206.117(b)(1)(ii)(G).



specify the reason for the termination and the process to be followed on appeal.<sup>89/</sup> If a client is being dispossessed in this manner, advocates should consider initiating an action in a court of competent jurisdiction for violation of state landlord/tenant law.

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<sup>89/</sup> 44 C.F.R. §206.117(b)(1)(ii)(H).

(iii) *Grants for Home Repairs and Hazard Mitigation.* If the Disaster Declaration provides for it, FEMA may make available a limited amount of money for repairs to uninsured disaster-related damages to an owner's primary residence, utilities, and residential infrastructures such as private access routes, as well as assistance for hazard mitigation measures that reduce the likelihood of future damage to damaged residences, utilities or infrastructure.<sup>90/</sup> This assistance is available only if (1) the damage to the home is disaster related; (2) the home is owner occupied; (3) the damage is not covered by insurance; and (4) the cost of repairs does not exceed \$5,000 adjusted annually for inflation.<sup>91/</sup> Repairs must conform to local and state building codes.<sup>92/</sup> Money for repairs may not be used for improvements or additions to the pre-disaster condition of the property unless these are required to comply with local and state ordinances or eligible mitigation measures.<sup>93/</sup>

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<sup>90/</sup> 42 U.S.C. §5174(c)(2)(A); 44 C.F.R. §206.117(b)(2)(i),(iii).

<sup>91/</sup> 42 U.S.C. §206.5174(c)(2); 44 C.F.R. §206.117(b)(2).

<sup>92/</sup> 44 C.F.R. §206.117(b)(2)(v).

<sup>93/</sup> 44 C.F.R. §206.113(b)(5).

Although recipients of home-repair or hazard-mitigation grant under the IHP housing assistance program must show that the damage for which they seek assistance is not covered by insurance, they cannot be required to show that they are unable to obtain assistance from any other means.<sup>94/</sup> In particular, and in contrast to Financial Assistance to Address Other Needs,<sup>95/</sup> an uninsured homeowner cannot be required to show that s/he is ineligible for an SBA disaster loan in order to qualify for home-repair or hazard-mitigation assistance.<sup>96/</sup> In fact, a homeowner may be eligible for IHP housing assistance to cover emergency repairs, and may also qualify for an SBA loan for more extensive repairs. However, the owner is required to use the proceeds of the SBA loan to repay the IHP grant if it was used for repairs or measures also eligible for an SBA loan.<sup>97/</sup>

*(iv) Replacement of Primary Residence.* If the disaster declaration so provides, FEMA may award up to \$10,000 (adjusted annually for inflation) for replacement of a primary residence that incurred more than \$10,000 (adjusted annually for inflation) in disaster-related damage.<sup>98/</sup> This type of assistance must be individually approved by the Associate Director of FEMA. The applicant may either purchase a

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<sup>94/</sup> 42 U.S.C. §5174(c)(2)(B); 44 C.F.R. §206.117(2)(iv).

<sup>95/</sup> See Part , below.

<sup>96/</sup> 42 U.S.C. §5174(a)(2), (c)(2)(B); 44 C.F.R. §206.117(b)(2)(iv); see also, *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006), in which the federal district court permanently enjoined FEMA from requiring applicants for THA to complete an SBA loan application as a prerequisite to receiving THA.

<sup>97/</sup> 13 C.F.R. §123.101(c); see also, 42 U.S.C. §5155(a),(b); .

<sup>98/</sup> 44 C.F.R. §206.117(b)(3). Replacement assistance may be provided to applicants with damages less than \$10,000 in extraordinary circumstances, based on a finding that replacement assistance is more appropriate than other forms of housing assistance. *Id.*

replacement residence for \$10,000, or apply the grant toward the purchase of a more costly home.<sup>99/</sup>

## **2. FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS**

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<sup>99/</sup> *Id.*

The Financial Assistance to Address Other Needs (ONA) part of the IHP program must be requested by the Governor, and listed as a designated type of assistance in the Declaration of Disaster.<sup>100/</sup> The purpose of ONA is to assist disaster victims in replacing personal property and paying for transportation, disaster-related medical, dental, funeral and other necessary expenses and serious needs.<sup>101/</sup> The amount of assistance cannot exceed \$25,000 (adjusted annually for inflation) less the amount of any THA received.<sup>102/</sup>

Depending on the arrangement chosen by the state, the ONA program may be administered by the state or by FEMA.<sup>103/</sup> If the state chooses to administer the program, it must have in place an approved State Administrative Plan (SAP).<sup>104/</sup> If the state will be administering the ONA program, legal aid advocates should

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<sup>100/</sup> 42 U.S.C. §5174(f); 44 C.F.R. §206.40(a).

<sup>101/</sup> 42 U.S.C. §5174(e); 44 C.F.R. §206.119(a),(b).

<sup>102/</sup> 42 U.S.C. §5174(h); 44 C.F.R. §206.110(b).

<sup>103/</sup> 44 C.F.R. §206.120(a),(b). As of the 2004 hurricane season, Florida has chosen to allow FEMA to administer the "Other Needs" program.

<sup>104/</sup> 44 C.F.R. §206.120(c). The State Administrative Plan (SAP) should be in place before the disaster. By November 30 of each year, the state is required to submit to FEMA the SAP, an annual update, or a letter

obtain a copy of the State Administrative Plan from FLS or the State Coordinating Officer (SCO) as soon as possible.<sup>105/</sup>

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stating that the SAP is still current, for FEMA's review and approval by December 31. *Id.*

<sup>105/</sup> Other likely sources of the SAP are the Governor's office, the office of the Governor's Authorized Representative (GAR), the FEMA Regional Office, and/or the Disaster Field Office (DFO).

The State Administrative Plan must include procedures for (1) notifying potential applicants of the availability of the program (including application deadlines, program descriptions and eligibility guidelines), (2) registration and acceptance of applications and late applications, (3) damage inspections,(4) eligibility determinations, (5) notification of eligibility, (6) payment of grants, (7) appeal processing, and (8) protection of applicant privacy.<sup>106/</sup>

**a. Eligibility Requirements**

Like THA, ONA is need based, but not means or resource tested. To be eligible, applicants must show that they incurred necessary expenses or have serious needs as a result of the disaster for which they cannot obtain relief through other means, including a Disaster Loan from the SBA.<sup>107/</sup> An applicant must exhaust all other sources of potential assistance by applying for insurance reimbursement and/or for assistance from the SBA Disaster Loan Program.<sup>108/</sup> With respect to insurance, if the disaster-related expense is covered by an insurance policy, the applicant must demonstrate either that the proceeds will be insufficient to cover the necessary expense or serious need and are less than the maximum amount of assistance available through FEMA,<sup>109/</sup> or that the insurance payment has been unduly delayed and the applicant has agreed to repay FEMA from insurance proceeds.<sup>110/</sup> With respect to an SBA Disaster

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<sup>106/</sup> 44 C.F.R. §206.120(d)(3).

<sup>107/</sup> 44 C.F.R. §§206.110(a); 206.119(a)(1),(2),(3).

<sup>108/</sup> *Id.*

<sup>109/</sup> 44 C.F.R. §206.113(a)(4).

<sup>110/</sup> 44 C.F.R. §206.113(a)(3).

Loan, the applicant must show that s/he has applied and either been denied, or that the loan will be insufficient to cover the necessary expenses or serious needs.<sup>111/</sup>

***b. Application Process***

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<sup>111/</sup> 44 C.F.R. §206.119(a).



At the time of the initial interview, the FEMA representative determines whether the applicant, based on the applicant's income, is potentially eligible for an SBA loan.<sup>112/</sup> If the applicant is found ineligible for an SBA loan at the time of the initial interview, the application form is so marked, and the applicant is referred to the ONA program.

The extent of an applicant's real and personal property losses are determined by a FEMA inspector during an on-site visit. The ONA program bases its findings of eligibility and the amount of the grant on the FEMA inspector's report. ONA grants may be used only to repair or replace the damaged or destroyed items listed in the award letter.

The conditions engendered by a disaster, particularly a catastrophic disaster, result in many errors in FEMA inspection reports. Therefore, whenever possible, advocates should advise disaster victims to take photographs of the damage to their homes or personal property. In cases of disagreement with the inspection report, the applicant should support an appeal with photographs as well as sworn statements from landlords, neighbors, or friends regarding the extent of the damage.

### ***c. Types of Assistance.***

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<sup>112/</sup> See 44 C.F.R. §206.119(a).

ONA grants are available in any amount for which the applicant qualifies, so long as the \$25,000 maximum (adjusted for inflation) for all types of IHP assistance to an individual or household is not exceeded.<sup>113/</sup> Covered items include medical, dental and funeral expenses for disaster related injury or death, disaster related damage or destruction of personal property (including automobiles), and money for transportation and specific other expenses.<sup>114/</sup>

*(i) Medical and Dental Expenses.* Medical expenses are generally limited to medical costs, dental costs and repair or replacement of medical equipment.<sup>115/</sup>

*(ii) Funeral Expenses.* This coverage is generally limited to the cost of funeral services, burial or cremation and other related funeral expenses.<sup>116/</sup>

*(iii) Repair or Replacement of Personal Property.* This assistance is generally limited to coverage of (1) clothing, (2) household items, furnishings and appliances, (3) tools, specialized or protective clothing, and equipment required by an employer as a condition of employment,<sup>117/</sup> (4) computers, uniforms, school books and supplies required for educational purposes, and (5) cleaning or

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<sup>113/</sup> 42 U.S.C. §5174(h); 44 C.F.R. §206.110(b).

<sup>114/</sup> 44 C.F.R. §206.119(b)(1), (2).

<sup>115/</sup> 44 C.F.R. §206.119(c)(3).

<sup>116/</sup> 44 C.F.R. §206.119(c)(4).

<sup>117/</sup> This assistance is not available to a self-employed applicant, 44 C.F.R. §206.113(b)(9), who will need to rely instead on an SBA disaster loan.

sanitizing eligible personal property items.<sup>118/</sup>

(iv) *Transportation*. This coverage is generally limited to repairing or replacing vehicles and financial assistance for public transportation and any other transportation related costs or services.<sup>119/</sup>

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<sup>118/</sup> 44 C.F.R. §206.119(c)(1).

<sup>119/</sup> 44 C.F.R. §206.119(c)(2).

(v) *Other Expenses*. This category includes (1) moving and storage expenses to avoid additional disaster damage, (2) purchase of a Group Flood Insurance Policy, and (3) other miscellaneous items or services determined to be necessary expenses and serious needs.<sup>120/</sup>

### **3. IHP APPEALS**

Any decision regarding eligibility for assistance or its amount may be appealed within 60 days after the applicant receives notice of the decision.<sup>121/</sup> In addition to denials and insufficient awards, appealable decisions include recoument of assistance, denial of continued housing assistance, termination of direct housing assistance, denial of a request to purchase a FEMA housing unit, and the sale price of a FEMA housing unit.<sup>122/</sup> The appeal must be in writing and signed by the appellant or his/her representative.<sup>123/</sup> Applicants or their representatives may request copies of their

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<sup>120/</sup> 44 C.F.R. §206.119(c)(5), (6).

<sup>121/</sup> 42 U.S.C. §5189a; 44 C.F.R. §206.115(a).

<sup>122/</sup> 44 C.F.R. §206.115(a)(1)-(9).

<sup>123/</sup> 44 C.F.R. §206.115(b). If the appeal is filed by a representative, the applicant must submit a signed statement authorizing the representation. *Id.*

files.<sup>124/</sup> FEMA must issue a decision within 90 days of receipt of the notice of appeal.<sup>125/</sup>

FEMA's decision is final.<sup>126/</sup>

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<sup>124/</sup> 44 C.F.R. §206.115(d). If the request is filed by a representative, the applicant must submit a signed statement authorizing the representation. *Id.*

<sup>125/</sup> 42 U.S.C. §5189a(b); 44 C.F.R. §206.115(f).

<sup>126/</sup> 44 C.F.R. §206.115(f).

If the State administers the “Other Needs” portion of the IHP program, the State Administrative Plan (SAP) is required to set forth the state’s procedures for interacting with applicants, including procedures for appeals by applicants.<sup>127</sup> At a minimum, the state must consider appeals on all issues which FEMA is required to consider.<sup>128/</sup>

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<sup>127/</sup> 44 C.F.R. §206.115(d)(3)(viii).

<sup>128/</sup> *Id.*

## 4. ADVOCACY ISSUES

### a. *FEMA Denial Notices: Due Process Rights*

FEMA notices and procedures regarding denial and termination of assistance have been challenged in recent cases brought on behalf of victims of Hurricane Katrina.<sup>129/</sup> In *ACORN v. FEMA*,<sup>130/</sup> the court held that FEMA notices violated due process because they did not adequately communicate the basis for denying benefits. More recently, plaintiffs in *Ridgely v. FEMA*<sup>131/</sup> are urging the federal court to enjoin FEMA's procedures for termination of benefits and recovery of overpayments because FEMA fails to provide adequate written notice regarding intent to terminate benefits or recover alleged overpayments, clear written statements of the reasons for their action, and a hearing prior to termination or recovery.

Since the *ACORN* case has been appealed, and the *Ridgely* case was filed only recently, the advocate should carefully research the latest federal court decisions and seek to enforce applicable case law that is favorable to low-income clients whenever possible. A good resource is Clearinghouse's FEMA Answers

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<sup>129/</sup> *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C., 2006); *Ridgely v. FEMA*, Civ. No. 07-2146 (E.D.LA, filed April 19, 2007).

<sup>130/</sup> 463 F.Supp.2d 26 (D.D.C., 2006).

<sup>131/</sup> Civ. No. 07-2146 (E.D.LA, filed April 19, 2007).

website.<sup>132/</sup>

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<sup>132/</sup> <http://femaanswers.org>.



## **b. Availability of Rental Housing: The Need for Trailers.**

When massive destruction creates a situation in which there is no housing available to rent, rental assistance is not a useful form of assistance. In this situation, FEMA is authorized to provide mobile homes, travel trailers or other manufactured housing units to people who “lack available housing resources”<sup>133/</sup> and would be “unable to make use of” rental assistance.<sup>134/</sup> Therefore, after a catastrophic disaster, advocates should begin assessing the availability of intact rental units right away, and begin to urge that mobile homes be provided as soon as it is apparent that rental property is not available. Time is particularly of the essence because FEMA may deny mobile homes to applicants who have previously received rental assistance, but if

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<sup>133/</sup> “Alternate housing resources” is defined as “housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, mobile homes and travel trailers.” 44 C.F.R. §206.111.

“Adequate, alternate housing” is defined as “housing that accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant.” 44 C.F.R. §206.111.

“Reasonable commuting distance” is defined as “a distance that does not place undue hardship on an applicant.” 44 C.F.R. §206.111.

<sup>134/</sup> 44 C.F.R. §206.117(b)(1)(ii).

an applicant refuses rental assistance, s/he may be denied all housing assistance.<sup>135/</sup>

FEMA may also fail to provide or adequately disseminate information on the availability of mobile homes and how to obtain them, especially among the low-income community. This may be information that mobile homes are available or information on the criteria being used to determine eligibility for them. Advocates should urge FEMA to provide adequate information to disaster-affected populations as to the availability of mobile homes and the eligibility criteria for obtaining them. Legal aid programs may also want to disseminate this information themselves through flyers or public service announcements.

***c. Accessibility of Trailers to People with Disabilities***

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<sup>135/</sup> 44 C.F.R. §206.110(c). In order to deny all housing assistance because of a refusal of the first offer, FEMA must also find that the refusal was unwarranted. *Id.*

In the past, FEMA has failed to make available mobile homes that accommodate the needs of people with disabilities, e.g., trailers with ramps to enter and exit, roll-in showers, toilets with grab bars, rooms with wide doorways and sufficient space to maneuver a wheelchair, and other accessible design features. This has prevented people with disabilities from receiving this form of assistance. After Hurricane Katrina, advocates for the disabled brought suit in *Brou v. FEMA*,<sup>136/</sup> challenging this practice as violating Section 504 of the Rehabilitation Act<sup>137/</sup> and the Fair Housing Act.<sup>138/</sup> The *Brou* case was settled under terms favorable to the plaintiffs: FEMA agreed to ensure that 5 percent of trailers at group sites would meet Uniform Federal Accessibility Standards and to provide various procedural safeguards to disabled disaster victims. Advocates of future disaster victims should be aware of this litigation issue and ensure that FEMA follows federal accessibility requirements.

***d. The “Shared Household” Issue.***

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<sup>136/</sup> *Brou v. FEMA*, (E.D. LA, filed Feb. 16, 2006).

<sup>137/</sup> 29 U.S.C. §794(a).

<sup>138/</sup> 42 U.S.C. §3604.

FEMA provides assistance to “households,” which consists of all the people “who lived in the pre-disaster residence who request assistance,” as well as people “expected to return during the assistance period.”<sup>139/</sup> FEMA typically issues one check in the name of the “head of household” and/or one mobile home per pre-disaster household.<sup>140/</sup> If the person whom FEMA has determined to be the “head of household” fails to share the assistance, other household members are effectively denied all IHP assistance.<sup>141/</sup> Since many very low-income people share housing in order to be able to afford it, this can result in some disaster victims receiving no assistance. For instance, if two families are sharing a two-bedroom pre-disaster dwelling, one family may apply for disaster benefits and be granted housing assistance for a two bedroom apartment in the form of a check for several months rent. When the second family applies, they will ordinarily be denied because assistance has already been provided to the first family.<sup>142/</sup>

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<sup>139/</sup> 44 C.F.R. §206.111.

<sup>140/</sup> 44 C.F.R. §206.117(b)(1)(i)(A).

<sup>141/</sup> The initial determination of who is the “head of household” of a particular dwelling unit is made by the FEMA inspector who visits the applicant’s pre-disaster dwelling to assess the extent of damage; it is generally based on who has the legal obligation to pay the rent or mortgage for the dwelling.

<sup>142/</sup> A similar situation can occur if several unrelated individuals are sharing a small rental unit, and FEMA issues a check to one of them. Another situation in which one disaster victim may be denied assistance while

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another gets more than s/he is entitled to involves a couple that splits up after the disaster.

However, FEMA regulations also allow the Regional Director to determine that “the size or nature of the household requires” that FEMA provide assistance for more than one residence.<sup>143/</sup> Legal aid advocates can therefore serve an important function by alerting FEMA during the early stages of disaster recovery to the prevalence of shared housing situations among members of the low-income community. If FEMA is aware of these shared housing situations at the time it determines the type and amount of assistance, it may either issue a check in the names of all adults in the household, separate checks for each family or individual, or mobile homes to each, depending on the size or nature of the household.

If FEMA denies assistance to an individual or household in a shared housing situation, legal representatives can nevertheless advocate for their coverage, by showing that their clients did not receive the assistance provided to the “head of the household” through no fault of their own. After Hurricane Andrew in 1992 and the institution of the *Locket v. FEMA* litigation,<sup>144/</sup> FEMA gave disaster housing assistance to applicants who were previously denied if they could show either that: (1) the head of household used the assistance to obtain housing that was too small to accommodate the applicant or too far from the applicant’s work or school or (2) the head of household’s whereabouts were not known to the applicant. Also, following Hurricane Katrina in 2005, the federal district court in *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, June 16, 2006), noted that FEMA modified its “Shared Household” policy and provided separate

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<sup>143/</sup> 44 C.F.R. §206.117(b)(1)(i)(A).

<sup>144/</sup> 836 F.Supp. 847 (S.D. Fla. 1993).

assistance to different members of a single pre-disaster household who were scattered after the storm.

***e. Requirements for Continued THA***

FEMA often fails to communicate to disaster victims who are granted temporary housing assistance what will be required of them in order to show that they continue to be eligible once the initial grant expires. For instance, FEMA usually fails to notify disaster victims in correspondence accompanying or following their initial rental assistance check that in order to receive continued assistance, they will need to provide receipts to establish that they spent the money on rent.

The federal district court in *McWaters v. FEMA*<sup>145/</sup> and *ACORN v. FEMA*<sup>146/</sup> both held that disaster victims have a property interest in temporary housing assistance (THA) protected by the Fifth Amendment to the United States constitution. The courts based these holdings on evidence that established that all persons meeting FEMA's eligibility criteria are provided with assistance, thereby creating a reasonable expectation of this benefit. The *McWaters* court found that since recipients of THA "have protected due process interests in *continuing receipt* of said assistance,"<sup>147/</sup> FEMA is required to "clearly delineate to recipients the necessary standards and

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<sup>145/</sup> Civ. Action 05-5488 (E.D. LA, June 16, 2006).

<sup>146/</sup> 463 F.Supp.2d 26 (D.D.C., 2006)

<sup>147/</sup> *Id.*, p. 40 (*emphasis added*).

requirements to continue receiving such rental assistance.”<sup>148/</sup>

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<sup>148/</sup> *Id.*



Advocates should examine the award letters sent to clients as soon as possible to ensure that they contain an explanation of how to use the funds and how to obtain additional benefits. FEMA officials should be reminded of their obligation to include such required notices in their correspondence with disaster victims. If FEMA fails to notify recipients at the time they receive THA of how they are required to expend the funds, advocates should urge that FEMA issue a directive suspending the rent receipt documentation requirement for continued assistance, as FEMA did following Hurricane Katrina.<sup>149/</sup>

***f. Termination of Mobile Home Assistance***

If FEMA determines that a disaster victim is ineligible for a mobile home after the victim has already been placed in the mobile home, the victim is entitled to the substantive and procedural protections outlined under federal regulations.<sup>150/</sup> The tenant must be given 15 days' notice of the termination of the lease agreement<sup>151/</sup> and has a right to appeal the decision within 60 days of such notice.<sup>152/</sup>

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<sup>149/</sup> See Attachment

<sup>150/</sup> 44 C.F.R. §§206.117(b)(1)(ii)(G),(H); 206.115(a)(7).

<sup>151/</sup> 44 C.F.R. §206.117(b)(1)(ii)(H).

<sup>152/</sup> 44 C.F.R. §206.115(a)(7).

The eviction notice must specify the reasons for termination, the date of termination, the procedure for appealing, and the occupant's liability for additional charges after the termination date.<sup>153/</sup> The occupant may ask for a copy of the information in his or her file.<sup>154/</sup>

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<sup>153/</sup> 44 C.F.R. §206.117(b)(1)(ii)(H).

<sup>154/</sup> 44 C.F.R. §206.115(d).

FEMA can terminate leases or other direct mobile home assistance for reasons that include, but are not limited to (1) The 18 month period of assistance has expired and not been extended; (2) Adequate alternative housing has become available;<sup>155/</sup> (3) The occupant obtained the housing assistance through fraud or misrepresentation; (4) The occupant failed to comply with the lease or other site rules; (5) The occupant failed to provide evidence showing that s/he is working toward a permanent housing plan.<sup>156/</sup>

In addition to requiring FEMA to abide by its own procedural and substantive rules regarding eviction, the advocate should also insist that FEMA must also follow applicable state law and obtain an order from a court of competent jurisdiction in order to legally evict a tenant from a mobile home.

#### ***g. Recoupment Issues***

After an initial phase of awarding benefits, FEMA begins an extensive process of review of the grants it has awarded in order to determine if recipients were eligible. FEMA's reexamination of eligibility for grants may go on for several years. Major reasons for recoupment affecting low-income clients include:

#### ***FEMA "Shared Household" rule - 44 C.F.R.***

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<sup>155/</sup> "Adequate alternate housing" is defined as "housing that accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant." 44 C.F.R., §206.111.

<sup>156/</sup> 44 C.F.R. §206.117(b)(1)(ii)(G).

§206.117(b)(1)(i)(A). As discussed above, this regulation provides that “FEMA will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.” This rule disproportionately affects low-income disaster victims, because so many low-income people “double-up” to save money on housing prior to a disaster. After a disaster, they may either (a) be unable to relocate together, (b) the person who is given the disaster assistance may not share it, or (c) the disaster crisis may cause the two households to be unable to continue to live together due to tension, threats or violence between them.

