



Providing Pro Bono Assistance to Survivors of a Natural Disaster

ABA Consumer Financial Services Committee
2019 Winter Meeting
January 12, 2019

Panelists:

Anthony Palermo, Holland & Knight LLP

Rachel Bentley, Legal Aid Society of Palm Beach County, Inc.

Maria Alvarez, Legal Services of Greater Miami, Inc.

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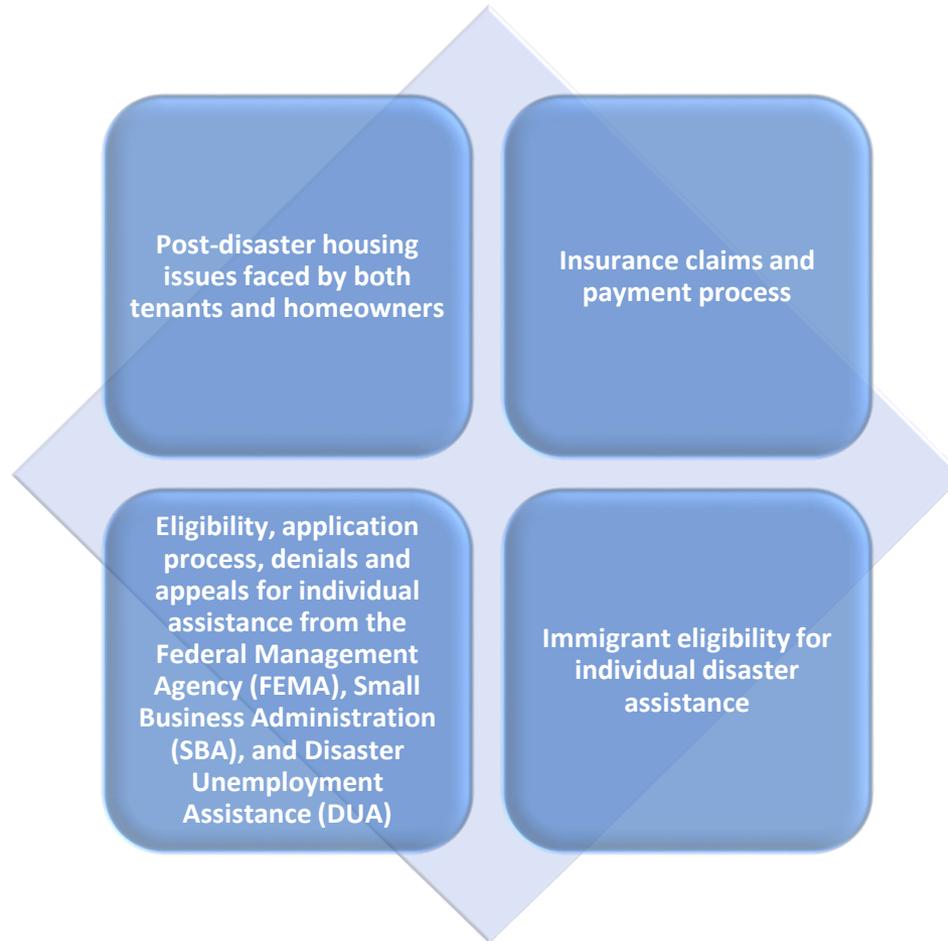
Moderator:

James J. Morrissey, Pilgrim Christakis LLP

Why Pro Bono Legal Assistance Matters?

- 
- In *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans*, LSC reported that seven in 10 low-income households experienced at least one civil legal problem during 2016, including issues with healthcare, housing conditions, disability access, veterans' benefits, and domestic violence.
 - Federally funded legal aid providers have the funding to serve only a small fraction of those who need their help.
 - **Funding shortage is even greater in Florida, which has the distinction of being one of only two states with no funds allocated in the state's budget to provide for the civil legal needs of its poorest citizens.**

Most Urgent Needs in the Aftermath of a Natural Disaster



Types of FEMA Disaster Assistance Available

Section 403 Transitional Sheltering Assistance (TSA) (formerly called Emergency Housing Assistance or Short-term Lodging Program)

Assistance Under Individual and Household Program (IHP)

Homeowner Insurance Issues: Representing Policyholders

- **Insured Post-Loss Duties:**
 - Most insurance policies contain a laundry list of post-loss duties which 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.