*FEMA Duplication of Benefits Rule - 42 U.S.C. §5155; 44*

*C.F.R. §206.110(h).* Although limited by its terms to duplication of assistance from other programs or from insurance, these statutory and regulatory provisions have been interpreted by FEMA in the past to prohibit FEMA from providing more than one form of disaster housing assistance to households. For example, FEMA has in the past attempted to recoup benefits from disaster victims if they were awarded both cash rental assistance and a mobile home.

*FEMA’s Recoupment Process -* FEMA’s recoupment process significantly disadvantages low-income disaster victims. It is essentially a “pay now” and “appeal later” process. Regardless of whether a disaster victim appeals, if (s)he fails to pay the alleged debt or enter into a repayment agreement within 30 days of FEMA’s notice, the victim is charged interest and penalties. FEMA’s failure to provide a hearing prior to initiating recoupment procedures is being challenged in the recently filed case of

*Ridgely v. FEMA.*<sup>157/</sup> The advocate should review the progress of this case for applicable case law. Clearinghouse's FEMA Answers website is a good resource.<sup>158/</sup>

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<sup>157/</sup> Civ. No. 07-2146 (E.D.LA., *filed* April 19, 2007).

<sup>158/</sup> <http://femaanswers.org>.

If FEMA determines that an applicant was ineligible, it initiates recoupment procedures by sending a notice to the recipient. This notice usually provides little information regarding the basis for the determination that an overpayment has occurred, a practice that is being challenged by plaintiffs in *Ridgely v. FEMA*.<sup>159</sup> FEMA's regulations require the recipient to repay the entire amount or enter into a repayment agreement within 30 days. If the recipient does not do so, (s)he is charged interest (presently 2%).<sup>160</sup> The recipient may appeal in writing within 60 days, but this does not toll the repayment obligation.<sup>161</sup> The recipient may obtain a copy of his/her file, but this does not toll the time within which to appeal.<sup>162</sup> If the recipient has not paid or entered into a repayment agreement within 90 days, (s)he is charged an additional penalty of 6% per year on the unpaid principal and interest.<sup>163</sup> If the recipient has not paid or entered into a repayment agreement within 120 days, and FEMA's review indicates that a debt is due, FEMA uses administrative offset to collect principal, interest and penalty.<sup>164</sup> Administrative offset allows recoupment via: (a) income tax refunds (including any Earned Income Tax Credit);<sup>165</sup> (b) Social Security benefits and other

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<sup>159</sup>/ Civ. No. 07-2146 (E.D.LA, *filed* April 19, 2007).

<sup>160</sup>/ 44 C.F.R. §11.42(a).

<sup>161</sup>/ 44 C.F.R. §11.43(c); 44 C.F.R. §206.115(b).

<sup>162</sup>/ 44 C.F.R. §206.115(d).

<sup>163</sup>/ 44 C.F.R. §11.42(a).

<sup>164</sup>/ 44 C.F.R. §11.43(d).

<sup>165</sup>/ 44 C.F.R. §11.61.

federal benefits of more than \$9,000 per year.<sup>166/</sup> FEMA may also offset a debt from wages,<sup>167/</sup> and may sell or assign the debt to a credit collection agency.

Under these procedures, FEMA staff make ample use of letters and telephone calls to pressure recipients to enter into repayment agreements.<sup>168/</sup>

This can be very intimidating to low-income people, especially among the elderly and newly arrived immigrants. Such people may enter into repayment agreements despite valid defenses or the availability of debt forgiveness. Advocates should warn disaster-assistance recipients not to enter into repayment agreements without consulting an attorney. It may also be necessary for advocates to advise FEMA staff not to initiate contact with represented recipients.

Further, unlike middle-income disaster victims, most low-income people do not have the resources to repay the alleged debt via a credit card and then resolve the issue with FEMA. The other option of entering into a repayment agreement creates survival issues for very low-income disaster victims - they will often have to choose between eating, keeping a roof over their heads, obtaining necessary medical care or medicines, and repaying FEMA. Advocates may want to address this issue with FEMA, federal legislators or federal courts, based on the recoupment process'

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<sup>166/</sup> 31 U.S.C. §3716(c)(3)(A)(ii).

<sup>167/</sup> 5 U.S.C. §5514.

<sup>168/</sup> 44 C.F.R. §11.42.

discriminatory impact on low-income disaster victims.<sup>169/</sup>

*Substantive Defenses* - If recoupment is based on the “shared household” rule, the advocate should show that the household split up after the disaster and that the amount provided to the other individual was not available to the client, because the other individual relocated to another area, or the client was unable to locate the other individual, or another reason existed which made sharing the money or mobile home impossible (for instance a domestic violence situation).

If recoupment is based on the client receiving a rental assistance check initially and later receiving a mobile home, the advocate may be able to argue that disaster victims should not be penalized for having been erroneously given a rental check when no rental housing was actually available, that the client used the money for necessities, and that the client did not receive notice that the money could only be used for rent. If recoupment is based on FEMA erroneously providing two rental-assistance checks, the advocate may be able to establish that the recipient used all of the money for rent and required continued assistance beyond the initial eligibility period.

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<sup>169/</sup> See 42 U.S.C. §5151(a); 44 C.F.R. §206.11(b).



FEMA regulations also allow for the termination of collection actions if no substantial recovery is possible, the debtor cannot be located, the cost of collection will exceed the recovery, the claim is legally without merit, or the claim cannot be substantiated by evidence.<sup>170/</sup>

## **F. SBA DISASTER LOANS**

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<sup>170/</sup> 44 C.F.R. §11.51(b).

The Disaster Loan Program is administered by the Small Business Administration (SBA), in coordination with FEMA.<sup>171/</sup> Three types of SBA loans may be made available following a declaration of disaster: disaster home loans, business disaster loans, and economic injury disaster loans.<sup>172/</sup> Disaster home loans are available to individuals, whereas business disaster loans and economic injury loans are provided to businesses. This article addresses disaster home loans only. SBA disaster home loans are available to disaster victims whenever the disaster declaration authorizes IHP Assistance.<sup>173/</sup> Such loans can be used to repair or replace uninsured or under-insured privately owned real or personal property damaged or destroyed as a result of the disaster.<sup>174/</sup>

### **1. Application Process**

When someone applies for disaster benefits, FEMA makes an initial “desk determination” of the applicant’s eligibility for an SBA loan based on income and family size. Applicants who are “desk denied” (their FEMA application states that an SBA application has been refused) are automatically referred for a grant from the

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<sup>171/</sup> 15 U.S.C. §636(b); 13 C.F.R. Part 123.

<sup>172/</sup> 13 C.F.R. §123.5.

<sup>173/</sup> 13 C.F.R. §123.3(1)

<sup>174/</sup> 15 U.S.C. §636(b)(1); 13 C.F.R. §123.2.

“Other Needs” portion of the IHP program. Although applicants who are desk denied may nevertheless submit applications for SBA loans, doing so will delay their consideration for IHP “Other Needs” assistance.<sup>175/</sup>

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<sup>175/</sup> 44 C.F.R. §206.119(a).

Applicants who are not summarily determined ineligible for an SBA loan are given an SBA loan application packet that must be completed and returned to SBA before the published deadline. SBA applications submitted after the deadline will be accepted only if SBA determines that the late filing is due to “substantial causes” beyond the applicant’s control.<sup>176/</sup>

Applicants who relocate after a disaster are responsible for insuring that SBA is informed of their current address and telephone number. Applicants should file promptly with SBA because SBA will not verify the loss until after the application is received, and delays may make verification of loss difficult. If SBA is unable to conduct a verification or cannot reach an applicant, the application will be denied, no benefits will be disbursed, and the applicant’s case will not be referred to the “Other Needs” portion of the IHP program for consideration of a grant. This situation can be corrected by requesting a reconsideration in writing.<sup>177/</sup>

## **2. Eligibility**

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<sup>176/</sup> 13 C.F.R. §123.3(b). SBA publishes a notice of the disaster declaration, including the kinds of assistance available, the date of the disaster, and the deadline and location for filing loan applications in the Federal Register. *Id.*

<sup>177/</sup> 13 C.F.R. §123.13. A request for reconsideration must be received by the SBA office that declined the original application within six months of the date of the declined notice. *Id.*

Loans are available to repair or replace primary residences or personal property.<sup>178/</sup> An applicant must establish (1) a verifiable disaster-related physical loss to personal or real property owned by the applicant, (2) that is not covered by insurance, and (3) the ability to repay a loan.<sup>179/</sup> A completed application received by SBA is reviewed by a loan officer to determine if the individual is able to repay a loan and, if so, the amount of the loan and the terms that should be offered. Age is not a factor in determining eligibility for an SBA loan, but the applicant must be an adult.<sup>180/</sup>

Loans for the repair or replacement of real property may be made only to homeowners, and beneficial owners.<sup>181/</sup> Home disaster loans may not be used to repair or replace a secondary home.<sup>182/</sup> Individuals living in a disaster-damaged dwelling who are not dependents of the owner-occupant may qualify for personal property loans.<sup>183/</sup> Such loans may not be used to repair or replace a vehicle of a type normally used for recreational purposes.<sup>184/</sup>

### **3. Other Requirements**

Flood insurance is required for all loans made for the repair or

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<sup>178/</sup> 13 C.F.R. §123.7.

<sup>179/</sup> 13 C.F.R. §§123.6, 123.100.

<sup>180/</sup> 15 U.S.C. §636c.

<sup>181/</sup> 13 C.F.R. §123.100(b).

<sup>182/</sup> 13 C.F.R. §123.101.

<sup>183/</sup> 13 C.F.R. §123.100(a)(2).

<sup>184/</sup> 13 C.F.R. §123.101(f).

replacement of property located in a flood zone.<sup>185/</sup> In addition, the SBA loan authorization generally requires applicants for home-repair loans to carry homeowner's insurance as a condition of receipt. However, both of these requirements can be relaxed by SBA in accordance with the applicant's circumstances and the conditions following the disaster.

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<sup>185/</sup> 13 C.F.R. §123.17.

#### **4. Amount of Loans**

A loan for repair or replacement of household or personal effects may not exceed \$40,000.<sup>186/</sup> A loan for repair or replacement of a primary residence may not exceed \$200,000.<sup>187/</sup> SBA does not require collateral for home loans of \$10,000 or less. For loans larger than this amount, the applicant must provide a lien on the damaged or replacement property and/or a security interest in personal property.<sup>188/</sup>

#### **5. Terms of Loans**

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<sup>186/</sup> 13 C.F.R. §123.105(a)(1).

<sup>187/</sup> 13 C.F.R. §123.105(a)(2).

<sup>188/</sup> 13 C.F.R. §123.11.

Home disaster loans may be granted for up to 30 years and may cover 100 percent of the verified loss, subject to the applicable limit of \$200,000.<sup>189/</sup> Loan interest rates are established by regulation, and are lower for applicants who cannot obtain credit elsewhere.<sup>190/</sup> SBA determines each applicant's loan maturity and installment terms based on the borrower's needs and ability to pay.<sup>191/</sup> Monthly installment payments beginning five months after the signing of the note are usual, but variations in these terms may be arranged.<sup>192/</sup> Payment amounts may be modified if the economic conditions of the borrower change. There is no penalty for prepayment of a loan.<sup>193/</sup>

## **6. Misapplication of Funds**

In order to verify that loan proceeds are used in accordance with their stated purpose, SBA requires borrowers to save receipts for a period of three years from the date of last disbursement.<sup>194/</sup> Willful use, without SBA approval, of any part of an SBA loan in a manner contrary to the loan authorization and agreement subjects the borrower to a fine in the amount of one and one-half times the original principal amount.<sup>195/</sup>

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<sup>189/</sup> 13 C.F.R. §123.105(a),(c).

<sup>190/</sup> 13 C.F.R. §123.104.

<sup>191/</sup> 13 C.F.R. §123.105(c).

<sup>192/</sup> *Id.*

<sup>193/</sup> 13 C.F.R. §123.105(c).

<sup>194/</sup> 13 C.F.R. §123.12.

<sup>195/</sup> 13 C.F.R. §123.9.



## **7. Advocacy Issues**

### ***a. Refusal or Rescission of an SBA Loan***

An eligible applicant who refuses an SBA loan will be precluded from obtaining an “Other Needs” award from the IHP program.<sup>196/</sup> Applicants who believe they should be found ineligible for an SBA loan because of inability to repay the loan should ask the SBA to reconsider and establish that the award of the loan was a mistake by showing that their income is offset by high debt and existing obligations. Even applicants who have already signed an SBA loan agreement may be allowed to rescind their agreement if they were required to pledge collateral for their loan.<sup>197/</sup> Such applicants may then be found ineligible by the SBA program and referred to the “Other Needs” portion of the IHP program on the condition that they agree to repay any portion of the SBA loan they have expended with the IHP award.

### ***b. Need for Both SBA Loan and ONA***

Disaster victims may qualify for both an SBA loan and an “Other Needs” IHP grant by showing that they continue to have “unmet needs” after receiving the maximum SBA loan for which they are eligible.<sup>198/</sup> Unmet needs must be documented and presented to SBA for review. SBA may certify the amount of the individual’s unmet needs and refer the case to the IHP “Other Needs” program for award of a grant.

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<sup>196/</sup> 44 C.F.R. §206.119(a).

<sup>197/</sup> 13 C.F.R. §123.15.

<sup>198/</sup> 44 C.F.R. §206.119(a)(3).

***c. Modification of the Terms of the Loan***

Borrowers whose economic circumstances change may request that SBA modify the terms of a loan by extending the life of the loan or decreasing the amount of the monthly payments.<sup>199/</sup> Borrowers may obtain an increase in the amount of their loan within two years of approval by showing that the cost of repair or replacement increased after loan approval due to circumstances beyond their control.<sup>200/</sup> Borrowers who wish to use a loan for a purpose different from that originally authorized may request modification of the purpose of a loan, subject to the limitation that physical home disaster loans must be used to restore or replace the applicant's disaster-damaged primary home and/or personal property.<sup>201/</sup>

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<sup>199/</sup> 13 C.F.R. §123.16(b).

<sup>200/</sup> 13 C.F.R. §§123.18, 123.20.

<sup>201/</sup> 13 C.F.R. §123.7.

**DATE: March 2, 1998**

**Response and Recovery Directorate Policy No. 4430.140 C**

**TITLE:** Policy on Verification of Citizenship, Qualified Alien Status and Eligibility for Disaster Assistance.

**PURPOSE:** To provide guidance for implementing Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

**SCOPE and AUDIENCE:** This policy prescribes a process to effectively comply with the intent of Congress to prohibit providing a "federal public benefit" to persons who are not United States citizens, non-citizen nationals, or "qualified aliens." It is to be applied to all disasters declared on or after February 28, 1998. All FEMA Regional Offices, National Processing Service Centers, and Disaster Field Offices are expected to follow this policy.

**DESCRIPTION:** When Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, Title IV of the Act requires that federal public benefits only be provided to United States citizens, non-citizen nationals, and qualified aliens. Under the Act, specific sections of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, are considered federal public benefits. The following policy outlines FEMA's compliance with Title IV of P.L. 104-193.

**PROCEDURES:** The Federal Emergency Management Agency (FEMA) will implement new policy and procedures to comply with the requirements of Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"), P.L. 104-193, as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA), P.L. 104-208, which amended the Immigration and Nationality Act (INA).

Effective for all disasters declared on or after February 28, 1998, this new policy will replace the October 18, 1995, Response and Recovery Procedure No. 4430.140 C, Prohibition of Assistance to Those Not Lawfully in the United States.

The Act provides that, with certain exceptions, only United States citizens, United States non-citizen nationals and "qualified aliens" (and sometimes only particular categories of qualified aliens) are eligible for federal, state, and local public benefit. Additionally, the Act requires the Attorney General, by February of 1998, to promulgate final regulations requiring verification that an applicant is a qualified alien eligible to receive federal public benefits under the Act.

As FEMA must adhere to new standards with this Act, "qualified alien" and "federal public benefit," in the provision of disaster assistance, the Individual and Family Grant (IFG) program is now subject to Title IV. With this Act, a State is **not** permitted to provide the IFG program, a federal public benefit, to persons who are not U. S. citizens, non-citizen nationals, or qualified aliens. A **federal public benefit** is defined as:

Any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; or

Any retirement, welfare, health disability, public or assisted housing, post-secondary education, food assistance, unemployment benefits, or any similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

Under the previous Supplemental Appropriations of 1994 and 1995, "lawfully present in the United States" was the standard and it was permissible for a State to provide IFG assistance to persons not lawfully present in the United States.

The Act's verification requirement **does not** apply to short-term, non-cash, in-kind emergency disaster relief. FEMA has interpreted this to mean programs that provide for: search and rescue; emergency medical care; emergency mass care; emergency shelter; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; warning of further risk or hazards; dissemination of public information and assistance regarding health and safety measures; provision of food, water, medicine, and other essential needs, including movement of supplies or persons; or reduction of immediate threats to life, property, and public health and safety.

The Act's verification requirement **does apply**, as these programs meet the definition of a federal public benefit, to the following programs of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended:

- Section 408, Temporary Housing Assistance
- Section 410, Unemployment Assistance
- Section 411, Individual and Family Grant Programs
- Section 412, Food Coupons and Distribution

All applicants who apply for assistance under Section 408, Temporary Housing Assistance, and Section 411, Individual and Family Grant (IFG) Programs, must sign the Declaration of Applicant, see attached revised FEMA Form 90-69D, and provide a form of identification prior to the receipt of such assistance.

All applicants who apply for assistance under Section 410, Unemployment Assistance, and Section 412, Food Coupons and Distribution, will be required to adhere to the policies developed by the agencies administering the programs for compliance with this Act.

Whether applications are taken by phone or in person, the person taking the application is responsible for informing the applicant of the Declaration of Applicant requirement. The application taker is to inform the applicant that, at the time of the FEMA inspection, FEMA will require the applicant, or another adult who resides in the same damaged structure and lived in the structure at the time of the disaster, to sign FEMA Form 90-69 D. Additionally, the person taking the application is to further explain that no FEMA Disaster Housing and/or IFG assistance will be provided unless FEMA Form 90-69D is signed.

By signing the 90-69D, the signer attests to his or her being a United States citizen, a non-citizen national, or a qualified alien in the United States. The signer is also to provide the FEMA inspector with a form of identification to confirm his or her identity.

To assure that all applicants have signed the Declaration of Applicant prior to receipt of assistance, the FEMA housing inspector, at the time of the FEMA housing inspection, will have the applicant, or another adult who resides in the same damaged structure and lived in the structure at the time of the disaster, sign the FEMA Form 90-69D and present a form of identification. The FEMA inspector will obtain the signature on FEMA Form 90-69D when the individual traditionally signs the Applicant Statement/Authorization, FEMA Form 90-69B.

NOTE: In cases where an applicant is applying for IFG assistance from any category that does not require a FEMA inspection, it will be the responsibility of the State administering the IFG program to send the applicant a FEMA Form 90-69D. The State must be in receipt of the signed Declaration of Applicant, and a copy of an identity document from the applicant, prior to disbursing any funds for IFG eligible items.

In cases where an applicant is applying for assistance from a category that does require a FEMA inspection and the applicant applies for IFG assistance from any category that does not require a FEMA inspection, both the State and FEMA will be responsible for obtaining a signed FEMA Form 90-69D in accordance with the above procedure.

The Declaration of Applicant is printed on three-ply paper. The FEMA inspector is responsible for writing the FEMA Control Number and Disaster Number on the 90-69D. Once signed, one copy is provided to the person providing the signature, one copy is for the inspector's records, and the inspector forwards one copy to the NPSC processing the

disaster. Regardless of whether the applicant signs the 90-69D or does not sign the 90-69D, the FEMA inspector is to complete the inspection.

If the applicant refuses to sign the Declaration of Applicant, the FEMA inspector indicates in the comments section of the Automated Construction Estimating (ACE) system that no FEMA Form 90-69D was signed by using **"NO SELF D"** in the comments section of ACE and will identify this inspection for ACE Host Review.

When the FEMA inspector up-loads the inspections to the NPSC, all FEMA inspections which do not have a signed 90-69D, are identified and withdrawn so that no further processing occurs.

Once the names and FEMA Control Numbers of applicants who have not signed the Declaration of Applicant have been identified and withdrawn, the NPSC Computer Operations Department (COPS) provides this information to the 403 Audit Department in the NPSC.

The 403 Audit Department will then attempt to contact the applicant, by phone, and inform him or her that no FEMA Disaster Housing and/or IFG assistance will be provided unless the Declaration of Applicant is signed. After the applicant signs the 90-69D and the NPSC is in receipt of the form, and a copy of an identity document from the applicant, his or her application for assistance will be reinstated.

For each disaster declared on or after February 28, 1998, the universe list of applicants to be sampled is run sixty (60) days from the last day of the application period. Shortly after the sixtieth (60<sup>th</sup>) day, the disaster will be audited using the existing 403 Audit Procedures.

Title IV of the Act prohibits FEMA from providing a federal public benefit to persons who are not U.S. citizens, U.S. non-citizen nationals, or qualified aliens. An identity document and a signed 90-69D are sufficient for the purpose of providing a federal public benefit.

The following are definitions and documentary evidence for these categories. When an applicant has been randomly selected for audit, documentary evidence, for these categories, is provided by an applicant, to the 403 Audit Department of a NPSC, to prove he or she is a U.S. citizen, a non-citizen national, or a qualified alien.

### **UNITED STATES CITIZEN OR NON-CITIZEN NATIONAL DEFINITION**

- A person (other than the child of a foreign diplomat) born in one of the 50 States or in the District of Columbia, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands who has not renounced or otherwise lost his or her citizenship;
- A person born outside of the United States to at least one U.S. citizen parent (sometimes referred to as a "derivative citizen");
- A naturalized U.S. citizen; or
- As a general matter, a United States non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements).

### **UNITED STATES CITIZEN OR NON-CITIZEN NATIONAL DOCUMENTARY EVIDENCE OF STATUS**

NOTE: The document(s) listed below will, when combined with satisfactory proof of identity, (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant is a U.S. citizen or non-citizen national for the purposes of the Act, as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA).

#### **PRIMARY EVIDENCE:**

- A birth certificate showing birth in one of the 50 States the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands, unless the person was born to foreign diplomats residing in such a jurisdiction. NOTE: If documents show that the individual was born in Puerto Rico, the U.S. Virgin Islands or the Northern Mariana Islands before these areas became part of the U.S., the individual may be a collectively naturalized citizen)
- United States passport (except limited passports, which are issued for periods of less than five years);
- Report of birth abroad of a U.S. citizen (FS-240) (issued by the Department of State to U.S. citizens);
- Certificate of birth (FS-545) (issued by a foreign service post) or a Certification of Report of Birth (DS-1350) (issued by the Department of State), copies of which are available from the Department of State);

- Certificate of Naturalization (N-550 or N-570) (issued by the Immigration and Naturalization Service (INS) through a Federal or State court, or through administrative naturalization after December 1990 to individuals who are individually naturalized; the N-570 is a replacement certificate issued when the N-550 has been lost or mutilated or the individual's name has changed);
- Certificate of Citizenship (N-560 or N-561) (issued by the INS to individuals who derive U.S. citizenship through a parent; the N-561 is a replacement certificate issued when the N-560 has been lost or mutilated or the individual's name has changed);
- United States Citizen Identification Card (I-197) (issued by the INS until April 7, 1983 to U.S. citizens living near the Canadian border or Mexican border who need it for frequent border crossings) (formerly Form I-179, last issued in February of 1974);
- Northern Mariana Identification Card (issued by the INS to collectively naturalized citizens of the U.S. who was born in the Northern Mariana Islands before November 3, 1986);
- Statement provided by a U.S. consular officer certifying that the individual is a U.S. citizen (this is given to an individual born outside the U.S. who derives citizenship through a parent but does not have an FS-240, FS-545 or DS-1350; or
- American Indian Card with a classification code "KIC" and a statement on the back (identifying U.S. citizen members of the Texas Band of Kickapoos living near the U.S./Mexican border).

#### SECONDARY EVIDENCE:

NOTE: If the applicant cannot present one of the documents previously mentioned under PRIMARY EVIDENCE, the following may be relied upon to establish U.S. citizenship or nationality:

- Religious record recorded in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) within three months after birth showing that the birth occurred in such jurisdiction and the date of birth or the individual's age at the time the record was made;
- Evidence of civil service employment by the U.S. government before June 1, 1976;
- Early school records (preferably from the first school) showing the date of admission to the school, the child's date and place of birth, and the name(s) and place(s) of birth of the parent(s);



- Census record showing name, U.S. citizenship or U.S. place of birth, and date of birth or age of applicant;
- Adoption Finalization Papers showing the child's name and place of birth in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction) or, where an adoption is not finalized and the State or other jurisdiction listed above in which the child was born will not release a birth certificate prior to final adoption, a statement from a state-approved adoption agency showing the child's name and place of birth in one of such jurisdictions (NOTE: the source of the information must be an original birth certificate and must be indicated in the statement); or
- Any other document that establishes a U.S. place of birth or in some way indicates U.S. citizenship (e.g., a contemporaneous hospital record of birth in that hospital in one of the 50 States, the District of Columbia, Puerto Rico (on or after January 13, 1941), Guam, the U.S. Virgin Islands (on or after January 17, 1917), American Samoa, Swain's Island or the Northern Mariana Islands (unless the person was born to foreign diplomats residing in such a jurisdiction)).

#### COLLECTIVE NATURALIZATION:

NOTE: If the applicant cannot present one of the documents listed under PRIMARY or SECONDARY EVIDENCE, the following will establish U.S. citizenship for collectively naturalized individuals.

#### (PUERTO RICO)

- Evidence of birth in Puerto Rico on or after April 11, 1899, and the applicant's statement that he or she was residing in the U.S., a U.S. possession or Puerto Rico on January 13, 1941; or
- Evidence that the applicant was a Puerto Rican citizen and the applicant's statement that he or she was residing in Puerto Rico on March 1, 1917, and that he or she did not take an oath of allegiance to Spain.

#### (U.S. VIRGIN ISLANDS)

- Evidence of birth in the U.S. Virgin Islands, and the applicant's statement of residence in the U.S., a U.S. possession or the U.S. Virgin Islands on February 25, 1927;
- The applicant's statement indicating residence in the U. S. Virgin Islands as a Danish citizen on January 17, 1917, and residence in the U.S., a U.S. possession or the U.S.

Virgin Islands on February 25, 1927, and that he or she did not make a declaration to maintain Danish citizenship; or

- Evidence of birth in the U.S. Virgin Islands and the applicant's statement indicating residence in the U.S., a U.S. possession or territory or the Canal Zone on June 28, 1932.

(NORTHERN MARIANA ISLANDS) (NMI) (formerly part of the Trust Territory of the Pacific Islands (TTPI):

- Evidence of birth in the NMI, TTPI citizenship and residence in the NMI, the U.S., or a U.S. territory or possession on November 3, 1986, (NMI local time) and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time);
- Evidence of TTPI citizenship, continuous residence in the NMI since before November 3, 1981, (NMI local time), voter registration prior to January 1, 1975, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time); or
- Evidence of continuous domicile in the NMI since before January 1, 1974, and the applicant's statement that he or she did not owe allegiance to a foreign state on November 4, 1986, (NMI local time).

NOTE: If a person entered the NMI as a nonimmigrant and lived in the NMI since January 1, 1974, this does not constitute continuous domicile and the individual is not a U.S. citizen.

#### DERIVATIVE CITIZENSHIP:

NOTE: If the applicant cannot present one of the documents previously mentioned under PRIMARY EVIDENCE, SECONDARY EVIDENCE, or COLLECTIVE NATURALIZATION, the following may be relied upon to determine derivative U.S. citizenship in the following situations:

- Applicant born abroad to two U.S. citizen parents: Evidence of the U.S. citizenship of the parents and the relationship of the applicant to the parents, and evidence that at least one parent resided in the U.S. or an outlying possession prior to the applicant's birth.
- Applicant born abroad to a U.S. citizen parent and a U.S. non-citizen national parent: Evidence that one parent is a U.S. citizen and that the other is a U.S. non-citizen national, evidence of relationship of the applicant to the U.S. citizen parent, and evidence that the U.S. citizen parent resided in the U.S., a U.S. possession, American Samoa or Swain's Island for a period of at least one year prior to the applicant's birth.

- Applicant born out of wedlock abroad to a U. S. citizen mother: Evidence of the U.S. citizenship of the mother, evidence of the relationship to the applicant and, for births on or before December 24, 1952, evidence that the mother resided in the U.S. prior to the applicant's birth or, for births after December 24, 1952, evidence that the mother had resided, prior to the child's birth, in the U.S. or U.S. possession for a period of one year.
- Applicant born in the Canal Zone or the Republic of Panama: A birth certificate showing birth in the Canal Zone on or after February 26, 1904 and before October 1, 1979 and evidence that one parent was a U.S. citizen at the time of the applicant's birth; or A birth certificate showing birth in the Republic of Panama on or after February 26, 1904 and before October 1, 1979 and evidence that at least one parent was a U.S. citizen and employed by the U.S. government or the Panama Railroad Company or its successor in title.

When an applicant claims to have U. S. citizenship or nationality and submits documents, but his or her claim or documents do not meet or fall within one of the categories of PRIMARY EVIDENCE, SECONDARY EVIDENCE, COLLECTIVE NATURALIZATION, or DERIVATIVE CITIZENSHIP, please consult the Human Services Division, Response and Recovery Directorate, at FEMA Headquarters, for appropriate determination or referral.

#### QUALIFIED ALIEN DEFINITION

- an alien admitted for permanent residence under the Immigration and Nationality Act ("INA");
- an alien granted asylum under § 208 of the INA;
- a refugee admitted to the U.S. under § 207 of the INA;
- an alien paroled into the U.S. under § 212 (d) (5) of the INA for at least one year;
- an alien whose deportation is being withheld under § 243 (h) of the INA as in effect prior to April 1, 1997, or whose removal is being withheld under § 241 (b) (3) of the INA;
- an alien granted conditional entry pursuant to § 203 (a) (7) of the INA as in effect prior to April 1, 1980;
- an alien who is a Cuban or Haitian entrant as defined in § 501 (e) of the Refugee Education Assistance Act of 1980; or
- an alien who (or whose child or parent) has been battered or subjected to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431 (c) of the Act.

**QUALIFIED ALIEN DOCUMENTARY EVIDENCE OF STATUS**

NOTE: The document(s) listed below will, when combined with satisfactory proof of identity, (which will come from the document itself if it bears a photograph of the person to whom it relates), establish that an applicant falls within one of the categories of qualified alien for the purposes of the Act, as amended by the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRAIRA).

**ALIEN ADMITTED FOR PERMANENT RESIDENCE:**

- INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green Card"); or
- Unexpired Temporary I-551 stamp in foreign passport or on INS Form I-94.

**ASYLEE:**

- INS Form I-94 annotated with stamp showing grant of asylum under § 208 of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(5)"; or
- INS Form I-766 (Employment Authorization Document) annotated "A5";
- Grant letter from the Asylum Office of INS; or
- Order of an immigration judge granting asylum.

**REFUGEE:**

- INS Form I-94 annotated with stamp showing admission under § 207 of the INA;
- INS FORM I-688B (Employment Authorization Card) annotated "274a.12(a)(3)";
- INS Form I-766 (Employment Authorization Document) annotated "A3"; or
- INS Form I-571 (Refugee Travel Document).

**ALIEN PAROLED INTO U.S. FOR AT LEAST ONE YEAR:**

- INS Form I-94 with stamp showing admission for at least one year under §212(d)(5) of the INA. (Applicant cannot aggregate periods of admission for less than one year to meet the one-year requirement.)

**ALIEN WITH DEPORTATION OR REMOVAL WITHHELD:**

- INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(10)";
- INS Form I-766 (Employment Authorization Document) annotated "A10; or
- Order from an immigration judge showing deportation withheld under § 243(h) of the INA as in effect prior to April 1, 1997, or removal withheld under § 241(b)(3) of the INA.

**ALIEN GRANTED CONDITIONAL ENTRY:**

- INS Form I-94 with stamp showing admission under § 203(a)(7) of the INA;
- INS Form I-688B (Employment Authorization Card) annotated "274a.12(a)(3)"; or
- INS Form I-766 (Employment Authorization Document) annotated "A3."

**CUBAN/HAITIAN ENTRANT:**

- INS Form I-551 (Alien Registration Receipt Card, commonly known as a "green card") with the code CU6, CU7, CH6;
- Unexpired temporary I-551 stamp in foreign passport or on INS Form I-94 with the code CU6 or CU7; or
- INS Form I-94 with stamp showing parole as "Cuban/Haitian Entrant" under Section 212(d)(5) of the INA.

**ALIEN WHO HAS BEEN BATTERED OR SUBJECT TO EXTREME CRUELTY:**

NOTE: Certain categories of aliens who have been subjected to battery or extreme cruelty in the United States by a family member with whom they resided are qualified aliens eligible for federal public benefits under this Act. An alien whose child or an alien child whose parent has been abused is also a qualified alien.

INS guidance, for this category of qualified alien, is very extensive and will be provided on a case by case basis when the alien seeking such federal public benefits identifies his or her documentary evidence of status to be within this category and of this nature.

If an applicant has a disability limiting his or her ability to provide the required evidence of citizenship, nationality, or immigration status (e.g., mental retardation, amnesia, or other cognitive, mental or physical impairment), every effort should be made to assist the applicant to obtain the required evidence.

For additional information regarding the Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, please contact Marcia Hodges, of the Human Services Division at FEMA Headquarters, at 202-646-2653.

**KEY WORDS:** Prohibition of assistance; federal public benefit; qualified alien; Welfare Reform Act; 403 Audit; Declaration of Applicant, FEMA Form 90-69D

**SUPERSESSON:** Response and Recovery Directorate Procedure No. 4430.140 C, October 15, 1995

**AUTHORITIES:** Public Law 104-193, Title IV

**ORIGINATING OFFICER:** Human Services Division, R&R Directorate

**REVIEW DATE:** February 1, 2000

**SIGNATURE:** (signed) 03-02-98  
Lacy E. Suiter  
Executive Associate Director  
Response and Recovery Directorate

**DISTRIBUTION:** Human Services Officers: FEMA Regions I-X,  
Caribbean Area Office, and Pacific Area Office  
Chiefs, National Processing Service Centers (VNPSC, TNPSC,  
MNPSC)  
Regional Directors, FEMA Regions I-X  
R&R Division Directors, FEMA Regions I-X  
Deputy Associate Director, Response and Recovery Directorate  
Executive Associate Director, Response and Recovery  
Directorate (2)  
Office of Emergency Information and Media Affairs  
Office of Congressional and Legislative Affairs  
Office of General Counsel  
Office of Inspector General

Attachment

## APPENDIX B

### OVERVIEW OF FEDERAL DISASTER MANAGEMENT SYSTEM

#### A. Declaration of an Emergency or Disaster

Both disaster assistance and emergency assistance under the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)<sup>1/</sup> are triggered by a Presidential Declaration. A Presidential Declaration of Emergency or Disaster is initiated by a request from the governor of the state in which the disaster has occurred.<sup>2/</sup>

##### 1. Disaster and Emergency Distinguished

A “major disaster” is a catastrophe that the President determines has caused damage of sufficient severity and magnitude to warrant federal disaster assistance to supplement state and local resources.<sup>3/</sup> The full range of disaster assistance under the Stafford Act may be made available if a disaster is declared.<sup>4/</sup> An “emergency” is generally declared by the President before a disaster occurs in order to help state and local

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<sup>1/</sup> The Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§5121 *et seq.*

<sup>2/</sup> 42 U.S.C. §5170; 44 C.F.R. §§206.35, 206.36.

<sup>3/</sup> 42 U.S.C. §5122(2).

<sup>4/</sup> 42 U.S.C. §§5170a, 5170b, 5170c.

governments prevent loss of life or property or lessen the impact of an impending catastrophe.<sup>5/</sup> Assistance authorized by an emergency declaration is limited to immediate and short term assistance.<sup>6/</sup>

## **2. The Declaration Process**

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<sup>5/</sup> 42 U.S.C. §5122(1).

<sup>6/</sup> 44 C.F.R. §206.63; see 42 U.S.C. §5192 for types of assistance.



The Governor's request for a declaration of either a major disaster or an emergency should be made through the Regional Director for the Federal Emergency Management Administration (FEMA) for the region in which the state is located, and must ordinarily be made within 30 days of the catastrophe or incident.<sup>7/</sup> The Director of FEMA (Director) must arrive at a recommendation concerning the declaration and forward this recommendation to the President along with the Governor's request.<sup>8/</sup>

The President may either grant or deny the Governor's request, or, in the case of a request for a declaration of major disaster, may declare an emergency instead.<sup>9/</sup> The Director must notify the Governor promptly of the President's decision or declaration, and of the types of assistance available and of the geographic areas eligible for assistance.<sup>10/</sup> The Governor may appeal the denial of a declaration within 30 days of the date of denial.<sup>11/</sup>

### **3. Types and Geographic Areas of Assistance**

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<sup>7/</sup> 44 C.F.R. §§ 206.36, 206.35.

<sup>8/</sup> 44 C.F.R. § 206.37(c).

<sup>9/</sup> 42 U.S.C. §5170; 44 C.F.R. §206.38.

<sup>10/</sup> 44 C.F.R. §206.39.

<sup>11/</sup> 44 C.F.R. §206.46

Both the designation of the disaster-impacted area, and the types of disaster assistance to be provided are usually included in the Presidential Declaration sent to the Governor.<sup>12/</sup> The Associate Director has the authority to decide what additional forms of assistance will be provided at the request of the Governor.<sup>13/</sup> The designation of the geographical area(s) which are considered impacted by the disaster must be published in the Federal Register.<sup>14/</sup> The Governor, or the Governor's Authorized Representative, may request additional types of disaster assistance, and/or that additional areas be declared eligible for assistance, within 30 days of the declaration.<sup>15/</sup>

### **3. The FEMA-State Agreement**

Following the declaration, the Director and the governor must execute a FEMA-State Agreement setting forth the incident period for which disaster assistance will be made available, the type and extent of federal assistance to be provided, and the

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<sup>12/</sup> 44 C.F.R. §206.40(a). A copy of the Declaration of Disaster may be obtained from either FEMA or the Governor's office.

<sup>13/</sup> *Id.*

<sup>14/</sup> 44 C.F.R. §206.40(b). Any modifications of the Declaration of Disaster are also published in the Federal Register.

<sup>15/</sup> 44 C.F.R. §206.40(c),(d).

commitment of the state and local governments.<sup>16/</sup>

## **B. State and Federal Roles**

FEMA has two major roles in the provision of disaster and emergency assistance:

(1) **coordination** of the relief efforts of federal, state and local governments and of non-governmental disaster assistance organizations,<sup>17/</sup> and

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<sup>16/</sup> 44 C.F.R. §206.44.

<sup>17/</sup> 42 U.S.C. §§5170a(2), 5170b; 44 C.F.R. §206.42(3).

(2) **direct administration** of the Individual and Household Assistance program,<sup>18/</sup> of the Public Assistance program for state and local governments,<sup>19/</sup> and of Emergency programs such as temporary public transportation,<sup>20/</sup> debris removal,<sup>21/</sup> and clearance of roads and construction of bridges.<sup>22/</sup>

Other individual assistance disaster programs authorized under the Stafford Act are administered by state agencies and other federal agencies and coordinated by FEMA. These include the Disaster Unemployment Assistance program,<sup>23/</sup> Disaster Food Stamps and Food Commodities programs,<sup>24/</sup> Emergency Grants to Low-Income Migrant and Seasonal Farmworkers,<sup>25/</sup> Disaster Legal Services,<sup>26/</sup> and Crisis Counseling Assistance.<sup>27/</sup> Finally, the Small Business Administration (SBA) Disaster Loan program is administered separately by the SBA under its own statutory and regulatory authority,<sup>28/</sup> although in coordination with FEMA.

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<sup>18/</sup> 42 U.S.C. §5174; 44 C.F.R. §§206.117, 206.119. Part of this program may be administered by the state, as explained below.

<sup>19/</sup> 42 U.S.C. §5172; 44 C.F.R. §206.203.

<sup>20/</sup> 42 U.S.C. §5186.

<sup>21/</sup> 42 U.S.C. §5170b(3)(A) ; 44 C.F.R. §206.224.

<sup>22/</sup> 42 U.S.C. §5170b(3)(C).

<sup>23/</sup> 42 U.S.C. §5177; 44 C.F.R. §206.141.

<sup>24/</sup> 42 U.S.C. §5179; 44 C.F.R. §206.151.

<sup>25/</sup> 42 U.S.C. §5177a.

<sup>26/</sup> 42 U.S.C. §5182; 44 C.F.R. §206.164. Disaster Legal Services are provided by *pro bono* attorneys through the Young Lawyers Division (YLD) of the American Bar Association (ABA).

<sup>27/</sup> 42 U.S.C. §5183; 44 C.F.R. §206.171.

<sup>28/</sup> 15 U.S.C. §636(b)(1); 13 C.F.R., Part 123.

## **1. Federal Disaster Officers**

Immediately after a Declaration of Disaster, the Director of FEMA appoints a Federal Coordinating Officer (FCO), and the Regional Director of FEMA appoints a Disaster Recovery Manager (DRM).<sup>29/</sup> The FCO is required to coordinate all relief activities in the disaster area, and to establish field offices for the administration of this relief.<sup>30/</sup> The DRM serves as the representative of the Regional Director of FEMA and exercises all of the Regional Director's authority with respect to the disaster.<sup>31/</sup>

## **2. The State Disaster Officers**

Following a declaration of disaster, the Governor must appoint a State Coordinating Officer (SCO) to coordinate state and local disaster assistance with that provided by the federal government and to ensure that all local jurisdictions are informed of the declaration, the types of assistance authorized, and the areas eligible to receive assistance,<sup>32/</sup> and a Governor's Authorized Representative (GAR) to administer federal disaster assistance programs on behalf of state and local governments, and to ensure state compliance with the FEMA-State agreement.<sup>33/</sup>

## **C. Disaster Field Offices and Recovery Centers**

Following a disaster declaration, the FCO must establish a Disaster Field Office

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<sup>29/</sup> 42 U.S.C. §5143(a); 44 C.F.R. §206.41.

<sup>30/</sup> 42 U.S.C. §5143(b); 44 C.F.R. §206.42(a).

<sup>31/</sup> 44 C.F.R. §206.41(b).

<sup>32/</sup> 42 U.S.C. §5143(b); 44 C.F.R. §§206.41(c), 206.42(b).

(DFO) and Disaster Recovery Centers (DRCs) in consultation with the SCO.<sup>34/</sup>

### **1. The Disaster Field Office (DFO)**

The DFO serves as the local headquarters for FEMA. Its purpose is to coordinate and monitor disaster assistance programs. It may house other disaster agencies such as the SBA and or the state agencies administering other disaster relief programs. The DFO is generally in existence for the duration of the disaster, and is the work station for the FCO, and other FEMA officials such as the Individual Assistance Officer (IAO), the Public Assistance Officer (PAO), and the Public Information Officer. The DFO is generally the office that an advocate must contact in order to advocate either on behalf of individual clients, or regarding systems issues such as outreach, or the administration of disaster programs.

### **2. The Disaster Recovery Centers (DRCs)**

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<sup>33/</sup> 44 C.F.R. §206.41(d).

<sup>34/</sup> 44 C.F.R. §206.42(a)(2).

The DRCs are application centers set up in the disaster area, at which disaster victims can typically apply for all available individual benefits, whether administered by FEMA or some other agency. They also serve as an information center for victims regarding available disaster assistance. The DRCs remain in existence only during the application period, and may be closed and reopened in new locations as determined by the FCO, in coordination with the SCO. They should be sufficient in location and number to disseminate information, accept applications, and counsel individuals, families and businesses concerning available assistance.<sup>35/</sup>

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<sup>35/</sup> 44 C.F.R. §206.42(a)(2).



JEB BUSH  
GOVERNOR

STATE OF FLORIDA

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

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September 2, 2004

The Honorable George W. Bush  
President  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C.

Through: Ms. Mary Lynne Miller  
Director, Region IV  
Federal Emergency Management Agency

Dear Mr. President:

Under the provisions of Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act"), as implemented by 44 C.F.R. § 206.36, I request that you declare a major disaster for the entire State of Florida due to the statewide impact of Hurricane Frances. According to current predictions by the National Hurricane Center, this event will inflict substantial damage to the coastal communities in eastern Florida from storm surge, high winds, torrential rainfall, inland flooding, and tornadoes, very much as Hurricane Charley did three weeks ago in southwestern and central Florida. I request 100 percent direct federal assistance, assistance under Categories A and B statewide, 100 percent assistance for debris removal and emergency protective measures in the first 72 hours (Categories A and B), and the Hazard Mitigation Grant Program for the entire State of Florida. I also request Public Assistance (Categories A-G) and Individual Assistance for the following counties lying in or near the path of Hurricane Frances that are likely to experience hurricane force winds: Brevard, Broward, Citrus, Glades, Hernando, Highlands, Indian River, Lake, Martin, Miami-Dade, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Polk, St. Lucie and Sumter Counties. I am requesting the full complement of Individual Assistance programs, to include the Individuals and Households Program, Disaster Unemployment Assistance, Crisis Counseling, Disaster Legal Services, and the Small Business Administration Disaster Loans Program.



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At present, nearly half of Florida's 67 counties have opened shelters or have them standing by. In addition, more than a dozen counties have issued evacuation orders; the resulting evacuation has already put over twice the normal number of vehicles on the highways of Florida, transporting hundreds of thousands of evacuees seeking refuge. The only available routes for many of the evacuees will take them westward to shelters in sections of the State ravaged only three weeks ago by Hurricane Charley, where the communities hit by that hurricane are still trying to recover. Several counties closed schools and more will close tomorrow. Several hospitals have been evacuated, and government offices and courthouses are closed in eleven counties. Local states of emergency have been declared in a majority of counties.

As you know, Hurricane Charley has caused substantial losses of life and property in Florida already. According to the latest weather information, Hurricane Frances is likely to come ashore sometime on September 4, 2004. It is now apparent that Hurricane Frances will strike coastal Florida, where population densities are among the highest in the southeastern United States. Due to the large populations of these coastal communities, it is essential to begin the evacuations at once for those members of the public who live in low-lying areas, as well as hospital patients and other vulnerable members of the public. I therefore issued Executive Order 04-192 yesterday to declare a state of emergency and activate the State Comprehensive Emergency Management Plan in support of the evacuation from these communities (Attachment 1). An evacuation of the general public from these communities begins today, and the State Emergency Operations Center was activated at Level 1 at 7:00 a.m. on September 1, 2004.

In addition to the other dangers posed by Hurricane Frances to some of the most densely populated areas in Florida, the telling characteristics of the storm itself foreshadow destruction on a much larger scale than that caused by Hurricane Charley. Hurricane Frances has five times the diameter of Hurricane Charley, which was a more compact system. If it retains its present diameter, Hurricane Frances will cause a swath of destruction from hurricane-force winds eighty miles wide, with gale-force winds extending outward an additional eighty or ninety miles (Attachment 2). Moreover, current projections show Hurricane Frances slowing in its forward movement to less than ten miles per hour as it approaches land. This slower movement will increase the rainfall from the hurricane to from ten to twenty inches as it moves over land. This abnormal rainfall will cause flooding in rivers that are already above normal levels due to heavy rainfalls earlier in the summer that were exacerbated by Hurricane Charley. According to estimates based on the demographic and economic data available, if Hurricane Frances stays on its present course it may generate 900,000 tons of debris and inflict damage on an unprecedented scale.

The State Coordinating Officer has requested a FEMA Emergency Response Team-A at the State Emergency Operations Center for this event. All five Water Management Districts are monitoring the flood stages of the rivers in the State, and are prepared to take action as needed. Other state agencies are putting their resources forward in response to this event. Emergency Support Function 8 (Health and Medical) is working with the County Health Departments to secure additional facilities and medical staffing for special needs shelters. Emergency Support Function 11 (Food and Water) is locating USDA commodities for distribution to the affected

communities. As with Hurricane Charley, we anticipate power outages on a large scale, and Emergency Support Function 12 (Energy) will be working with our utilities to restore power to as many customers as possible once the hurricane has passed. Emergency Support Function 14 (Public Information) has opened the Florida Emergency Information Line to give residents a source of reliable information concerning the emergency. Emergency Support Function 16 (Law Enforcement and Security) is working to prepare its resources for deployment as needed to ensure security in the affected communities. The personnel, who run these and other functions have been working since August 10, 2004 when the State Emergency Operations Center went to Level 1 for Hurricane Charley, and will continue to work through this storm without interruption.

I have determined, in accordance with 44 C.F.R. § 206.35, that this incident is of such severity and magnitude that effective response and recovery actions are beyond the capabilities of the State and the affected local governments, and that supplemental federal assistance is necessary to save lives, protect property, public health and safety, or to lessen or avert the threat of a disaster. In response to the situation, I have taken appropriate actions under state law and directed the execution of the provisions of the State Comprehensive Emergency Management Plan for the duration of this event.

In accordance with 44 C.F.R. § 206.208, the State of Florida agrees that with respect to direct federal assistance it will do the following:

1. Provide, without cost to the United States, all lands, easements and rights of way necessary to accomplish the approved work;
2. Hold and save the United States free from damages due to the requested work, and indemnify the United States from any claims resulting from such work;
3. Provide reimbursements to FEMA for the nonfederal share of the cost of such work in accordance with the FEMA-State Agreement; and
4. Assist the performing federal agency in all support and local jurisdictional matters.

In addition, I anticipate the need for debris removal, which poses an immediate threat to lives, public health and safety. Pursuant to Sections 403 and 407 of the Stafford Act, the State agrees to indemnify and hold harmless the United States for any claims arising from the removal of debris or wreckage for this disaster. The State agrees that debris removal from public and private property will not occur until the landowner signs an unconditional authorization for the removal of debris.

The Honorable George W. Bush  
September 2, 2004  
Page Four

I further hereby certify that State and local obligations and expenditures for this disaster will comply with all applicable cost sharing requirements. I have designated W. Craig Fugate, Director, Department of Community Affairs, Division of Emergency Management, as the State Coordinating Officer for this request. He will work with the Federal Emergency Management Agency on damage assessments and is authorized to provide any further information, assurances, requests or justification on my behalf.

# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR

### EXECUTIVE ORDER NUMBER 04-192

#### (Emergency Management)

**WHEREAS**, on August 10, 2004, the Governor issued Executive Order 04-182 to declare a state of emergency because of Hurricane Charley; and

**WHEREAS**, Hurricane Charley came ashore in the southwestern portion of the State as a Category 4 hurricane and devastated communities in the southwestern and central portions of the State; and

**WHEREAS**, the State is now trying to recover from the impact of Hurricane Charley, although it may take years to do so; and

**WHEREAS**, on September 1, 2004, the National Hurricane Center advised that Hurricane Frances has continued to strengthen into a Category 4 hurricane, with sustained surface winds exceeding 135 mph, and that it may strengthen even further; and

**WHEREAS**, Hurricane Frances threatens a number of communities in the State of Florida with extreme weather conditions which pose an immediate danger to the lives and property of persons in those communities; and

**WHEREAS**, it is likely that Hurricane Frances will strike those communities within a matter of days, making the orderly evacuation of persons from those communities vital to the safety of the residents; and

**WHEREAS**, special equipment, personnel and other resources in addition to those needed for Hurricane Charley may be required in order to ensure the timely evacuation of

persons from the threatened communities and the safe movement of the evacuees to other communities in the State acting as destinations for the evacuees; and

**WHEREAS**, emergency measures in addition to those needed for Hurricane Charley may be needed to protect the lives and property of persons in the threatened communities, and the general welfare of the State of Florida; and

**WHEREAS**, central coordination and direction of the use of such resources for the local evacuation measures are needed to ensure the timely evacuation of the threatened communities;

**NOW, THEREFORE, I, JEB BUSH**, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution and by the Florida Emergency Management Act, as amended, and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

Section 1. Because of the foregoing conditions, I hereby find that Hurricane Frances, alone and in combination with the destruction by Hurricane Charley, threatens the State of Florida with a catastrophic disaster. I therefore declare that a state of emergency exists in the State of Florida, and that the evacuation of multiple counties in the State may be necessary because of Hurricane Frances. I further find that central authority over the evacuation of these counties is needed to coordinate these evacuations, that these evacuations exceed the capability of the local governments in these communities, and that shelters in other counties are needed to accommodate the evacuees. I therefore declare that a state of emergency also exists in all destination counties that open shelters to accommodate evacuees from the communities threatened by Hurricane Frances.

Section 2. I hereby incorporate Executive Order 04-182, as amended, by reference into this Executive Order, and all mission assignments and orders issued by the State

Coordinating Officer and Deputy State Coordinating Officers in connection with Hurricane Charley under the authority of Executive Order 04-182, as amended, are hereby ratified and extended as if issued on this date. Executive Order 04-182, as amended, is also hereby extended, so that its date of expiration will coincide with the expiration of this Executive Order.

Section 3. I hereby designate the Director of the Division of Emergency Management as the State Coordinating Officer for the duration of this emergency and as my Authorized Representative. In exercising the powers delegated by this Executive Order, the State Coordinating Officer shall confer with the Governor to the fullest extent practicable. In accordance with Sections 252.36(1)(a) and 252.36(5), Florida Statutes, I hereby delegate to the State Coordinating Officer the following powers, which he shall exercise as needed to meet this emergency:

- A. The authority to activate the Comprehensive Emergency Management Plan;
- B. The authority to invoke and administer the Statewide Mutual Aid Agreement, and the further authority to coordinate the allocation of resources under that Agreement so as best to meet this emergency;
- C. The authority to invoke and administer the Emergency Management Assistance Compact and other Compacts and Agreements existing between the State of Florida and other States, and the further authority to coordinate the allocation of resources from such other States that are made available to the State of Florida under such Compacts and Agreements so as best to meet this emergency;
- D. The authority to seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;
- E. The authority to distribute any and all supplies stockpiled to meet the emergency;

F. In accordance with Sections 252.36(5)(a) and 252.46(2), Florida Statutes, the authority to suspend existing statutes, rules, ordinances, and orders for the duration of this emergency to the extent that literal compliance with such statutes, rules, ordinances, and orders may be inconsistent with the timely performance of disaster response functions;

G. The authority to direct all state, regional and local governmental agencies, including law enforcement agencies, to identify personnel needed from those agencies to assist in meeting the needs created by this emergency, and to place all such personnel under the direct command of the State Coordinating Officer to meet this emergency;

H. The authority to activate the Continuity of Operations Plans of all state, regional and local governmental agencies;

I. The authority to seize and utilize any and all real or personal property as needed to meet this emergency, subject always to the duty of the State to compensate the owner;

J. The authority to order the evacuation of all persons from any portions of the State threatened by the disaster, the authority to direct the sequence in which such evacuations shall be carried out, and the further authority to regulate the movement of persons and traffic to, from, or within any location in the State to the extent needed to cope with this emergency;

K. The authority to reverse the flow of traffic on any and all highways or portions of highways of the State Highway System as needed to facilitate the evacuation of the affected communities;

L. The authority to regulate the return of the evacuees to their home communities;

M. The authority to designate such Deputy State Coordinating Officers as the State Coordinating Officer may deem necessary to cope with the emergency; and

N. The authority to enter such orders as may be needed to implement any or all of the foregoing powers.

Section 4. I hereby order the Adjutant General to activate the Florida National Guard for the duration of this emergency, and I hereby place the National Guard under the authority of the State Coordinating Officer for the duration of this emergency.

Section 5. I hereby direct each county in the State of Florida, at the discretion of the State Coordinating Officer, to activate its Emergency Operations Center and its County Emergency Management Plan, as needed to ensure an immediate state of operational readiness, and I further direct each county in the State, at the discretion of the State Coordinating Officer, to open and activate all shelters to accommodate all evacuees.

Section 6. I hereby direct all state, regional and local agencies to place any and all available resources under the authority of the State Coordinating Officer as needed to meet this emergency.

Section 7. I hereby designate all state, regional and local governmental facilities including, without limiting the generality of the foregoing, all public elementary and secondary schools, all Community Colleges, and all State Universities, for use as shelters to ensure the proper reception and care of all evacuees.

Section 8. I find that the special duties and responsibilities resting upon some state, regional and local agencies and other governmental bodies in responding to the disaster may require them to deviate from the statutes, rules, ordinances, and orders they administer, and I hereby give such agencies and other governmental bodies the authority to take formal action by emergency rule or order in accordance with Sections 120.54(4) and 252.46(2), Florida Statutes,



to the extent that such actions are needed to cope with this emergency. Without limiting the generality of the foregoing, I hereby order the following:

A. I hereby give all agencies of the State, including the collegial bodies within those agencies, the authority to suspend the effect of any statute, rule, ordinance, or order of any state, regional, or local governmental entity, to the extent needed to procure any and all necessary supplies, commodities, services, temporary premises, and other resources, to include, without limiting the generality of the foregoing, any and all statutes and rules which affect budgeting, printing, purchasing, leasing, and the conditions of employment and the compensation of employees, but any such statute, rule, ordinance, or order shall be suspended only to the extent necessary to ensure the timely performance of disaster response functions.

B. I hereby direct the Department of Transportation to waive the collection of tolls and other fees and charges for the use of the Turnpike and all other transportation facilities, regardless of whether such facilities are components of the State Highway System, to the extent such waiver may be needed to facilitate the evacuation of the affected communities; to reverse the flow of traffic on any and all highways or portions of highways of the State Highway System as may be needed to facilitate the evacuation of the affected communities; to close any and all highways or portions of highways as may be needed for the safe and efficient transportation of evacuees to those counties the State Coordinating Officer may designate as destination counties for evacuees in this emergency; to waive fuel taxes levied on vehicles registered in other States that are owned or operated by governmental agencies of those States, or by public utility companies or parties under contract with them, and to waive by special permit the registration requirements and the hours of service requirements for such vehicles; to waive the size and weight restrictions for divisible loads on any vehicles transporting emergency equipment,

services and supplies, and by special permit to designate alternate size and weight restrictions for all such vehicles for the duration of the emergency; and to waive by special permit the warning signal requirements in the Utility Accommodations Manual to accommodate public utility companies from other jurisdictions which render assistance in restoring vital services, to the extent such waivers are needed to meet this emergency.

C. At the request of the Director of Emergency Management of any county, I hereby direct the Department of Health to take over the operation of all shelters in that county that are intended for use by those evacuees with special personal, medical or psychological needs, and to station licensed medical professional and paraprofessional personnel at those shelters as needed to provide appropriate reception and care for such evacuees.

D. I hereby give all agencies of the State the authority to allow overnight stays by employees of the State who travel a distance of less than fifty (50) miles for the performance of official duties in connection with this emergency, and the authority to allow employees of the State reimbursement for the cost of meals during Class C travel incurred in connection with this emergency.

E. I hereby give all agencies of the State responsible for the use of state buildings and facilities the authority to close such buildings and facilities in those portions of the State affected by the emergency, to the extent needed to meet this emergency.

F. I hereby give all agencies of the State, including the collegial bodies within those agencies, the authority to abrogate the time requirements, notice requirements, and deadlines for final action on applications for permits, licenses, rates, and other approvals under any statutes or rules under which such applications are deemed to be approved unless disapproved in writing by

specified deadlines, and all such time requirements that have not yet expired as of the date of this Executive Order are hereby suspended and tolled to the extent needed to meet this emergency.

G. I hereby give all agencies of the State with employees certified by the American Red Cross as disaster service volunteers within the meaning of Section 110.120(3), Florida Statutes, the authority to release any such employees for such service as requested by the American Red Cross as needed to meet the emergency.

Section 9. I hereby find that the demands placed upon the funds appropriated to the agencies of the State of Florida and to local agencies may be inadequate to pay the costs of this disaster. In accordance with Section 252.37(2), Florida Statutes, to the extent that funds appropriated to the agencies of the State and to local agencies may be inadequate to defray the costs of this disaster, I hereby direct the transfer of sufficient funds from any unappropriated surplus funds, or from the Working Capital Fund, or from the Budget Stabilization Fund.

Section 10. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by States other than the State of Florida shall be allowed to render such services in the State of Florida during this emergency for persons affected by the disaster, with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross.

Section 11. In accordance with Sections 501.160(2) and 501.160(3), Florida Statutes, I hereby place all persons on notice that it is unlawful for any person in the State of Florida to rent or sell, or offer to rent or sell at an unconscionable price, any essential equipment, services, or supplies whose consumption or use is necessary because of the emergency. Such services shall include, without limiting the generality of the foregoing, any rental of hotel, motel, or other

transient lodging facilities, and any rental of storage facilities. In accordance with Section 501.160(1)(b), Florida Statutes, any price exceeding the average price for such essential equipment, services, or supplies for the thirty (30) days immediately preceding the date of this Executive Order shall create a presumption that the price is unconscionable unless such increase is caused by actual costs incurred in connection with such essential equipment, services, or supplies, or is caused by national or international economic trends.

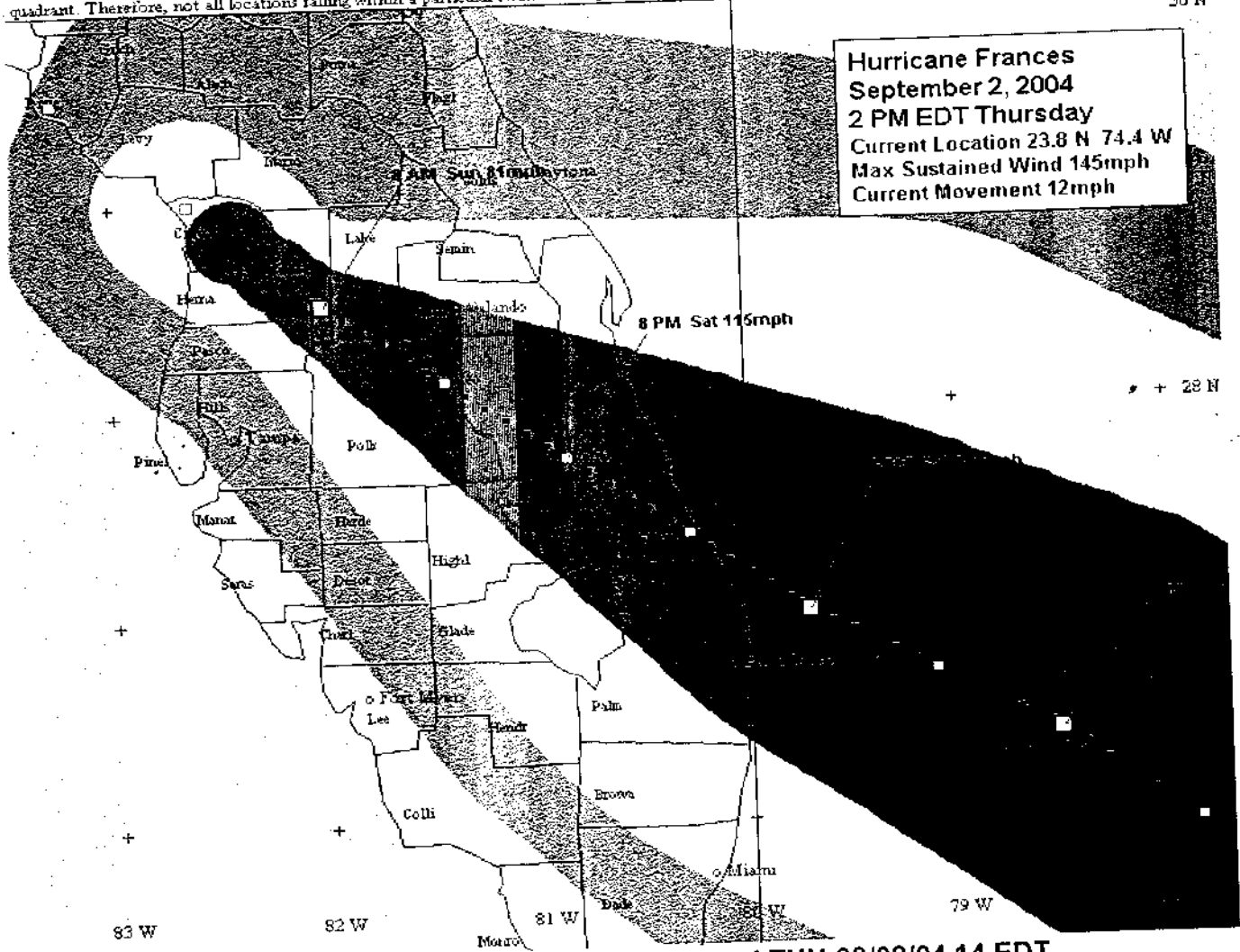
Section 12. All state agencies that enter emergency final orders or rules, or take other final actions based on the existence of this emergency shall advise the State Coordinating Officer in writing of the action taken as soon as practicable, but in no event later than the expiration of sixty (60) days from the date of this Executive Order.

Section 13. This Executive Order shall be deemed to have taken effect on September 1, 2004, and all actions taken by the Director of the Division of Emergency Management with respect to Hurricane Frances before the issuance of this Executive Order are hereby ratified. This Executive Order shall expire sixty (60) days from the date hereof unless extended.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 1st day of September, 2004.

recast Wind Swath (to 72 hrs only) ☐ >34Kt(39mph) ☐ >50Kt(58mph) ■ >64Kt(74mph)  
 ter Disclaimer: **2 PM Sat 60mph** Forecast wind swaths are determined from radii that represent the maximum possible extent of a given surface quadrant. Therefore, not all locations falling within a particular swath will experience the winds indicated by the swath.



Forecast track shown (dots) is based on Advisory issued THU 09/02/04 14 EDT

Wind Swaths shown here, are the official Hurricane Center Advisory for the storm and advisory number shown above. These forecasts are subject to errors smaller in the first hours, becoming greater with each hour.

Forecast error = at 12hours..47 miles 24hrs..88 mi. 36hrs..127 mi. 48hrs..166 mi. 72hrs..249 mi.)

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[FEMA-1545-DR]

**Florida; Amendment No. 1 to Notice of a Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-1545-DR), dated September 4, 2004, and related determinations.

**EFFECTIVE DATE:** September 5, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 4, 2004:

Broward, Citrus, Glades, Hernando, Highlands, Lake, Miami-Dade, Okeechobee, Orange, Osceola, Pasco, Polk, and Sumter Counties for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) and direct Federal assistance at 100 percent Federal funding of the total eligible costs for the first 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04-20572 Filed 9-10-04; 8:45 am]

**BILLING CODE 9110-10-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[FEMA-1545-DR]

**Florida; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-1545-DR), dated September 4, 2004, and related determinations.

**EFFECTIVE DATE:** September 4, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated September 4, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida resulting from Hurricane Frances beginning on September 3, 2004, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in all counties in the State, and Hazard Mitigation statewide, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For the first 72 hours, you are authorized to fund direct Federal assistance and assistance for debris removal and emergency protective measures at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William L. Carwile III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Brevard, Indian River, Martin, Palm Beach, and St. Lucie Counties for Individual Assistance.

Debris removal and emergency protective measures (Categories A and B) and direct Federal assistance for all counties in the State of Florida at 100 percent Federal funding of the total eligible costs for the first 72 hours.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04-20574 Filed 9-10-04; 8:45 am]

**BILLING CODE 9110-10-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[FEMA-1542-DR]

**Indiana; Major Disaster and Related Determinations**

**AGENCY:** Federal Emergency Management Agency, Emergency

## VIII

### LONG TERM RECOVERY FROM CATASTROPHIC DISASTERS

In addition to emergent and short term assistance to families displaced or injured by the disaster, there is also a long term impact on the community. It is often those neighborhoods in the community most depended upon by low income households that are most severely damaged. Affordable housing, particularly older market rate housing and older mobile homes, are frequently decimated by hurricanes and floods. However, in rebuilding efforts, while there is significant attention to the immediate needs of the low income families displaced by the storm, there is often much less attention focused on preserving or restoring their housing and communities. As a result a significant amount of post disaster advocacy for resources must be devoted to insuring that housing and community development efforts focused on very low and extremely low income households receive at least the same amount of attention as those focused on higher income households and their communities.

However, unlike the immediate needs of the displaced tenants and homeowners - food, clothing, shelter, and health care - needs which FEMA and other emergency agencies are specifically designed to address - long term needs are as varied as the disasters themselves. Likewise, as opposed to the programmatic rules governing FEMA assistance, disaster Food Stamps, disaster Unemployment Compensation and the like, many of the issues arising during the long term disaster response are simply disaster-specific applications of much broader legal and policy issues. Each of these

issues could deserve a manual on its own and it is impossible to fully treat them within the scope of this manual.

What follows is an attempt to alert the reader to the existence of these issues, provide some overview as to identification and response and, finally, to point the direction in addressing a solution.

## I **AFFORDABLE HOUSING RECOVERY**

Without question the most serious and fruitful long term housing advocacy strategy for low income households is insuring that as much as possible of the existing low income housing is repaired and returned to the market as housing, affordable to low income households. This includes not only subsidized housing but also low income market rate housing.

There are a number of reasons, including but certainly not limited to disaster related damage, that may result in the long term loss of that housing. Owners of properties with significantly appreciated underlying land values may attempt to manipulate the disaster related damage in an effort to convince the regulatory agency to remove any low income housing restrictions. Local governmental agencies may attempt to use the disaster related damage as a type of urban renewal, trying to discourage the return of unwanted affordable housing. And finally, many owners of older affordable market rate housing may simply be uninsured or under-insured and thus unable to fully repair the damage.

While every disaster is unique in its range, severity and types of damage, there



are certain common themes that emerge during the recovery effort. These suggestions attempt to provide some guidance as to various tasks and advocacy efforts that can be undertaken in response to any serious disaster. Specifically, it is initially vitally important to identify all of the affordable housing resources affected by the disasters and, to the extent possible, shepherd them back to occupancy. This involves ongoing contact and communication with owners, regulators and tenants. It is also important to undertake advocacy to access and target new resources so that they might be made available to extremely low income households. Finally it is important to work with local governments to insure that new resources can work for the most needy of households and to prevent “redevelopment” efforts designed to prevent the return of our clients to the “new” city.

## **1. Identification of Low Income Housing Resources**

The first step in any effort to insure that losses of affordable housing is minimized is identifying the affordable housing resources that existed prior to the disaster. While it is possible to do this after the disaster hits, it is far more efficient to conduct a census of subsidized affordable housing long before any disaster strikes and to periodically update the census. When a disaster hits, the tenants are scattered. To the extent there is a realistic list of preexisting subsidized units, those scattered tenants can be organized based on their prestorm addresses and can become a powerful force for requiring the restoration and repair of those buildings.

a. Subsidized Housing

(i) **Federal** - Identifying subsidized housing is particularly difficult because there are so many different sources of subsidy and there are few centralized databases listing subsidized.

While the properties can be roughly categorized by the type of subsidy, units are often subsidized by more than one type of assistance. It is beyond the scope of this manual to describe all of the possible sources of subsidies. An excellent reference for federal subsidy programs is HUD Housing Programs: Tenants' Rights (3d ed.), pp. 1/22 et seq., available from the National Housing Law Project.

(ii) **State** - Florida also has state subsidy programs, funded through the Sadowski Act Housing Trust Fund, Fla. Stat., 420.0001, et seq. and administered by the Florida Housing Finance Corporation. The Corporation administers the principal state financed rental program, SAIL (see Fla. Stat. 420.5087) , in a consolidated funding cycle with federal Low Income Housing Tax Credits and HOME funds. An explanation of the Florida state programs is available at the Corporation's website, <http://www.floridahousing.org> and the rules governing their administration are available in the Fla. Adm. Code, 67-48.

(iii) **Local** - Several counties and many cities also have locally administered affordable housing programs which result in subsidized units with recorded regulatory agreements.

Even after you have listed all of the possible subsidy programs, obtaining the exact addresses of all subsidized units is a difficult and tedious task, best performed before a disaster when timely responses to public records requests are possible. However, there are several sources which when combined can provide a relatively complete listing of subsidized units.

(A) The Shimberg Center at the University of Florida has an excellent website

with information on housing programs in the State of Florida. The website includes an “assisted housing inventory” and “public housing inventory” which attempts to list all subsidized projects within the State of Florida, sorted by County and listed by address. The website is available at [www.flhousingdata.shimberg.ufl.edu/](http://www.flhousingdata.shimberg.ufl.edu/)

(B) A list of all units assisted with Low Income Housing Tax Credits can be found at <http://lihtc.huduser.org> .

(C) U.S. HUD maintains a database of Project Based Section 8 and HUD assisted multifamily properties at <http://www.hud.gov/offices/hsg/mfh/exp/mfhdiscl.cfm>

## **b. Market Rate Affordable Housing**

In addition to subsidized housing most communities have significant amounts of *affordable market rate housing*, i.e., housing which rents, without subsidy, for a rate that is affordable to low income households. This group includes older mobile home parks, as well as older, unsubsidized but affordable rentals. In addition, it includes owner occupied homes, often occupied by elderly couples who have paid off any existing mortgage. While this housing is far more difficult to identify and quantify and is often overlooked in disaster recovery, it is often a far more significant resource (in terms of numbers of units) than subsidized units and far more at risk in a disaster.

## **2. Interim Policy Advocacy on Behalf of Displaced Tenants**

### **a. Coordination and Communication Among Affordable Housing Providers**

It is vital that there be communication between advocates, owners and regulatory bodies on an ongoing basis during the recovery period. While the regulatory agencies will often be in

touch with their developers, advocates are frequently excluded unless they proactively join the conversations. It is essential that certain policies be determined at the outset to guide the recovery efforts. The following are examples of the type of cooperative policies that might be considered by such a group.

(i) **Rent Rolls** - It is vital that current rent rolls be obtained on every damaged project as soon as possible. Tenants will be scattered by the disaster and the rent rolls are often the most accurate picture of who occupied the units at the time of the disaster. The regulatory agencies, such as the Florida Housing Finance Corporation or U.S. HUD, can be useful in obtaining this information from the owners. Advocates and tenants can similarly apply pressure on local Housing Authorities to preserve the rent rolls. Housing Authority rent rolls are public records and can be requested by advocates to insure that the information is preserved.

(ii) **Right of Return** - It is important that the developers, regulators, landlords and advocates agree on a common overall “right of return” policy. The basic policy should be that the tenants who relocated due to the storm did so temporarily and have an absolute right to return when all necessary repairs are completed. After Hurricane Andrew, U.S. HUD issued a directive to its owners, requiring them to recognize the “right of return” of its tenants.

This “right of return” policy accomplishes several goals. First, it allows for an initial communication with the tenants as to their rights (during the early period following the storm when they are still visiting the storm damaged site.) Second, it ties the tenants to the projects during the interim recovery period. Third, it prevents landlords from “rescreening” tenants at the time of return. Essentially, tenants should be permitted to return just as they were

on the day before the storm. If something occurred in the interim period that might be cause for eviction - they should be permitted to return and then be subjected to an eviction proceeding.

**(iii) *Tenant Communication*** - It is also important that owners maintain communication with their tenants and, to the greatest extent possible, secure forwarding addresses. If the former tenants cannot be located at the time the building is repaired any rights they might have to return will be forfeited once the building has been filled. By obtaining an early “right of return” commitment, it is possible to provide tenants with an initial friendly communication from the landlord - which will keep lines of communication open. In addition, having an accurate rent roll list allows for cross checking names with FEMA and other assisting agencies to insure that families, who may be in temporary shelters, are informed when their former apartments are ready to be reoccupied.

**(iv) *Ongoing Adaptive Policy Determination and Development*** - Housing program policy is not made with disasters in mind. Each disaster is *sui generis*, creating its own unique need for ad hoc policy determinations. While establishing a “right of return” policy answers a number of policy questions, the disintegration of families during the stress of relocation will present a myriad of issues. For example, how do developers accommodate families who have separated in the interim and now need two smaller units? Ongoing communication between the regulatory agencies, the owners and tenant advocates creates a forum for discussing these ad hoc policies and attempting to create some regularity of decision making.

### **3. Insuring the Restoration of All Affordable Housing**

#### **a. Establish Complete Restoration as the Goal**

Complete restoration of all affordable housing, including all public housing, must be the norm - the standard - for all advocacy efforts. All of the previously described advocacy efforts - obtaining rent rolls, fostering communication, establishing a right of return - are designed to both operate with and to independently encourage the complete restoration of all affordable units.

If there is an ongoing communication effort, then it will be easier to distinguish and focus on those few projects for which complete restoration is most problematic. There are several possible reasons for a failure to repair and each has to be focused on separately.

**(i) *Insufficient Funds*** - Most regulated projects should be fully insured as a condition of their governmental assistance. Therefore, it should be rare that a governmentally subsidized privately owned project fails to have sufficient insurance to fully repair. Any argument that a project is under-insured should be very closely examined. Public Housing projects, on the other hand, may have such a great deal of deferred maintenance that restoration overwhelms the resources of the local housing authority. Therefore, it may be important to insure that any state or federal affordable housing disaster assistance program include funds specifically designed to address the needs of under-insured projects.

**(ii) *Economic Disincentives to Repair*** - For certain private subsidized developers, the disaster could provide an excuse for exiting the affordable housing restrictions on their units. Project Based Section 8 developments, for example, who are committed to long term contracts with U.S. HUD at fixed rents, it may be far more lucrative to rebuild the units as market rate rentals or condominiums. For such developers, there are strong incentives to exaggerate their damages and the futility of repair in the hope that U.S. HUD will simply release them from

any restrictions. Depending on the circumstances, any such efforts by owners, with or without HUD complicity should be challenged. I am not aware of any disaster specific legal challenges. Thus advocates must use the same challenges that would be available without a disaster - adapted to the disaster context. An excellent description of the legal tools available for fighting attempts by owners or HUD to relieve themselves of low income housing restrictions is contained in HUD Housing Programs: Tenants' Rights (3d ed.), *supra.*, at Section 15.3, *et seq.* (for HUD subsidized projects) and at Section 15.4, *et seq.* (for Project Based Section 8 Projects).

For certain Public Housing Authorities, a similar disincentive to repair exists as they may wish to use the disaster as an excuse to demolish and "voucher out" a damaged (and unwanted) public housing project. As with other federally assisted housing the same challenges would be available as are available without a disaster. An excellent description of the legal tools available for fighting attempts by Public Housing Authorities to demolish existing public housing is contained in HUD Housing Programs: Tenants' Rights (3d ed.), *supra.*, at Section 15.2, *et seq.*

## **II PARTICIPATION IN POST DISASTER RESOURCE ADVOCACY**

After a serious disaster, every community will organize to focus advocacy for sufficient resources to respond and recover. This organizational effort may be organized privately or by the government. The Hurricane Andrew post disaster resource advocacy effort, called "We Will Rebuild", was organized in Miami-Dade County by private and public community leaders. The post 2004 Hurricane season state wide rebuilding effort was spearheaded by Governor Bush's Hurricane Housing Working Group, working out of the Governor's Office.

In either case it is vital that advocates for the needs of extremely low income households be part of these housing advocacy efforts. Extremely low income families, less than 30% AMI, consistently have some of the most severe housing needs as a result of the hurricanes in Florida. These families frequently reside in structures less able to withstand the storm, have few, if any, personal or family resources to assist with recovery, and are often at the mercy of others, landlords or mobile home park owners, regarding restoring or replacing their damaged homes.

The needs of these families are as diverse as they are. They include households that were homeless before the storm, as well as the many thousands of working poor, including contingent workers, migrant workers and the unemployed, as well as the elderly and the disabled. Many of these households are the workforce for our most important industries - tourism, agriculture, personal services. Therefore, providing diverse types of housing assistance for these families is a significant challenge in the post disaster recovery period.

It is important to remember, even after emergency shelter is provided, these households will have both “interim” and “long term” needs, and both of these needs must be addressed. Many of these households will be without adequate housing months after the storms and will not be able to wait the one or two years for the development of new subsidized housing opportunities. The families immediate needs must be addressed if they are to take advantage of the long term programs.

The following are some of the principal types of assistance that can be requested as part of any post disaster advocacy efforts<sup>1</sup>:

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<sup>1</sup> These suggestions for resource advocacy were taken from suggestions made to the Governor’s Hurricane Housing Working Group, established by Governor Bush after the hurricane



## **1. Increased Availability of Housing Vouchers and Rental Assistance**

(i) *Federal Vouchers* - The federal Section 8 housing voucher program is currently the single largest resource for housing the extremely low income and very low income families in Florida. Every effort should be made to seek any additional federal vouchers that may be available. There is often a disincentive to request vouchers as the destruction of affordable rental housing can sometimes render them virtually useless in the short term. However, the private rental stock will almost certainly return more quickly than any new construction. Moreover, much of the new construction is often HOME financed or Low Income Housing Tax Credit financed, resulting in rents that are generally unaffordable to extremely low income households. Section 8 vouchers is the single housing resource which is guaranteed to provide affordable housing for extremely low income households.

(ii) *Interim State Voucher Program* - After the 2004 Hurricane season, Florida developed a short term supplemental housing voucher program that could provide a “bridge” to permit poor workers to remain in their communities as they await the development of longer term solutions.

(iii) *Relocation Expense Subsidy* - Needy families living in housing damaged by hurricanes often need relocation expenses such as security deposits, utility payment deposits, and first or last months rent which are not provided for by FEMA. Such a fund can also be used for temporary storage of household furnishings, moving costs, etc.

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season of 2004.

**(iv) *Increased Availability of Interim FEMA Trailer Assistance* - FEMA**

trailers are one of the few sources of “interim housing” in areas where there are no units to rent with vouchers. Assuming that the newly constructed subsidized units will take 18 months to two years to come on line, the only interim resources for extremely low income households will be rent subsidy programs or FEMA Trailers. After Hurricane Andrew, the FEMA trailers were vital in providing a housing resource until the long term subsidized housing resources began to return. FEMA should be urged to make maximum use of trailers in situations where long term housing is not available.

**2. *Prioritization of Funding***

**(i) *Targeting Extremely Low Income Households Must Be the Top Priority* -**

After every disaster, significant amounts of one time funds are identified. Housing advocates must advocate not only with respect to the amount of these funds but, more importantly, with respect to the prioritization of their expenditure. One of the highest priorities must be rental housing for the extremely low and very low income households. After a severe storm or series of storms, privately owned, unsubsidized affordable housing will often virtually cease to exist in the areas hit hardest by the hurricanes. That housing cannot be replaced at the same rents without significant subsidies.

**(ii) *We must Advocate for Development of Imaginative Deep Subsidy Programs to Assist the Lowest Income Households* -** One of the objections to programs targeted exclusively to the lowest income households is that they fail in the absence of an ongoing operating subsidy. While this notion should be confronted directly, the desperate and difficult situations after a serious disaster can sometimes be utilized to gain acceptance for programs and

policies that might otherwise be rejected as too highly targeted, or too novel. The following are a few programs that were suggested to the Governor's Hurricane Housing Working Group following the 2004 storms:

**(iii) *Community Land Trust*** - It was suggested that Florida should provide subsidies to impacted counties for the purpose of purchasing mobile home park properties to be used for housing extremely and very low income families for a term of no less than 50 years. Priority could be given for the purchase of properties that suffered damage in the hurricanes and are in danger of being converted to uses which do not serve the extremely and very low income. Local governments could transfer title to the properties to community land trusts (nonprofit organizations that could be set-up with the assistance of the local government). This program could greatly assist in stemming the widespread loss of mobile home park properties due to the combination of market forces and the hurricanes, with the displacement of thousands of extremely and very low income Floridians.

**(iv) *Manufactured Home Loan Guarantee Fund*** - It was suggested that Florida could establish a manufactured home loan guaranty program to be used as a credit enhancement for the financing of individual manufactured homes, to enable the buyer to obtain the same interest rate and closing fees on a manufactured home (built to post 1994 standards, with adequate tie downs) as a stick built home. The manufactured home would be required to be located on property owned by the buyer prior to or at closing. This program could also be supplemented with a down payment and closing cost assistance program. This program should to a substantial extent be targeted to rural areas and could result in ownership opportunities for extremely low income households.

**(v) *Extremely Low Income Targeted Development Subsidy*** - Florida should

provide a deep subsidy to developers using bonds with 4% tax credits to set-aside 15% of the units for extremely low income families and 10% of the units for very low income families for a term of no less than 50 years. This serves the purpose of using the much available bond money with 4% federal tax credits to create permanent housing for the extremely low income in a mixed income development. The Florida Housing Finance Corporation could administer these monies with the multifamily mortgage revenue bond program.

**(vi) *Capacity Building among Community Based Developers*** - Often a hurricane can result in a huge surge in reconstruction and construction of affordable housing in a damaged community. It is important that the influx of funds be accompanied with some funding to assist local community based nonprofit developers to have a fair chance to access those funds.

**3. Advocates must Maintain Vigilance over Local ReBuilding and Planning Efforts to Insure that Former Low Income Residents are Included in the Post Disaster Community.**

**a. The Redevelopment Syndrome**

Just as it is important to be part of the larger resource advocacy efforts, so to it is vitally important to participate in local government post disaster planning efforts. Frequently, particularly in smaller jurisdictions, local governments attempt to use the destruction caused by hurricanes as a type of “redevelopment” selectively rebuilding or refusing to rebuild housing based on the perceived attractiveness of its potential inhabitants. Any such effort when based on considerations of race, ethnicity or family size is subject to challenge as a violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, et seq.; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. For an excellent discussion of the law

challenging discriminatory zoning and land use decisions see, James A. Kushner, Fair Housing, Discrimination in Real Estate, Community Development and Revitalization, 2d Ed., Ch. 7, §§ 7.02 through 7.14.

**b. Mobile Home Parks**

Mobile home parks are frequently one of the least desirable land uses in the wake of a hurricane. Often local governments will take action to prevent them from being rebuilt or restored after the storm. Mobile home parks, however, provide one of the more affordable market rate housing options for extremely low income households. Therefore, advocacy efforts should be directed at the maintaining affordable mobile home parks whenever possible. If there is any evidence that the mobile home park is being closed due to the race, ethnicity or family size of the residents (or former residents) then the action of the local government may be subject to challenge as a violation of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §§ 3601, et seq.; the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. For an excellent discussion of the law challenging discriminatory zoning and land use decisions see, James A. Kushner, Fair Housing, Discrimination in Real Estate, Community Development and Revitalization, 2d Ed., Ch. 7, §§ 7.02 through 7.14.

In addition, if the mobile home park is closed due to rezoning or other land use change during the period of post storm vacancy, then the advocate should review Fla. Stat., 723.083 which prohibits any local agency from approving any rezoning or taking “any other official action which would result in the removal or relocation of mobile home owners residing in a mobile home park without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of the mobile home owners.”

**c. Unmet Needs Consortium**

A very positive and extremely useful local planning effort is the Unmet Needs Consortium. This is an informal assembly of social service, housing and other local emergency needs providers, each of whom have caseworkers working with storm victims. After obtaining waivers of confidentiality, they present particularly difficult or complex cases to the entire group who combine their resources in responding to each individual case worker's presentation. As a result, storm victims are given access to a large panoply of services and funds which they otherwise would be unable to obtain from a single agency.

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July, 2005

## IX

### THE RIGHTS OF RESIDENTIAL TENANTS AFFECTED BY A DISASTER

#### **Introduction:**

The rights of residential tenants in Florida are governed by the Florida Residential Landlord Tenant Act which is found at Florida Statutes 83.40 et seq., also known as Part II of the Landlord and Tenant Act. That Act applies to persons who occupy a dwelling unit, under the provisions of a rental agreement which calls for the payment of periodic rent in exchange for occupancy. That Act does not apply, in most cases, to residency in a mobile home park, recreational vehicle park, or to the guests of a motel. A second important source of tenant rights is the lease between the landlord and tenant, should one exist. The lease may add additional terms and protections for tenants, but may not lawfully waive or preclude rights found in the Act. Florida Statute 83.47

#### **Termination of a Tenancy:**

In Florida, absent a written lease provision to the contrary, duration of a tenancy is determined by the frequency with which a tenant pays rent. Pursuant to Florida Statute 83.46, tenants who pay rent weekly are week to week tenants; tenants who pay rent monthly are month to month tenants, and tenants who pay rent annually are year to year tenants. If the tenant does not pay rent but receives the dwelling unit as an incident of employment, the duration of the tenancy is determined by the frequency with which he is paid wages. For example, if wages are paid weekly, the tenancy is week to week. Florida Statute 83.46. Termination of all such tenancies by either party must be done by written notice mailed or hand delivered to the other party. Generally, a week to week tenancy requires the delivery of such a notice seven days prior to termination, while a month to month tenancy requires fifteen days prior notice for termination and a year to year tenancy requires sixty days prior notice. Florida Statute 83.57.

However, if the landlord seeks to terminate because the tenant is behind in the payment of rent, the law requires only the delivery of a three day notice. The notice must advise the tenant that they have three working days to pay rent or their tenancy will terminate. Florida Statute 83.56(3). Unfortunately, Florida law makes no provision for any sort of moratorium of a tenant's rent obligation due to loss of income during a disaster. Conversely, the landlord's obligation to give the proper amount of written notice to a tenant prior to lease termination does not abate after a disaster.

After the landlord has terminated a tenancy, by giving the proper amount of written notice, he must then file an action for possession in the county court where the property is located. He may not use self-help eviction methods to regain possession.

### **Prohibited Practices:**

Florida Statute 83.67 of the Florida Residential Landlord and Tenant Act prohibits constructive or self-help evictions by landlords. Specifically, the Act prohibits landlords from:

1. directly or indirectly causing the termination of utility services including, but not limited to water, heat, light, electricity, gas, elevator, garbage collection or refrigeration, regarding of whether the utility service is under the control of or payment is made by the landlord;
2. preventing the tenant from gaining reasonable access to the dwelling unit by any means including, but not limited to changing the locks or using any bootlock or similar device; and
3. removing outside doors, locks, roof, walls, or windows, or personal property of the tenant except for maintenance purposes.

If the landlord takes actions prohibited by this Section, the tenant is entitled to sue for an award of actual and consequential damages or three months' rent,



whichever is greater, as well as attorney fees and costs. Separate awards are permitted for subsequent or repeated violations which are not contemporaneous with the initial violation. Note that this section only applies to the landlord=s intentional conduct and not any loss of utilities or other prohibited activities caused by a disaster.

However, it is not a prohibited practice for a landlord to take possession of the property if the tenant has abandoned the property pursuant to Florida Statute 83.59. Unless the landlord has received written notification of absence from the tenant, a landlord may presume that a tenant has abandoned the tenancy if the tenant is behind in rent and has been absent from the premises for a period of time equal to one-half the time for periodic rental payments.

Just after a disaster, it is common for tenants to be away from their rented property for extended periods of time as a result of evacuation or lack of utilities. It is recommended that the tenants send written notification to their landlords of their extended absence, and that they also make some provision with the landlord concerning their rental payments.

### **Security Deposits:**

Florida Statute 83.49 governs landlords= obligations with respect to the return of security deposits. This provision applies to all private landlord tenant relationships. It does not apply to hotels, motels or situations in which the amount of rent is regulated by law or regulations of a public body such as a public housing authority.

#### **1. Landlord=s responsibilities:**

Under the provisions of Florida. Statute 83.49, the landlord must exercise one of three options upon receipt of a security deposit: a) Deposit in a separate non interest

bearing account for the benefit of tenants; b) Deposit in a separate interest bearing account and allow tenant to collect at least 75% of the annualized interest; c) Post a surety bond with the clerk of the circuit court. The landlord has 30 days from receipt of the advance rent or security deposit to notify the tenant in writing of the manner in which he/she is holding these monies. Once the tenant vacates the unit, if the landlord does not intend to make any claims, he/she has 15 days to return the security deposit (with interest accrued). If the landlord decides to claim a portion of the security deposit, he/she has 30 days to give the tenant written notice by certified mail of his/her intent to impose a claim and the reason for imposing the claim. **If the landlord fails to give the required notice within the 30 day period, he or she forfeits the right to impose a claim upon the security deposit.** There are no statutory provisions for a more immediate return of a tenant=s deposit after a disaster.

## **2. Tenant=s responsibilities:**

When a tenant vacates the premises, he or she has a duty to inform the landlord in writing of the address where the tenant may be reached. Failure to disclose this information relieves the landlord of the notice requirement but does not waive any right the tenant may have to the security deposit. Tenants who have vacated after a disaster should be advised to send a forwarding address to their landlords.

## **Rent Withholding and Maintenance of Premises:**

### **Landlord=s responsibilities:**

Florida Statute 83.51 describes the landlord=s obligation to maintain the premises. These include: a) compliance with all applicable building, housing and health codes. If no codes are applicable, the landlord must maintain roofs, windows, screens, doors, floors, steps, porches, exterior walls plumbing and structural components. b) The

landlord must make reasonable provisions for: extermination; locks and keys; clean and safe common areas; garbage removal; heat, running water and hot water. **The obligations under part b) may be modified in writing in the case of single family homes or duplexes;**

**Tenant=s responsibilities:**

The tenant has a duty to keep the premises clean and sanitary, and to repair any damage caused by his usage. The landlord is not responsible to the tenant for conditions created or caused by the negligent or wrongful act or omission of the tenant, his/her family or guests. The tenant has a duty to notify the landlord in writing of his/her material noncompliance with Florida Statute. 83.51. The tenant=s written notice must specify the non-compliance and provide notice of the tenant=s intent to withhold rent unless the deficiencies are corrected within 7 days. After a disaster, a tenant who cannot get a commitment to make repairs from his or her landlord should be assisted with the preparation of a such a 7 day letter, listing the material problems requiring repair and specifying that rent will no longer be sent after the passage of seven days time. The tenant should also be advised to save the withheld rent.

If the landlord completes the repairs within the 7 day time-frame, the tenant must tender the full amount of rent. If the landlord does not complete the repairs and files an action for non-payment of rent, the tenant should raise the noncompliance as a defense to the eviction. A material non-compliance with Florida Statute 83.51 is a complete defense to an action for possession based on nonpayment of rent. At the eviction hearing, the tenant may ask the court for a reduction of rent based on the diminution in value of the dwelling during the period of the landlord=s non-compliance.

It is important to note that Florida Statutes do not provide tenants an opportunity to repair and deduct. Additionally, if the landlord files an action for non-payment of rent, the court will require the tenant to post the entire amount of rent due into the court registry prior to making a decision on the underlying eviction or as to diminution of value.

## Casualty Damage:

Florida Statute 83.63 of the Florida Residential Landlord and Tenant Act sets forth the rights of tenants whose rental premises are damaged or destroyed for reasons not attributable to their own wrongful or negligent acts. The rights set forth in the Act apply when the enjoyment of the premises is substantially impaired. The Act provides tenants with two options

1. In cases where the disaster has rendered the property completely uninhabitable, the tenant may immediately terminate the tenancy and vacate the premises; or

2. In cases where the disaster has rendered only a portion of the premises uninhabitable, the tenant may vacate the part of the premises rendered unusable by the casualty and reduce their rent by the fair rental value of the part of the premises damaged or destroyed.

The statute is not clear as to how the tenant should terminate the tenancy or determine the amount of rent reduction. While not specifically required, it would be wise for tenants to provide written notice to their landlord of their choice to either terminate the tenancy or to vacate part of the premises, as well as the basis for any decision to reduce a portion of the rent. Tenants often wish to know if their landlord is responsible for providing them with alternate housing when a disaster has rendered their premises uninhabitable, but nothing in the statute requires a landlord to do so. Should the tenant make the decision to vacate, it should be noted that the landlord is still subject to the provisions of the statute which govern the return of security deposits.

It is important to note that the right to terminate the tenancy for casualty damage is given to the tenant, not to the landlord. If the tenant chooses to remain in the

damaged premises, the landlord has an obligation to maintain the property pursuant to Florida Statute 83.51. See Baldo vs. Georgoulakis, 1 Fla. L. Weekly Supp. 432b (Dade County, 1993).

### **Personal Property Damage:**

Residential tenants will frequently inquire as to whether or not the landlord is responsible for any personal property which was inside their rental unit and which was damaged due to a disaster or its aftermath. If a written lease exists, it is important to examine its terms carefully although it should be noted that most Florida leases exonerate the landlord of any responsibility for the tenant=s personality and many urge the tenant to carry renters insurance. The Florida Statute does not deal with this issue and, absent negligence, it is doubtful that the landlord would be responsible for the value of the damaged personal property. However, the tenant may wish to make a claim with the Federal Emergency Management Agency (FEMA) for the value of the destroyed items.

### **Guests:**

Another topic of inquiry for tenants is their ability to have displaced family or friends stay with them at their rental premises after a storm. Again, the Florida Statute is silent as to this issue and the terms of the written lease or oral agreement will govern their right to add members to their households. Again, there is no moratorium on enforcement of the lease provisions due to exigent circumstances and the tenant who allows displaced family members to reside at his rental unit may find that he has committed a lease violation. However, under the terms of Florida Statute 83.56(2)(b), he should be sent a notice giving him 7 days in which to correct the violation before any eviction action could proceed.

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June, 2006

## X

### **A PRIMER FOR HANDLING HOMEOWNER'S INSURANCE CLAIMS IN FLORIDA**

This paper is intended to serve as a guide for the general practitioner representing a policyholder claiming benefits under a homeowner's policy of insurance. As most homeowner's insurance policies issued today are standardized across the industry, the principles outlined herein will generally apply no matter which particular insurer issued the policy. However, as the specific policy language may vary from insurer to insurer, I strongly urge the practitioner to carefully read the language of the particular policy with which you are dealing.

#### **BASIC COVERAGE ISSUES**

The first step in analyzing any homeowner's insurance policy is determining what property is covered, who is an insured and what perils are insured against. Covered property typically includes the dwelling on the residence premises, including structures attached to the dwelling. (Usually the location specifically described on the declaration page). Coverage is also typically provided for other structures on the residence premises set apart from the dwelling by a clear space such as a guest house, tool shed, etc.

#### **Types of Property Covered**

Coverage is generally provided for personal property owned or used by the insured anywhere in the world. The following items of personal property are typically excluded from coverage: animals, birds or fish; motor vehicles or all other motorized land conveyances (however, motorized golf carts and their equipment are usually covered);

aircraft and parts; property of roomers, boarders, tenants or other residents not related to an insured; property in an apartment regularly rented or held for rental to others; business data, including electronic data and computer disks; and credit cards or fund transfer cards. Most policies have special limits of liability which limit the amount of loss to be paid, in the aggregate, for certain specified items of personal property which typically includes money, gold and silver; securities and letters of credit; watercraft; loss by theft of jewelry, watches, precious stones, fur, silverware, goldware, firearms; and motorized golf carts.

### **Loss of Use Coverage**

Most policies also include coverage for loss of use, including additional living expenses (ALE). This coverage indemnifies an insured for the necessary increase in living expenses so the insured's household can maintain its normal standard of living, if a covered loss to the dwelling makes that part of the residence premises not fit to live in. Generally, payment is made for the shortest time required to repair or replace the damage or, if the insured permanently relocates, the shortest time required for the insured's household to settle elsewhere. In either case, most policies have a maximum benefit period of twelve (12) months. Most loss of use provisions also provides indemnity for the loss of rental income when the dwelling becomes uninhabitable. This coverage pays for the fair rental value of that part of the residence premises rented to others or held for rental ?less? any expenses that are no longer incurred while the premises are not fit to live in, if a covered loss to the dwelling makes that part of the residence premises rented to others or held for rental, not fit to live in.

### **Additional and Extended Coverage**



Most policies provide additional or extended coverages, sometimes at an increased premium, for the following when associated with a covered property loss: debris removal; reasonable repairs taken to prevent further damage to the property; damage to trees, shrubs and other plants; fire department service charges; credit card, fund transfer, forgery and counterfeit money; fines or assessments levied by a property owner's association as a result of direct loss to the property; collapse; lock replacement; refrigerated products; land; glass or safety glazing material; landlord's furnishings; and increased building costs as a result of ordinance or law.

### **Who Is Insured**

The practitioner next needs to determine who is an insured under the policy. Policies generally include as insureds the named insured(s) listed on the declaration page; residents of the named insured's household who are relatives or other persons under the age of 21 and in the care of any person named above. In analyzing whether an individual is a resident of the insured's household, the court will look at the totality of the circumstances, including the intent of the particular individual. General Guaranty Ins. Co. v. Broxsie, 239 So. 2d 595, 597 (Fla. 1<sup>st</sup> DCA 1970) and Taylor v. USAA, 684 So. 2d 890 (Fla. 5<sup>th</sup> DCA 1996). A student away from home at school can still qualify as a resident of his parent's household. Seitlin & Co. v. Felix Ins. Co., 650 So. 2d 624 (Fla. 3<sup>rd</sup> DCA 1994). Similarly, one who is away in military service can still be a resident of his/her primary physical residence. Taylor, supra.

### **What Perils Are Insured**

Finally, a determination must be made as to what specific perils are insured against. With respect to the dwelling, certain homeowner's forms provide coverage for all

direct physical loss to property unless specifically excluded, while other forms specifically set forth the “Perils Insured Against.” Regardless of the policy form, most policies will not cover loss resulting from the following events:

- a. Pressure or weight of water damaging a fence, pavement, patio, swimming pool, foundation, bulkhead or dock. See Wallach v. Rosenberg, 527 So.2d1386 (Fla. 3d DCA 1988) (noting that a jury question existed as to whether pressure, in part, caused collapse of sea wall.)
- b. Theft in and to a dwelling under construction of materials and supplies used in construction. See Diaz v. Florida Insurance Guaranty Association, 650 So.2d 675 (Fla. 3d DCA 1995).
- c. Vandalism and malicious mischief, if a dwelling has been vacant for more than thirty (30) consecutive days before a loss.
- d. Constant or repeated seepage or leakage of water over a period of weeks, months, or years from within a plumbing, heating or air-conditioning system. Please note that the purpose of this exception is to preclude coverage for a slow leak which goes on unabated for a significant period of time. Coverage is not precluded for sudden water loss causing damage from a plumbing, heating, air-conditioning or household appliance.
- e. Ordinary wear and tear and deterioration are not covered under the policy. Nor is there coverage for damage caused by a latent defect or mechanical defect. Therefore, damage caused by, or attributable to, a failure to maintain or preserve the dwelling will not be a covered peril under the policy.
- f. Settling, shrinking, bulging, or expansion, including resulting cracking of pavements, foundation walls, floors, roofs or ceilings are not covered. As a result, general settling and/or cracking to a home unrelated to an outside force will not be covered. See Gutman v. American Motorists Insurance Company, 410 So.2d 1001 (Fla. 3d DCA 1982) (settlement cracks in 45 year old home not covered under homeowner's policy).
- g. Smog, rust or other corrosion, mold, wet or dry rot.
- h. Birds, vermin, rodents or insects.

## **Personal Property – Covered Perils**

With respect to personal property, the standard homeowner's policy typically lists those events which constitute covered perils. The enumerated perils covered by the standard form include:

- a. Fire/lightening;
- b. Windstorm or hail. It should be noted that rain damage will only be covered if the direct force of the wind creates an opening in the structure through which the rain enters. See New Hampshire Insurance Company v. Carter, 359 So.2d 52 (Fla. 1st DCA 1978). The policy does not provide coverage for damages which result solely due to a leaky roof. Stufflebean v. Fireman 's Fund Insurance Company, 710 S.W.2d 931 (Mo. App. W.D. 1986).
- c. Explosion;
- d. Riot or civil commotion;
- e. Vehicles;
- f. Vandalism or malicious mischief. Coverage for vandalism applies even though the damage may have occurred in the course of an uncovered event, i.e., a burglary. See Allstate Insurance Company v. Coin-O-Mat Inc., 202 So.2d 598 (Fla. 1st DCA 1967) Damage by a wild animal, however, will in all likelihood not constitute vandalism. See Montgomery v. United Services Automobile Association, 886 P.2d 981 (N.M. Ct. App. 1994) (noting that a bobcat lacked the intent necessary to commit an act of vandalism) Id. at 981.
- g. Theft is generally covered, as is attempted theft and loss of property. However, theft is not covered if committed by or at the direction of an insured. Further, no theft is covered if it occurs to a dwelling under construction. A theft may include items lost in an unlawful repossession, even if performed in good faith. St. Paul Fire & Marine Insurance Company v. Pensacola Diagnostic Center and Breast Clinic, 505 So.2d 513 (Fla. 1st DCA 1987). Property of a student, who is an insured, is covered while at a residence away from home if the insured has been at said residence at any time during the forty-five (45) days immediately before the loss.

- h. Accidental Discharge or Overflow of Water - discharge of water from a plumbing, heating, air-conditioning system, automatic sprinkler or household appliance is covered. The discharge must originate on the residence premises. The term household appliance means a device that performs a task in or around the home. It does not include items such as a waterbed. See West American Insurance Company v. Lowrie, 600 So.2d 34 (Fla. 3rd DCA 1992). Further, a discharge of water resulting from a backup or discharge occurring off premises is not covered. Hallsted v. Blue Mountain Convalescence Center, 595 P.2d 514 (Wash. Ct. App. 1979) (sewer backup causing damage is not a covered event).

### **Policy Exclusions**

Most policies also have a list of exclusions that operate to preclude coverage to both the dwelling and personal property losses, and if such exclusion applies, the policy will afford no coverage regardless of the item or property involved. Most policies carry an exclusion for damage caused by earth movement, which is usually defined as loss caused by the earth sinking, rising, or shifting. However, the Florida Supreme Court has recently held that, in the absence of specific policy language to the contrary, this exclusion applies only where the earth movement results from natural events as opposed to man-made events such as road blasting. Fayad v. Clarendon Nat'l Ins. Co., 899 So. 2d 1082 (Fla. 2005). An exception to this exclusion applies where the policy has a sinkhole collapse endorsement. Zimmer v. Aetna Insurance Company. 383 So.2d 992 (Fla. 5th DCA 1980).

An exclusion typically exists for ordinance or law coverage, which means damage or expense caused by the enforcement of any ordinance or law regulating the construction, repair or demolition of a building.<sup>1</sup> See State Farm Fire & Casualty Co. v.

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<sup>1</sup> Most property insurers will provide ordinance and law coverage by way of a policy endorsement for an additional premium.

Metropolitan Dade County, 639 So. 2d 63 (Fla. 3d DCA 1994) (improvements to homes damaged by Hurricane Andrew to bring them into compliance with code is not covered). Damage from flood or rising surface waters is typically excluded. This includes water which backs up from a sewer or drain. However, direct loss caused by fire, explosion, or theft resulting from water damage is covered. A loss resulting from war or nuclear hazard is also typically the subject of an exclusion.

No property coverage is provided for any loss arising from an intentional act committed by or at the direction of an insured. Further, there is no coverage for damage resulting from an insured's neglect after a covered loss. An insured is required to use all available reasonable means to protect and preserve property following a loss. Failure to do so will preclude any coverage for loss or deterioration, which occurs after the insured event. McCorkle v. Valley Forge Ins. Co., 665 S.W. 2d 898 (Ark. Ct. App. 1984).

## **THE INSURED'S POST-LOSS DUTIES**

In addition to establishing that a particular loss is covered, most policies contain a laundry list of post-loss duties an insured must comply with or potentially risk a forfeiture of coverage. These duties include giving the insurer and/or its agent prompt notice of the loss; notifying the police in case of loss by theft; protecting the property from further loss; preparing an inventory of damaged personal property showing its quantity, description and actual cash value; and submitting a signed, sworn proof of loss. As often as the insurer reasonably requires, the insured will also be required to show damaged property; provide records and documents requested and permit copies to be made; and submit to an

Examination Under Oath (“EUO)” while not in the presence of any other insured. An insured’s refusal to comply with a demand for a EUO can be considered a material breach of the contract which will preclude an insured from recovery under the policy. Goldman v. State Farm Fire General Insurance Company, 660 So. 2d 300 (Fla. 4<sup>th</sup> DCA 1995) and Stringer v. Fireman’s Fund Insurance Co., 622 So. 2d 145 (Fla. 3<sup>rd</sup> DCA 1993). It is important to note that a policy provision requiring an EUO is a condition precedent to suit rather than a “cooperation clause.” Thus, an insurer need not show prejudice to validly deny a claim based on an insured’s failure to submit to a EUO. Goldman, supra. Even an offer to submit to a deposition following the filing of suit will not excuse the failure to attend a EUO. Goldman, supra.

## **LOSS SETTLEMENT**

Most standard homeowner’s policies give an insurer the option to settle covered property losses by either paying the insured the actual cash value (ACV); replacing or paying the insured the cost to replace the property with property of like kind, quality, age and condition; or paying the insured the cost to repair or restore the property to the condition it was in just before the loss.

### **Replacement Cost Coverage**

An insured can purchase, for an extra premium, a rider or endorsement for replacement cost coverage. Replacement cost is typically defined as the cost, at the time of loss, of a new item identical to the one damaged, destroyed or stolen. Replacement cost insurance is designed to cover the difference between what property is actually worth (ACV) and what it would cost to rebuild or repair that property. It is insurance on the property’s depreciation. Most replacement cost endorsements provide, and courts that

have interpreted such endorsements have held, that an insurance company's liability for replacement cost does not arise until the repair or replacement has been actually made.

State Farm Fire & Casualty Co. v. Patrick, 647 So. 2d 983 (Fla. 3rd DCA 1994).

Additionally, most policies impose a time limit, usually 180 days after the date of the loss, for the insured to replace the property and make a claim for the replacement cost. The practitioner must be aware, however, that Florida Statute §627.7011 was amended in 2005 and now requires that the insurer pay full replacement cost coverage up front, regardless of whether the insured actually replaces the property. Therefore, if your claim arises after July 1, 2005, the effective date of the amended statute, an insured is entitled to full replacement cost coverage upon the loss of property.

An insurer loses its option of repairing as opposed to replacing damaged property where a statute, rule or regulation requires that the insured replace damaged property. Northbrook Property & Casualty Ins. Co., v. R & J Crane Service, Inc., 765 So. 2d 836 (Fla. 4th DCA 2000) ("Because we conclude that the insurance contract must be interpreted in light of existing statutes and regulations surrounding its subject, we hold that where the OSHA regulations preclude repair of the property, the insurer is obligated to replace, rather than repair the damaged crane.") Also, where the insurer elects to repair the damaged property rather than pay its value, and where the insurer selects the repair contractor, the insurer can be held liable for any consequential damages resulting from the contractor's negligence or any unreasonable delay in making the repairs. Travelers Indemnity Co. v. Parkman, 300 So. 2d 284 (Fla. 4<sup>th</sup> DCA 1974) and Coleman v. American Bankers Ins. Co. of Florida, 228 So. 2d 410 (Fla. 3<sup>rd</sup> DCA 1969).

## **APPRAISAL**

For the purported purpose of avoiding protracted and expensive litigation arising from property claims, insurers insert appraisal provisions in most standard homeowner's policies. However, as will be discussed in further detail below, these provisions are often times used by insurers to gain both an unfair economical and tactical advantage over its insured during the claims process. With the exception of minor variations in the terminology employed, most appraisal provisions take the following form:

"If you and we do not agree on the **amount of the loss**, either party can demand that the amount of the loss be determined by appraisal. If either makes a written demand for appraisal, each will select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand.

The two appraisers will then select a competent, impartial umpire. If the two appraisers are not able to agree upon the umpire within 15 days, we can ask a judge of a court of record in the state where the residence premises is located to select an umpire.

The appraisers will then set the amount of loss. If they submit a written report of any agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree within a reasonable time, they will submit their differences to the umpire. Written agreement signed by any two of these three will set the amount of the loss. The party selecting that appraiser will pay each appraiser. Other expenses of the appraisal and the compensation of the umpire will be equally paid by you and us."

Recently, there have been many reported appellate decisions regarding the procedural and substantive aspects of the appraisal process. As reflected in the above appraisal clause, either the insured or the insurer can demand that the amount of the loss be determined by appraisal, where a disagreement as to the amount of the loss exists. However, before submitting to the appraisal process, the practitioner must first determine



whether appraisal is appropriate, whether it has been prematurely demanded and whether the insurer has waived its contractual appraisal rights.

### **Appropriateness of Appraisal**

In determining whether appraisal is an appropriate method of dispute resolution, the practitioner must be mindful that Florida courts have consistently held that appraisal is appropriate only to determine the amount of the loss, while questions of coverage are for the courts. See USF & G v. Romy, 744 So. 2d 467 (Fla. 3<sup>rd</sup> DCA 1999) (“Arbitrable issues involved with appraisal, by their nature, are narrowly restricted to the resolution of specific issues of actual cash value and the amount of the loss”). Compare with Johnson v. Nationwide Mutual Ins. Co. 828 So. 2d 1021 (Fla. 2003) (Causation is a coverage question for the court when an insurer wholly denies that there is a covered loss and an amount of loss question for the appraisal panel when an insurer admits a covered loss, but the amount is disputed.)

Appraisal is appropriate only if there exists an actual disagreement as to the amount of the loss. In other words, the disagreement necessary to trigger appraisal cannot be unilateral. Romy, supra. Do not permit an insurer to invoke the appraisal clause if the insurer has not independently determined the amount of the claimed loss. (“In other words, by the terms of the contract, it was contemplated that the parties would engage in some meaningful exchange of information sufficient for each party to arrive at a conclusion before a disagreement could exist”). Romy, supra. A corollary to this rule is that an insured must comply with the policy’s post-loss duties prior to attempting to compel appraisal. Romy, supra. (“The nature of the post-loss obligations are merely to provide the insurer with an independent means by which to determine the amount of the loss, as opposed to

relying solely on the representations of the insured.") See also Scottsdale v. University at 107<sup>th</sup> Avenue, Inc., 827 So. 2d 1016 (Fla. 3rd DCA 2002).

Finally, be aware of policies that contain language that gives the carrier the right to continue to deny a claim post-appraisal. This language often takes the following form: "If we submit to an appraisal, we still retain our right to deny the claim." The Florida Supreme Court in State Farm Fire and Casualty Co. v. Licea, 785 So. 2d 1285 (Fla. 1996); held that such a clause was not void for lack of mutuality of obligation, but only to the extent that the clause is interpreted as referring to the insurer's right to dispute coverage as a whole and issues of whether there has been a violation of the usual policy conditions of fraud, lack of notice and failure to cooperate.

### **Department of Insurance Mediation**

Even where appraisal is appropriate to resolve a dispute as to the amount of the loss, make sure the insurer has offered the insured his/her statutory right to participate in a Department of Insurance sponsored mediation prior to appraisal. See §627.7015, Fla. Stat. The Florida Legislature, when it enacted §627.7015, recognized that appraisal is not always the quick, inexpensive means of dispute resolution that insurers portray it to be and when it stated:

- (1) "There is a particular need for an informal, non-threatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner's insurance policies obligate insureds to participate in a potentially expensive and time-consuming adversarial appraisal process prior to litigation... This section is available with respect to claims under personal lines policies for all claimants and insurers prior to commencing the appraisal process, or commencing litigation... This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or disputes relating to liability coverages in policies of property insurance."

Subsection (2) of the statute mandatorily requires that the insurer notify all first-party claimants of their right to participate in the mediation program under this section, at the time a first-party claim is filed.

### **Implied Waiver of Appraisal Right**

The statute was amended in 2005 to provide that an insurer who fails to comply with the statute by notifying a first-party claimant of their right to statutory mediation, waives their contractual right to demand appraisal to determine the amount of the loss.

An insurer may also waive its right to appraisal where it takes action inconsistent with the use of appraisal to resolve the dispute. Gray Mart, Inc. v. Fireman's Fund Ins. Co., 703 So. 2d 1170 (Fla. 3<sup>rd</sup> DCA 1997); U.S. Fire Ins. Co. v. Franko, 443 So. 2d 170 (Fla. 1<sup>st</sup> DCA 1983) and Finn v. Prudential-Bache Securities, Inc., 523 So. 2d 617 Fla. 4<sup>th</sup> DCA 1988). Florida courts recognize that a party's contractual right to appraisal may be waived by actively participating in a lawsuit. Gray Mart, supra. Filing an answer without asserting the right to appraisal, initiating a legal action without seeking appraisal and counterclaiming without raising the issue of appraisal will act as a waiver. Phillips v. General Accident Ins. Co. of America, 685 So. 2d 27 (Fla. 3<sup>rd</sup> DCA 1996); Transamerica Ins. Co. v. Weed, 420 So. 2d 370 (Fla 1<sup>st</sup> DCA 1982). However, the Court held in Phillips, supra, that an insured did not waive the right to arbitration by serving discovery limited in scope and for the only purpose of obtaining information relevant to the trial court's determination of whether the right to arbitration was present. Until recently, a conflict existed in the District Courts of Appeal as to whether a showing of prejudice is indispensable to a finding of waiver of the right to arbitration or appraisal. The Florida

Supreme Court resolved this conflict in Raymond James Financial Services, Inc. v. Saldukas, 896 So.2d 707 (Fla. 2005) when it held that an effective waiver of the right to appraisal does not require proof of prejudice. It must be noted, however, that a mere delay in the assertion of one's right to arbitrate does not constitute waiver unless the delay has given the party seeking appraisal an undue advantage or has resulted in prejudice to another. Merrill Lynch, Pierce, Fenner and Smith, Inc. v. Melamed, 453 So.2d 858 (Fla. 4<sup>th</sup> DCA 1984). Similarly, an insurer's failure to immediately demand arbitration upon discovering that there is a large disparity between the insurer's appraisal and the insured's appraisal did not constitute a waiver of the right to appraisal. U.S. Fire Ins. Co. v. Franko, 443 So. 2d 170 (Fla. 1<sup>st</sup> DCA 1983). Finally, an insurer does not waive its right to appraisal by failing to request appraisal prior to a homeowner filing suit to collect benefits under the policy. Gonzalez v. State Farm Fire and Casualty Co., 805 So. 2d 814 (Fla. 3d DCA 2000).

## **Appraisal Procedures**

If and when it is determined that appraisal is appropriate to resolve a given dispute, the practitioner must be familiar with the procedural rules that govern appraisal, including the selection of the appraisers and umpire. The starting point for this task is to reference the particular policy language involved. Most policies provide that both the insured and the insurer each appoint a competent, independent appraiser. The two appraisers then select a competent, impartial umpire. If the two appraisers are not able to agree upon an umpire, either side can petition a court in the state where the residence premises is located to select an umpire. I suggest that you do not, under any circumstances, accept the “neutral” umpire recommended by the insurer or its appraiser. Invariably, this purported “neutral” umpire is a person or firm who has previously been appointed as the insurer’s appraiser on other claims. Instead, I recommend that the Court be petitioned to appoint a neutral umpire such as a mediator or a retired judge.

## **Qualifications of Appraisers**

The qualifications for each party’s selected appraiser are minimal. According to the policy language, they must be competent and independent. An appraiser does not need to be a lawyer, but can be a non-lawyer with expertise appropriate to the issues at hand. Liberty Mutual Fire Ins. Co. v. Hernandez, 735 So. 2d 587 (Fla. 3<sup>rd</sup> DCA 1999). With respect to the policy requirement that an appraiser be independent, one court has defined this as an outside appraiser, unaffiliated with the parties and one where the appointing party does not have an ownership interest in the firm designated to do the appraisal. Rios v. Tri-State Ins. Co., 714 So. 2d 547 (Fla. 3<sup>rd</sup> DCA 1998). The Rios court also held that a direct or indirect financial interest in the outcome of the appraisal does not require the

disqualification of an appointed appraiser. Thus, an appraiser paid by a contingent fee percentage of the award was deemed to be an “independent appraiser” within the meaning of an appraisal clause. See also Galvis v. Allstate Ins. Co., 721 So. 2d 421 (Fla. 3<sup>rd</sup> DCA 1998).

### **Applicability of Arbitration Code**

Until recently, a conflict existed among the District Courts of Appeal as to whether appraisal clauses in homeowners’ insurance policies are considered agreements to arbitrate and are governed by the Florida Arbitration Code. The conflict was resolved by the Florida Supreme Court in Allstate Ins. Co. v. Suarez, 833 So. 2d 762 (Fla. 3<sup>rd</sup> DCA 2002), wherein the Court held that such clause contemplates an informal process which is not governed by the Florida Arbitration Code.

### **Court Proceedings**

Once the appraisal is concluded, make sure that the appraisal award is in writing and signed by two of the three members of the appraisal panel. Pursuant to Florida Statute §682.12, upon application of a party to the appraisal, the court shall confirm an award, unless a party makes a timely application to vacate, modify or correct the award pursuant to §682.13 or §682.14, Florida Statutes. Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when: (a) there is an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award; (b) the arbitrators or umpires have awarded upon a matter not submitted to them or him and the award may be corrected without effecting the merits of the decision upon the issues submitted; and (c) the award is imperfect as a matter of form, not effecting the merits of the controversy.

Pursuant to §682.13, Fla. Stat., upon application of a party, the court shall vacate an award when: (a) the award was procured by corruption, fraud or other undue means; (b) there is evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party; (c) the arbitrators or umpire in the course of his jurisdiction exceeded their powers; (d) the arbitrators or the umpire refused to postpone the hearing upon sufficient cause being shown therefore or refuse to hear evidence material to the controversy or otherwise so conducted the hearing, as to prejudice substantially the right of a party; and (e) there is no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under §682.03 and unless the party participated in the arbitration hearing without raising the objection. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Section 682.15 Fla. Stat.

### **ATTORNEYS' FEES, COSTS AND PREJUDGMENT INTEREST**

Florida courts have consistently held that an insured, as a prevailing party, can recover attorneys' fees incurred during arbitration or appraisal proceedings pursuant to §627.428 and/or §682.11, Florida Statutes. Insurance Company of North America v. Acousti Engineering Company of Florida, 579 So. 2d 77 (Fla. 1991); Fewox v. McMerit Construction Co., 556 So. 2d 419 (Fla. 2<sup>nd</sup> DCA 1989); and Scottsdale Insurance Company v. DeSalvo, 748 So.2d 941 (Fla. 1999); See also a case handled by the undersigned, Travelers Indemnity Insurance Company of Illinois v. Meadows MRI, LLP, 900 So. 2d 676 (Fla. 4<sup>th</sup> DCA 2005). Compare with Nationwide Property & Casualty Insurance Co. v. Bobinski, 776 So. 2d 1047 (Fla. 5<sup>th</sup> DCA 2001) wherein an insured was

denied an award of attorneys' fees where the insured first filed suit after the appraisal award had been rendered. The Court also determined that suit was filed solely to obtain attorneys' fees under the statute. Please note that the arbitrators or appraisers are prohibited from determining an award of attorneys' fees, unless the parties confer jurisdiction on the arbitration/appraisal panel to decide entitlement to attorneys' fees and assess the amount of the fee. Acousti Engineering, supra.

Generally, the prevailing party to an appraisal proceeding is entitled to recover their appraisal fees as costs of the proceeding. State Farm Fire and Casualty Co. v. Albert, 618 So. 2d 278 (Fla. 3<sup>rd</sup> DCA 1993) and American Indemnity Co. v. Coneau, 419 So. 2d 670 (Fla. 5<sup>th</sup> DCA 1982). However, if the policy specifically addresses this issue, the policy language will control. Aries Ins. Co. v. Hercas Corp., 781 So. 2d 429 (Fla. 3<sup>rd</sup> DCA 2001).

The insured is entitled to recover prejudgment interest from the date of the appraisal award. DeSalvo v. Scottsdale Insurance Company, 705 So. 2d 694 (Fla 1<sup>st</sup> DCA 1998) ("Appraisal of insured property loss created liquidated damages entitling insured to prejudgment interest from the date of the award.")

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## XI

### THE EDUCATIONAL RIGHTS OF CHILDREN AFFECTED BY A DISASTER

#### Introduction

Children and youth who lose their homes as a result of a disaster may qualify for federally mandated special educational rights under the McKinney-Vento Homeless Assistance Act, 42 U.S.C. §11431 *et seq.*, because the disaster has left them homeless. These rights include being allowed to either immediately enroll in public schools in the area they are now living, or continue in and be transported to their school of origin, as well as the right not to be segregated from other students on the basis of their homelessness, and the right to comparable educational opportunities to non-homeless students. The following is a brief summary of the educational rights of children and youth who become homeless after a disaster.

#### Who Qualifies

The term “homeless children and youth” under the McKinney-Vento Homeless Assistance Act applies to young people who “lack a fixed, regular, and adequate nighttime residence” and includes children and youths in any of the following situations:

- ✓ Sharing housing of other persons due to loss of housing;
- ✓ Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- ✓ Living in emergency or transitional shelters, or abandoned in hospitals;

- ✓ Awaiting foster care placement
  - ✓ Having a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
  - ✓ Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
  - ✓ Migratory children who are living in the circumstances described above.
- 42 U.S.C. §11434a(2).

Children in low-income families affected by a disaster often find themselves living in one of the above situations. These children qualify for protection of their educational rights under the McKinney Vento Homeless Assistance Act based on their status as homeless children.

## **The Educational Rights of Homeless Children & Youth**

**1. School Selection** - The parents of homeless children and youths have a right to have them continue attending the school they were attending when they were permanently housed unless they choose not to, for the duration of their homelessness. 42 U.S.C. §11432(g)(3)(A)(i). The parents also have the right to enroll their children and youths in any regular public school in the attendance area in which they are now living. 42 U.S.C. §11432(g)(3)(A)(ii). If the public school district<sup>1</sup> decides to place the

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<sup>1</sup> Public school districts are denoted as “Local Educational Agencies (LEAs)”.

child or youth in a school other than the school of origin, it must give the parents a written explanation of the decision and of their right to appeal. 42 U.S.C.

§11432(g)(3)(B)(ii).

Parents have the right to choose the child's or youth's placement regardless of whether s/he is living with the homeless parents or has been temporarily placed elsewhere. 42 U.S.C. §11432(g)(3)(F).

The school district homeless liaison<sup>2</sup> must assist unaccompanied youths with placement decisions, must consider their views, and must provide them with notice of their right to appeal. 42 U.S.C. §11432(g)(3)(B)(iii).

**2. Enrollment** - The school must immediately enroll the child or youth even if s/he lacks records normally required for enrollment such as proof of residency, medical records, previous academic records or other documentation. 42 U.S.C.

§11432(g)(3)(C)(i). If the child or youth needs to obtain immunizations, or immunization or medical records, the school district's homeless liaison is required to assist them in obtaining these. 42 U.S.C. §11432(g)(3)(C)(iii). The public school must immediately contact the school last attended to obtain academic and other records. 42 U.S.C. §11432(g)(3)(C)(ii).

If a dispute arises over school selection or enrollment in school, the child or youth must be immediately admitted to the school in which enrollment is sought,

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<sup>2</sup> Public school districts must designate an appropriate staff person to serve as a liaison for homeless children and youth. 42 U.S.C. §11432(g)(1)(J)(ii).

pending resolution of the dispute. 42 U.S.C. §11432(g)(3)(E)(i).

**3. *Transportation*** - Transportation must be provided to and from the school of origin on the same basis as is provided to other students. 42 U.S.C. §§11432(g)(1)(J)(iii), 11432(g)(4)(A). If the homeless student continues to live in the area served by the original school district, that school district must provide and arrange transportation to the school of origin. 42 U.S.C. §11432(g)(1)(J)(iii)(I). If the student moves to an area served by another school district and continues to attend his/her school of origin, the two school districts must share the expense. 42 U.S.C. §11432(g)(1)(J)(iii)(II).

**4. *Comparable Services*** - Homeless students must be provided services comparable to those received by other students in the school selected, including transportation services, educational services, vocational and technical education, programs for gifted and talented students and school nutrition programs.<sup>3</sup>

**5. *Prohibition Against Segregation*** - Under the McKinney-Vento Homeless Assistance Act, homelessness alone is not a sufficient reason to separate students from the mainstream school environment. 42 U.S.C. §11431(3). States may not segregate homeless children or youth in a separate school, or in a separate program within a school, based on their homelessness.<sup>4</sup> States and public school districts must

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<sup>3</sup> Effective July 1, 2004, homeless students are categorically eligible for free meals in the National School Lunch and School Breakfast Programs under the Section 107 of the Child Nutrition and WIC Reauthorization Act of 2004. See attached Guidance memoranda from the U.S. Department of Agriculture, Food and Nutrition Service, Appendix 3.

<sup>4</sup> Some separate schools already operating in fiscal year 2000 in California and Arizona are exempted from this requirement so long as they meet specific criteria under the Act.

adopt policies and practices to ensure that homeless children and youth are not segregated or stigmatized on the basis of their status as homeless. 42 U.S.C. § 11432(g)(1)(J)(i).

## **Designated Officials**

**1. Local Educational Agency (LEA) Liaison** - Each public school district must designate an appropriate staff person to serve as a local educational agency liaison for homeless children and youth. 42 U.S.C. §11432(g)(1)(J)(ii). Liaisons for homeless children and youth must ensure that the following is accomplished in their public school district (42 U.S.C. § 11432(g)(6):

(i) Homeless children and youth are identified by school staff and through coordination activities with other entities and agencies;

(ii) Homeless children and youths enroll in, and have a full and equal opportunity to succeed in public schools;

(iii) Homeless families, children and youth receive educational services for which they are eligible, including Head Start, Even Start, and pre-school programs and referrals to health, mental health, dental and other appropriate services;

(iv) Parents or guardians are informed of educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;

(v) Public notice of the educational rights of homeless students is disseminated where children and youth receive services under the McKinney-Vento Homeless

Assistance Act;

(vi) Enrollment disputes are mediated in accordance with 42 U.S.C.

§11432(g)(3)(E);

(vii) The parents/guardians of a homeless child or youth, and any unaccompanied youth, are fully informed of all transportation services, including to the school of origin, and are assisted in accessing transportation services.

**A list of the LEA Homeless Liaisons for each county in the state of Florida can be found through a link on the Florida Department of Education web page for homeless and migrant students, <http://www.firn.edu/doe/title1/titlex.htm>.**

**2. State Coordinator for the Education of Homeless Children and Youth** - Each state is required to appoint a Coordinator for Education of Homeless Children and Youth. 42 U.S.C. §11432(d)(3). Under 42 U.S.C. §11432(f), this state coordinator must:

(1) Gather reliable, valid and comprehensive information regarding homeless children and youths;

(2) Develop and carry out the state's plan under the Act;

(3) Collect and transmit reports to the U.S. Department of Education;

(4) Facilitate coordination between the state department of education, the state social services agency and other agencies to provide services to homeless children and their families;

(5) Coordinate and collaborate with educators, providers of services to the homeless, local educational agency liaisons, and community organizations and groups

representing the homeless;

(6) Provide technical assistance to public school districts in coordination with local educational agency liaisons.

Florida's Department of Education web page for homeless and migrant student services is <http://www.firn.edu/doe/title1/titlex.htm>.

## **Helpful Contacts**

For additional information, please contact:

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(904) 269-2650  
[deborah@floridalegal.org](mailto:deborah@floridalegal.org)

Other sources of information regarding the McKinney-Vento Homeless Assistance Act:

National Center on Homelessness and Poverty  
[www.nlchp.org](http://www.nlchp.org)  
(202) 638-2535

National Association for the Education of Homeless Children and Youth  
[www.naehcy.org](http://www.naehcy.org)  
(512)475-8765

National Center for Homeless Education  
[www.serve.org/nche](http://www.serve.org/nche)

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Consultant to The Florida Bar Foundation  
June, 2006

## XII CONSUMER HOME REPAIR PROTECTIONS

While not exhaustive, the following outline provides an overview of many of the state and federal laws that will be of assistance to practitioners representing individuals who encounter legal problems associated with contracts for repair of their homes following a disaster.

### I. HOME SOLICITATION SALES:

A. Definitions. Florida law defines a home solicitation sale as a sale, lease or rental of consumer goods or services with a purchase price exceeding \$25.00, including all interest, service charges, finance charges, postage, freight, insurance and service or handling charges under single or multiple contracts made pursuant to an installment contract, a loan agreement, other evidence of indebtedness or a cash transaction in which:

1. "The seller or person acting for the seller engages in a personal solicitation of the sale, lease, or rental at a place other than the seller's fixed location business where goods or services are offered or exhibited for sale, lease or rental," F.S. 501.021(1)(a); and
2. "The buyer's agreement or offer to purchase is given to the seller and the sale, lease, or rental is consummated at a place other than at the seller's fixed location business establishment, including a transaction unsolicited by the consumer and consummated by telephone and without any other contact between the buyer and the seller or its representative



prior to delivery of the goods or performance of the services. It does not include a sale, lease, or rental made at any fair or similar commercial exhibit or a sale, lease, or rental that results from a request for specific goods or services by the purchaser or lessee or a sale made by a motor vehicle dealer licensed under F.S. 320.27 which occurs at a location or facility open to the general public or to a designated group.” F.S.

501.021(1)(b).

B. All violations of the Florida Home Solicitation Sales Act may also be unfair or deceptive trade practices under Florida’s Deceptive and Unfair Trade Practices Act, F. S. 501.201, et seq. (2005); the advocate should examine each case for possible dual violations.

C. Check List:

1. Did the seller have a permit? F.S. 501.022(1) (a) (2005). Permits are obtained from the Clerk of the Circuit Court. F.S. 501.022 (2) (2005).

2. Does notice of the buyer’s right to cancel appear on every note or other evidence of indebtedness given pursuant to the sale? F. S. 501.031 (2005).

3. Is the notice of the buyer’s right to cancel conspicuous? F.S. 501.031(2)(a) (2005).

4. Has the buyer signed and dated a ‘Buyer’s Right to Cancel’ disclosure statement that reads as follows:

"This is a home solicitation sale, and if you do not want the goods or services, you may cancel this agreement by providing written

notice to the seller in person, by telegram, or by mail. This notice must indicate that you do not want the goods or services and must be delivered or postmarked before midnight of the third business day after you sign this agreement. If you cancel this agreement, the seller may not keep all or part of any cash down payment." F.S. 501.031(2)(b) (2005).

5. Did the seller leave a business card, contract, or receipt with the buyer that has the name, address and telephone number of the person making the sale and of the parent company or sponsor? F. S. 501.046 (2005).

6. Did the seller misrepresent the terms and conditions of the sale, lease or rental? F.S. 501.047(1) (2005).

7. Did the seller misrepresent an affiliation with the parent company or sponsor? F.S. 501.047(2) (2005).

8. Did the seller represent as a reason for soliciting the sale, lease or rental of goods or services participation in a contest or an inability to perform any other job, or otherwise perform any act of misrepresentation? F. S. 501.047(3), (5) (2005).

9. Did the seller indicate that the agreement to purchase, lease or rent goods or services was non-cancelable? F. S. 501.047(4) (2005).

10. What work or goods were actually promised? Are the specifications contained in the contract are complete?

D. The Buyer's Right to Cancel. The buyer has a right to cancel until midnight of the third business day from the date the contract was signed. Cancellation

must be in writing and delivered in person, via telegram or by mail to the address stated in the agreement or offer to purchase. Business day means any calendar day except Sunday and the following federal holidays: New Years Day, Washington's Birthday, Martin Luther King's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day. F.S. 501.021, 501.025 (2005). (Federal holidays are listed at 5 U.S.C. §6103.)

E. Getting the Down-payment Back. Florida law provides the following protections for a buyer who cancels:

“Within 10 days after a home solicitation sale has been canceled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement. Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to her or him by the seller and has a lien on the goods in her or his possession or control for any recovery to which she or he is entitled.” F.S. 501.041 (2005).

F. If the Seller Does Not Come to Get the Goods. Upon demand, the buyer must return the goods to the seller within a reasonable time. The buyer is not obligated to tender the goods at any place other than the buyer's residence. If the seller fails to demand possession of the goods within a reasonable time (40 days is considered reasonable), the goods become the property of the buyer without further obligation to

pay for them. The buyer must care for the goods for a reasonable time. F.S. 501.045 (2005).

G. If the Seller Has Performed Any Services Prior To Cancellation. The seller is not entitled to compensation for any services performed before cancellation. FS. 501.045 (2005).

H. Penalties. Violations of the Florida Home Solicitation Act are generally first degree misdemeanors. A subsequent offense can be considered a third degree felony. F. S. 501.055 (2005).

## **II. THE FTC 'COOLING OFF' RULE FOR DOOR-TO-DOOR SALES**

A. The FTC rule is contained in 16 C. F.R. Part 429. It declares unfair and deceptive the failure of a seller in a home solicitation transaction to comply with the FTC rule's disclosure and notice requirements, 16 C.F.R. 429.1. The FTC rule requires the seller to give the following to the buyer at the time of the sale:

1. A fully completed receipt or dated copy of any sales contract in the language used in the sale with the name and address of the seller, 16 C.F.R. 429.1(a);
2. Oral notification of the right to cancel, 16 C.F.R. 429.1(e);
3. Written disclosure of the three day right to cancel in 10 point bold face type in the same language as the sale and on the front of the receipt or next to the signature line for the buyer on the contract, 16 C.F.R. 429.1(a);
4. An easily detachable Notice of Cancellation filled out in duplicate, 16 C.F.R. 429.1(a),(c).

B. The FTC rule also deems the following actions on the part of the seller to be unfair and deceptive:

1. Obtaining a confession of judgment or a waiver of any rights provided to the buyer under the Rule, 16 C.F.R. 429.1(d).
2. Failing to provide or misrepresenting the right to cancel, 16 C.F.R. 429.1(f).
3. Not honoring a Notice of Cancellation by failing or refusing to refund all payments, return all traded-in property, cancel and return any negotiable instrument (note & mortgage) and terminate any security interest within ten (10) days of receiving notice of cancellation, 16 C.F.R. 429.1(a).
4. Negotiating, transferring, selling, or assigning any note within five (5) business days of the contract, 16 C.F.R. 429.1(h).
5. Failing to notify the canceling buyer within ten (10) business days whether the seller will take possession of or abandon any goods, 16 C.F.R. 429.1(i)

C. Compliance with the FTC Rule does not exempt the transaction from the requirements of the Florida Home Solicitation Act, 16 C.F.R. 429.2.

D. The FTC Rule does not apply when a Truth-in-Lending rescission is required, 16 C.F.R. 429.0(a)(2).

E. The FTC Rule does not apply if the buyer asks the seller to visit the home for repairs, but does apply to any additional goods or services sold other than those needed for repairs, 16 C.F.R. 429.0(a)(5).

F. The seller is not required to allow the normal statutory three (3) day right

of rescission under 16 C.F.R 429 if the buyer initiated contact, the goods and services are needed to meet a bona fide personal emergency, and the buyer furnished the seller with a handwritten description of the emergency and expressly waived his right to cancel, 16 C.F.R. 429.0(a)(3).

G. There is no private cause of action under the FTC Rule.

### **III. OTHER FEDERAL RULES**

If the buyer paid by credit card, the debt can be disputed in a writing sent to the billing dispute address set out on the back of the credit card statement within 60 days pursuant to the Fair Credit Billing Act, 15 U.S.C. §1666.

### **IV. THE HOME IMPROVEMENT SALES AND FINANCE ACT, F.S. 520.60-520.98**

A. This act applies to home improvement contracts paid in installments over more than 90 days where a security interest in real property is retained. The act imposes licensing requirements and requires “home improvement finance sellers” and “sellers,” i.e., any person who enters into two or more contracts per year for more than \$500, F.S. 520.61(14), to give the owner a complete, signed copy of the contract which must be in the approved form and include:

1. Notice of the right to rescind within three (3) days following the execution of the contract, F.S. 520.72 (2005);
2. The names, addresses and license number of the contractor and salespeople who solicited or negotiated the contract. F.S. 520.73(1)(a)

(2005);

3. Approximate dates the work will begin and a description of the work and material to be used, F.S. 520.73(1)(c),(d) (2005);

4. Disclosure of amount financed, finance charge, total of payments, total sales price, amount of monthly payments, description of any security interest; F.S. 520.73 (2)(a),(b),(c),(d),(h),(i) (2005);

5. The following notice to the owner, in substantially the following form:

a. Do not sign this home improvement contract in blank.

b. You are entitled to a copy of the contract at the time you sign.

Keep it to protect your legal rights.

c. This home improvement contract may contain a mortgage or otherwise create a lien on your property that could be foreclosed on if you do not pay. Be sure you understand all provisions of the contract before you sign.

F.S. 520.73 (5) (2005).

6. In addition, no home improvement contract may contain any of the provisions prohibited under F. S. Section 520.74 (2005).

7. Generally, "No act, agreement, or statement of any buyer under a home improvement contract shall constitute a valid waiver of any provision of this act intended for the benefit or protection of the buyer." F.S. 520.75 (2005).

B. Under the Act, the seller is prohibited from engaging in the following acts:

1. Substantial misrepresentations in procurement of contract, false

promises of character likely to influence, persuade or induce, F.S. 520.90(3) (2005);

2. Abandonment, willful failure to perform, F.S. 520.90(1) (2005);

3. Committing fraud in execution of contracts and mortgage, (such as notary fraud), F.S. 520.90(4) (2005);

4. Deceptive advertising, F.S. 520.90(6) (2005);

5. Willful disregard of building laws (such as failure to obtain permit or inspections, use of unlicensed, subcontractors, violations of building codes, etc, see F.S. Chapter 489 (2005)). F.S. 520.90(7) (2005).

6. Willful misrepresentation of any matter required to be disclosed to owner, F.S. 520.90(15);

C. Mortgages or mortgage notes must contain a boldface notice that it is subject to a home improvement sales contract, F.S. 520.80;

D. Gissendaner v. Rich, 365 So.2d 454 (1st DCA 1978): A home improvement contractor could not prevail in a foreclosure suit because he failed to obtain a signed completion certificate for repairs, F.S. 520.81 (2005);

E. However, Goldsten v. Betty Ginsburg Interior Design, Inc., 519 So. 2d 645 (4<sup>th</sup> DCA 1987) interpreting F.S. 520.61, now F.S. 520.69(1) (2005)): A contract that does not create a security interest does not qualify under the “Home Improvement Act”;

F. A private right of action to recover an amount equal to the finance charges and any fees charged to the owner by reason of delinquency, costs and attorney fees exists under F.S. 520.98(2) for willful violation of the Act;

G. The FTC holder in Due Course Rule (16 C.F.R. Part 433) is similar to F.S.



520.88(4) (2005). Assignees are subject to all claims or defenses.

## **V. MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. 2301-2312; 16 C.F.R.**

**700.1-703.8** This federal act provides minimum standards for warranties on consumer products, and consumer remedies for violations.

A. A home improvement contract is covered by the Magnuson-Moss Act when it involves a “consumer product,” defined as “any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).” 15 U.S.C. §2301(1). Federal regulations clarify that “separate items of equipment attached to real property, such as air conditioners, furnaces and water heaters” are covered by the Act, 16 C.F.R. 700.1(c), but the Act’s protections do not generally attach to “wiring, plumbing, ducts, and other items which are integral component parts of the structure.” 16 C.F.R. 700.1(d). The Act requires clear and conspicuous disclosure of each full or limited warranty prior to the sale. 15 U.S.C. §2302.

B. If a written warranty is given, the seller is prohibited from disclaiming implied warranties, 15 U.S.C. §2308(a).

C. Before asserting a Magnuson-Moss claim, a buyer must first give the warrantor a reasonable opportunity to cure after notice of the defect, 15 U.S.C. §2310(e), and must first use any qualifying dispute resolution procedure which the warrantor has established, 15 U.S.C. §2310(a)(3)(i).

D. Violations of the Act include:

1. The failure to honor written warranties, 15 U.S.C. §2304(a)(1), or implied warranties 15 U.S.C. §2304(a)(2);
  2. The failure to make warranties available for inspection prior to the sale, 15 U.S.C. §2302(b)(1); 16 C.F.R. 702.3(a) (door-to-door sellers are specifically obligated to comply with this requirement, 16 C.F.R. 702.3(d); and
  3. The failure to comply with the disclosure requirements of the Act, 15 U.S.C. §2302(a).
- E. Consumers may claim damages and other legal and equitable relief, 15 U.S.C. §2310(d)(1). Costs and attorney fees may be awarded to a prevailing consumer. 15 U.S.C. §2310(d)(2).

## **VI. COMMON LAW AND OTHER STATUTORY CLAIMS**

- A. Additional implied and express warranty claims (quality of work, materials) can be made under Article 2 of the U.C.C. if the sale is of goods, as opposed to services. F.S. 672.313 (2005) sets forth the requirements for creating an express warranty under the U.C.C., while F.S. 672.315 (2005) outlines the U.C.C.'s implied warranty of fitness for a particular purpose.
- B. Fraud. The elements of fraud (misrepresentation or omission of material fact made with the intent to deceive and to induce reliance, justifiable reliance and damages) must be proved by clear and convincing evidence. The remedy is rescission and cancellation of the mortgage or damages.
- C. Unconscionability. A court sitting in equity may provide relief from a

contract if it finds that the circumstances surrounding the entry into the contract, the terms of the contract itself, evidence of gross inequity of bargaining power, the presence of deception on the part of the seller, and/or other circumstances establish that enforcement of the contract would be unconscionable. See Williams v. Walker Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965). Upon a finding of unconscionability, the court has the power to refuse to enforce the entire contract or the unconscionable provision, or may restrict the operation of the terms to avoid an unconscionable result.

D. Florida Deceptive and Unfair Trade Practices Act, F.S. 501.201, et seq., provides protections for consumers from unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

E. Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§1961- 1968 provides a private right of action for people injured in their business or property by reason of a violation of the Act, 18 U.S.C. §1964(c). The violation could take the form of a home improvement contract based on a fraudulent scheme with a pattern of mail or wire fraud.

F. Florida's Civil Remedies for Criminal Practices Act. – F.S. Chapter 772 requires clear and convincing proof of a pattern of criminal activity and provides for treble damages, attorney fees and costs. F.S. 895.05(b) authorizes injunctive relief; F.S. Chapter 895 is Florida's RICO Act, which is applicable to cases involving racketeering and illegal debts.

G. Fraudulent Practices – The following crimes listed under F.S. chapter 817 may be used as a predicate act for a RICO claim:

1. F.S. 817.54, which defines the crime of obtaining a mortgage or

promissory note by false representation.

3. F.S. 817.38, which defines the crime of simulated process;

4. F.S. 817.40, which defines the crime of false, misleading and deceptive advertising and sales;

5. F.S. 817.412, which defines the crime of sale of used goods as new.

H. Theft - F.S. 812.014 defines the crime of theft. This crime can also be used as a predicate act for a RICO claim.

I. Usury. F.S. Chapter 687 - A loan is usurious when the interest charged exceeds the lawful rate. Under Florida law, a contract for the payment of interest upon “a loan, advance of money, line of credit, or forbearance to enforce the collection of any debt, or upon any obligation whatever,” is usurious if “at a higher rate of interest than the equivalent of 18 percent per annum simple interest,” F.S. 687.02(1), unless the amount or value of the “loan, advance of money, line of credit, forbearance to enforce the collection of a debt, or obligation exceeds \$500,000,” in which case it is usurious if the rate of interest exceeds “25 percent per annum.” F.S. 687.071(2). A usurious transaction has four (4) elements:

(1) An express or implied loan;

(2) An understanding between the parties that the money loaned shall be returned;

(3) An agreement that a greater rate of interest than is allowed by law shall be paid or agreed to be paid; and

(4) The existence of a corrupt intent to take more than the legal rate for the use of the money loaned.

Rollins v. Odom, 519 So.2d 652 (Fla. 1st DCA) rev. den. 529 So.2d 695 (Fla.1988); Dixon v. Sharp, 276 So.2d 819.

Usury is unlawful in Florida, F.S. 687.03(1) (2005); F.S. 687.071(2),(3), and the interest portion of a usurious contract is unenforceable. F.S. 687.04. A person who extends credit at a rate higher than 25 percent per annum is guilty of a criminal offense. F.S. 687.071(2),(3).

J. Truth in Lending (TILA) – 15 U.S.C. §§ 1601-1667(e); 12 C.F.R. Part 226. Under 15 U.S.C. §1602(f), most home mortgages are subject to the disclosure requirements of the federal Truth-In-Lending Act, 15 U.S.C. §1638. The required disclosures include the annual percentage rate, finance charge, amount financed, security interest, total of payments and a payment schedule, 15 U.S.C. §1638(a); 12 C.F.R. §226.23(a)(3) n. 48.

Notice of the right to rescind is also required for certain non-purchase money residential mortgage credit, 15 U.S.C. §1635(a). If the borrower is able to prove that she “did not receive the required notice and did timely exercise her right to rescind, the mortgage would be void and the parties entitled to be returned to the *status quo*.” Yslas v. D.K. Guenther Builders, Inc., 342 So.2d 859 (Fla. 2d DCA, 1977). Actual damages, statutory damages, costs and attorney fees can also be awarded. 15 U.S.C. §1640(a); 15 U.S.C. §1635(g). Creditors must strictly comply with TILA. “Liability will flow from even minute deviations from requirements of the statute and Regulation Z”. Shroder v. Suburban Coastal Court, 729 F.2d 1371, 1380 (11th Cir. 1984).

Harm need not be shown for recovery under TILA. “An objective standard is used to determine violations of the Truth-In-Lending Act based on the representations

contained in the relevant disclosure documents; it is unnecessary to inquire as to the subjective deception or misunderstanding of particular consumers.” Zamarippa v. CY’s Car Sales. Inc., 674 F.2d 877, 879 (11th Cir. 1982).

If a disclosure is one of the five designated as “material” at 12 C.F.R Section 226.23(a) (3) n. 48, then any error with regard to that disclosure, unless within the \$5.00 or \$10.00 tolerance, depending on the size of the transaction for the finance charge, 12 C.F.R. 226.18(e) n. 41, extends the rescission period. Steele v. Ford Motor Credit Co. 783 F.2d 1016, (11th Cir. 1986). Any deficiency in the notice of the right to rescind triggers a right to rescind. Michel v. Beneficial Consumer Discount Co., 140 B.R. 92, 100, (Bank R.E.D, Pa. 1992).

State and federal courts have concurrent jurisdiction over TILA. 15 U.S.C. §1640(e). A consumer can raise TILA rescission simultaneously as a defense to a state foreclosure proceeding and as an affirmative claim in federal court.

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December, 2005

## XIII

### DISASTER RECOVERY FOR MOBILE HOME RESIDENTS

#### 1. Introduction

After a hurricane passes, it is not unusual to see hundreds of mobile homes overturned, torn apart or seriously damaged. Mobile home residents are usually the first to be ordered to evacuate their homes prior to the arrival of a storm. After the storm, one of the biggest challenges for legal services providers is to find those who are unable to return to their homes. For those who provide services to mobile park residents it is important to engage in “proactive” advocacy as soon as practicable.

#### 2. Immediate Action Steps

**A. Conduct a “windshield survey”** of your area’s mobile home parks.

Determine which ones have been completely destroyed and which ones are likely to be up and running soon.

**B. Key Contacts** - Contact your local county administrator’s office, Florida Division of Emergency Management, FEMA and your local long term recovery organization. Request that they share with you their official assessment of damage to the local housing inventory. These agencies usually develop official counts of the number of damaged and destroyed mobile homes in each municipality.

**C. Get Involved in the Recovery** - Attend initial meetings at your local division of emergency management office and local long term recovery

organization. At these meetings you will be able to access important information regarding the number of persons in the county's shelters, and locations for delivery of water and ice to residents. Make sure that services are delivered at locations where individuals of diverse races, languages and income levels will be welcome. For example, if water and ice are being handed out at a police station, it is likely that some individuals will not be comfortable going there.

**D. Advocate for those Likely to be Overlooked** – Make sure that plans are made to identify and serve mobile home park residents located in rural or remote areas. If there are language barriers, advocate for the appropriate agencies to designate bilingual staff to reach these individuals.

**E. Advocate for the Right of Return** – Regardless of the temporary housing arrangements that are made, be sure to advocate for the right of mobile home residents to return to their communities. Advocate for “one for one” replacement of mobile homes (see below).

### **3. Key Legal Issues Facing Mobile Home Residents after a Hurricane**

The Florida Mobile Home Act, F.S. 723.002, *et seq.*, protects owners of mobile home who rent a lot in a mobile home park lot in which 10 or more lots are offered for rent. The Mobile Home Act does not cover those who live in RV's or rent mobile homes. The following are answers to some of the questions that often arise after a hurricane.

*How do I know if a resident's mobile home qualifies as an RV or a mobile home?*



A mobile home is designed for use as a permanent dwelling. The law states it must be at least 8 ft wide and 35 ft long.

*What happens if a client rents the mobile home and the mobile home lot?*

That person is covered under the Florida Residential Landlord Tenant Act.

*If the mobile home is destroyed, does the owner of a mobile home still have to pay lot rent?*

Yes, because a mobile home owner rents the land upon which the mobile home was placed, he/she is obligated to pay rent in order to maintain possession of the lot.

*Who is responsible for debris clean up?*

It is generally a good idea to review the lease, prospectus, and mobile home park rules and regulations to determine if the parties have a written agreement governing this issue. If there is no written agreement, the parties' responsibilities are governed by F.S. 723.023 which states that:

- The mobile home park owner is responsible for cleaning the debris in the common areas of the mobile home park.
- The mobile home owner is responsible for cleaning up the debris on his/her individual lot caused by his or her own personal property (ie: destroyed utility sheds, mobile home parts, furniture etc.)

*What happens if the mobile home owner is unable to take care of the debris on his/her lot?*

Many mobile home owners are elderly, disabled or lack the resources to remove large amounts of debris. This is why it is important for advocates to pressure the authorities into creating a one for one replacement program with FEMA. Under the one for one replacement program, FEMA will clean up the debris on the mobile home lot and install a FEMA travel trailer or mobile home on the same lot. In most cases, the residents of the destroyed mobile home are able to remain on their lot with little disruption to their lives.

However, the one for one replacement program requires collaboration/coordination between the park owner, county and/or local government and FEMA. It is important for advocates to initiate this dialogue with the agencies immediately after the storm and before FEMA moves the mobile home residents away from their mobile home park.

*What kind of benefits will FEMA provide mobile home owners?*

After a mobile home owner applies for FEMA benefits, he or she should make every effort to be present when FEMA comes around to inspect the mobile home. The mobile home owner should be advised to take pictures of the mobile home and its contents and to provide the FEMA agent any information he/she may have regarding the value of his/her losses. These photos and information may be crucial if the mobile home owner needs to file an appeal.

In most cases, the FEMA agent will assess the cost of repairs and provide the mobile home owner up to \$5,100 for repairs. However, with older, more vulnerable homes, it is a good idea to advocate for total destruction of the mobile home. If the mobile home is classified as destroyed, the mobile home owner will be awarded up to \$12,500 for “loss of housing unit”. If the mobile home is initially declared “repairable” but the client believes the cost of repairs will exceed the value of the mobile home, it is generally a good idea to speak to local, county or city inspectors to request that they inspect the mobile home. If the mobile home is condemned by the local authorities, the mobile home owner is entitled to seek a reclassification in order to obtain the higher level of benefits from FEMA.<sup>1</sup>

*What if the person who resides in the mobile home is leasing the mobile home?*

If the resident of the mobile home is renting the mobile home, he or she is classified as a renter. The mobile home “tenant” is entitled to receive funds for loss of personal property and rental assistance. When the mobile home is being leased, the owner of the mobile home is not entitled to any FEMA benefits because the dwelling was not his/her primary place of residence.

In mobile home rental situations, it is important to inquire into the nature of the relationship between the mobile home “tenant” and the owner. Often, mobile home tenants are leasing these units under a “rent to own” arrangement. If this is the case, the advocate for the tenant should appeal to FEMA to reclassify the mobile home “tenant” as a homeowner.

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<sup>1</sup> As a practical matter, advocates who seek to obtain a reclassification of a unit as “destroyed” should enlist the help of the local DEM housing coordinator and/or the FEMA area representative. In these situations, they can usually bypass the regular FEMA appeals process and the long wait that is associated with it.

#### **4. Recertification and Long Term Housing Issues**

**A. Recertification** – Individuals who receive temporary housing in the form of FEMA travel trailers or mobile homes are required to recertify their status every 30 days. The recertification process involves verification of their continued eligibility as well as their long term housing plans. Individuals who fail to recertify on a timely basis are subject to termination of their temporary housing benefits. Advocates should remind FEMA recipients of the need to meet regularly with their FEMA housing workers.

**B. The FEMA Sales Program** – The FEMA sales program allows disaster victims to purchase a FEMA travel trailer or mobile home at a reduced price. The travel trailer or mobile home must be used as a permanent residence and can not be transferred or sold to a third party for a period of one year from the date of purchase. The person purchasing the travel trailer or mobile home must provide proof of insurance as well as proof of access to property on which the mobile home will be located (*i.e.*, a letter from a mobile home park manager stating that the individual has been approved for residency at a mobile home park).

The price of a FEMA travel trailer or mobile home varies from household to household. The sales program guidelines indicate that a FEMA recipient's income, household size and amount of disaster assistance received are the most important factors in calculating the sales price of the mobile home and eligibility for the sales program. Therefore, it is important to advise individuals who are interested in purchasing a FEMA mobile home to save as much of their FEMA

assistance as possible so that they will have the funds needed to purchase the mobile home.

In recent years, FEMA has created a non-profit trailer donation program for those individuals who are unable to qualify for the FEMA sales program. This program usually begins at the end of the 18 month temporary housing program. FEMA “donates” mobile homes to local non-profits. In consideration for the “donation” the non-profit agrees that the units will be used exclusively to house disaster victims for a period of one year. When the one year period expires, the non-profits are allowed to transfer ownership of the mobile homes directly to the disaster victims.

**C. Long Term Housing Issues** – It is not unusual for mobile home park owners to view the destruction of a mobile home park as an opportunity for “urban renewal”. Advocates for mobile home park residents should be on the look out for any proposed change in zoning applications by mobile home park owners. F.S. 723.083 provides very specific requirements for approval of a change in zoning including a finding that there is comparable housing available in the area where the mobile home park residents could relocate. Furthermore, the park has to give written notice to all residents within 5 days of filing an application to change the park’s zoning. F.S. 723.081. Low income mobile home park residents are especially vulnerable in these situations. The advocate should make every effort to preserve one of Florida’s last forms of affordable housing.



# FEMA

## RECOVERY POLICY (INTERIM) 9455.1

I. **TITLE:** **Temporary Housing Unit Donations**

II. **DATE:** August 15, 2006

III. **PURPOSE:**

Establish criteria for permanently donating FEMA-purchased temporary housing units to States, local governments, and voluntary organizations.

IV. **DESCRIPTION:**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act authorizes the permanent donation of temporary housing to States, local governments, and voluntary organizations, for the sole purpose of providing temporary housing to disaster victims.

IV. **SCOPE AND AUDIENCE:**

This interim policy is to be implemented in all disasters declared on or after the publication date (paragraph II) or in those disasters with an open period of assistance on the publication date, until superseded by the final policy. All personnel are directed to follow this policy. This policy does not affect FEMA's discretion to permanently dispose of temporary housing through other authorized means (e.g., sale, transfer).

V. **AUTHORITY:**

Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5174); and 44 CFR 206.117

VI. **DEFINITIONS:**

A. **Temporary Housing:** For the purposes of this interim policy, this is defined as readily fabricated manufactured housing (mobile homes, travel trailers, modular housing).

B. **Disaster Victim:** An individual or household from the affected area determined to be eligible for Individuals and Households Program assistance.

C. **Voluntary Organization/Agency:** An entity that meets the criteria of a Non-Profit Charitable Organization as defined in IRC§501(c)(3).



# FEMA

## RECOVERY POLICY (INTERIM) 9455.1

### VII. POLICY:

A. When requested, FEMA may permanently donate temporary housing units to a State, local government, or voluntary organization for the purpose of providing temporary housing to disaster victims in major disasters and emergencies. The decision to authorize permanent donations will be based on an evaluation of need, resource availability, and impact on operational readiness. Temporary housing units will be considered for permanent donation only in the following order of availability (i.e., Priority 2 units may not be donated if Priority 1 units are available). Deviations from this order require detailed justification from the Federal Coordinating Officer or Regional Director, as appropriate.

Priority 1. Used units (mobile homes, travel trailers, or modular housing) for which it has been determined that the costs of rehabilitation are not in the government's interest.

Priority 2. Used units (mobile homes, travel trailers, or modular housing) which have been returned to FEMA, and for which it has been determined that the costs of rehabilitation are in the government's interest; however, such rehabilitation has not yet commenced.

Priority 3. Used, rehabilitated units (mobile homes, travel trailers, or modular housing).

Priority 4. Unused mobile homes or modular housing.

Priority 5. Unused travel trailers.

B. The permanent donation of temporary housing units is contingent upon FEMA and the receiving organization executing a *Donation of Temporary Housing Units Agreement* (model attached). The agreement will only be effective for the declared disaster or emergency.

C. FEMA will pay any costs associated with delivering a permanently donated temporary housing unit to a site identified by the recipient organization. The recipient organization must agree to accept the unit as is and assume all other costs, including those associated with installation, maintenance, deactivation, and disposition when the unit is delivered to the identified site.

D. The recipient organization must agree, in writing, to assume – at delivery – legal responsibility for any and all future liabilities associated with the donated units.



# FEMA

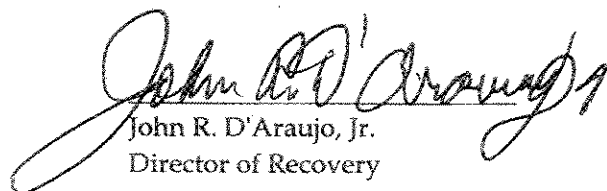
## RECOVERY POLICY (INTERIM) 9455.1

E. All donations must be approved by the Recovery Director, in consultation with FEMA Logistics and the Chief Financial Officer.

VIII. ORIGINATING OFFICE: Recovery Division (Individual Assistance Branch).

IX. SUPERSESION: None.

X. REVIEW DATE: One year from the date of publication.

  
John R. D'Araujo, Jr.  
Director of Recovery





# FEMA

## RECOVERY POLICY (INTERIM) 9455.1

### Attachment 1

#### Agreement Between [Insert Recipient Organization] and the Federal Emergency Management Agency for the Permanent Donation of Temporary Housing Units

THIS AGREEMENT, made and entered into the \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between [insert recipient organization name] and the Federal Emergency Management Agency (hereinafter "FEMA"), U.S. Department of Homeland Security ("DHS").

WHEREAS, the State of \_\_\_\_\_, sustained damage of sufficient severity and magnitude as to warrant a declaration by the President of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5206 (hereinafter "Stafford Act") on [insert declaration date] (hereinafter referred to as "FEMA-\_\_\_\_-DR-\_\_");

WHEREAS, Section 408 of the Stafford Act ( 42 U.S.C. § 5174), authorizes the provision of temporary disaster housing, including mobile homes, travel trailers or other readily fabricated dwellings (housing units), and authorizes the President to donate housing units to a qualified recipient organization for the sole purpose of providing temporary housing to victims of major disasters;

WHEREAS, [insert recipient organization name] has agreed to accept the donation of [number of units] housing units and to use them for the sole purpose of providing temporary housing to disaster victims of the specified major disaster or emergency;

WHEREAS, the [insert recipient organization name] has agreed to comply with State and local codes and ordinances for manufactured housing;

#### NOW, THEREFORE:

1. FEMA hereby agrees to donate housing units, and [insert recipient organization name] agrees to accept and arrange for use by disaster victims, [insert number of units] manufactured housing units, as specifically described and identified by Vehicle Identification Numbers (VIN) set forth in Attachment "--" to this Agreement.

2. [Insert recipient organization name] hereby agrees that the units shall be for the sole purpose of providing temporary housing to disaster victims for eighteen months from the date



# FEMA

## RECOVERY POLICY (INTERIM) 9455.1

FEMA-\_\_\_\_-DR-\_\_ was declared or for a period no less than one (1) calendar year from the date this agreement becomes effective, whichever is longer;

3. [Insert recipient organization name] hereby agrees not to sell, transfer, donate, or otherwise dispose of the units for eighteen months from the date FEMA-\_\_\_\_-DR-\_\_ was declared or for a period no less than one (1) calendar year from the date this agreement becomes effective, whichever is longer.

4. [Insert recipient organization name] hereby agrees to follow Federal, State and local laws, requirements, and procedures for the type of housing unit provided, including, but not limited to, the following:

a. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq;

b. Title 44 of the Code of Federal Regulations (CFR):

- i. Part 7, Nondiscrimination in Federally Assisted Programs;
- ii. Part 9, Floodplain Management and Protection of Wetlands;
- iii. Part 10, Environmental Considerations;
- iv. Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
- v. Part 18, New Restrictions on Lobbying.

5. [Insert recipient organization name] hereby agrees to assume, upon delivery, full financial responsibility for the donated unit, including rehabilitation (if necessary), additional hauling, installing, maintenance, permitting and utilities, and any costs associated with eventual disposition;

6. [Insert recipient organization name] hereby agrees to obtain and maintain hazard and flood insurance (when applicable) on the housing unit while it is being used to provide temporary housing assistance to disaster victims.

7. [Insert recipient organization name] hereby agrees to provide quarterly status reports to FEMA that list the names of each disaster victim occupying the respective units, the unit's VIN number, and the declared disaster or emergency for which the unit is being used until final disposition of the unit(s).



# FEMA

## RECOVERY POLICY (INTERIM) 9455.1

8. The [Insert recipient organization name] agrees to allow the Department of Homeland Security and/or FEMA to audit their program to validate appropriate use of donated units.

9. [Insert recipient organization name] hereby agrees to hold harmless and indemnify the United States and FEMA and be responsible for any and all claims or causes of action, including any judgment, action, debt, liability costs and attorney's fees or any other request for moneys of any type of relief arising from or incident to the transport, use, maintenance, occupancy, repair, or otherwise result from those units acquired pursuant to this Agreement.

10. [Insert recipient organization name] hereby agrees not to encumber the temporary housing unit with any liens.

11. This Agreement may only be modified through a written request, signed by the parties to this Agreement.

12. Nothing in this Agreement is intended to conflict with current federal, state or local laws or regulations or the directives of DHS or FEMA. If a term of this Agreement is determined to be inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect.

13. The points of contact for this Agreement are:

For FEMA:

For entity:

This Agreement shall become effective on the date of last signature by the respective parties hereto:

FEMA:

[Insert recipient organization name]:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Attachments: Agreement "--": Vehicle Identification Numbers