State and Federal Consumer Home Repair Protections

- **Florida-Specific:**
 - Florida Home Solicitation Sales Act
 - Florida Home Improvement Sales and Finance Act
 - Florida Deceptive and Unfair Trade Practices Act
 - Florida Common Law Claims (Fraud, Unconscionability, etc.)
- **Federal Laws:**
 - Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961- 1968
 - Truth in Lending (TILA) – 15 U.S.C. §§ 1601-1667(e); 12 C.F.R. Part 1026.
 - MAGNUSON-MOSS WARRANTY ACT, 15 U.S.C. §§ 2301-2312; 16 C.F.R. §§ 700.1-703.8
 - Fair Credit Billing Act, 15 U.S.C. §1666.

Types of Pro Bono Opportunities Available

- Through the **Disaster Legal Services Program**, the ABA YLD and FEMA have coordinated the delivery of free legal services in the wake of a disaster.
 - Since September 2007, ABA YLD has responded to 178 declared disasters in 44 states and 4 U.S. territories
- Volunteer attorneys must generally be licensed and in good standing in the affected jurisdiction to participate.

Types of Pro Bono Opportunities Available

- Legal Service Organizations (Disaster Delivery Program)
 - Congress has provided LSC with funds to support delivery of legal services related to the consequences of certain natural disasters. Fund expenses for grantees may fund: (1) mobile resources, (2) technology, and (3) **disaster coordinators for pro bono volunteers.**

Resources

- National Disaster Legal Aid Resource Center
(www.disasterlegalaid.org)
- Disaster Legal Services (www.disasterassistance.gov)
- ABA Young Lawyers Division Disaster Legal Services Program
(https://www.americanbar.org/groups/young_lawyers/disaster_legal_services/)

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9101

AMENDED EMERGENCY ORDER AFTER HURRICANE HARVEY PERMITTING OUT-OF-STATE LAWYERS TO PRACTICE TEXAS LAW TEMPORARILY

ORDERED that:

Pursuant to Section 81.061 of the Texas Government Code, and notwithstanding Chapter 81, Subchapter G, an attorney who is licensed to practice law in another U.S. jurisdiction and who meets the following criteria is permitted to practice Texas law for six months from the date of this order:

1. the attorney is in good standing with the entity that governs the practice of law in the jurisdiction where the attorney is licensed;
2. either:
 - a. the attorney is displaced from the attorney's home jurisdiction due to Hurricane Harvey and the attorney practices in Texas remotely as if the attorney were located in their home jurisdiction; or
 - b. the attorney provides services through a legal-aid or pro bono program or a bar association that provides services to victims of Hurricane Harvey;
3. as soon as possible after beginning to provide services under this order, the attorney returns to the State Bar of Texas the Registration for Temporary Practice of Texas Law form attached to this order; and
4. the attorney agrees to abide by the Texas Disciplinary Rules of Professional Conduct and to submit to the disciplinary jurisdiction of the Supreme Court of Texas and the State Bar of Texas.

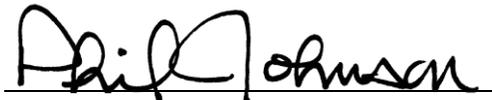
Dated: August 30, 2017



Nathan L. Hecht, Chief Justice



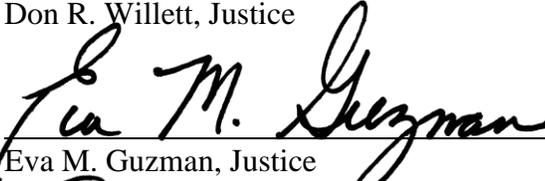
Paul W. Green, Justice



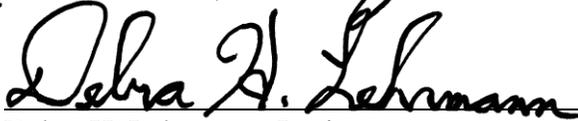
Phil Johnson, Justice



Don R. Willett, Justice



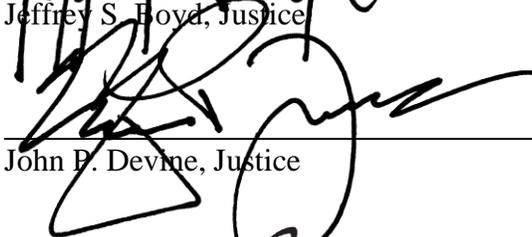
Eva M. Guzman, Justice



Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

The Supreme Court of Texas

REGISTRATION FOR TEMPORARY PRACTICE OF TEXAS LAW

Pursuant to Misc. Docket No. 17-9101, Amended Emergency Order After Hurricane Harvey
Permitting Out-of-State Lawyers to Practice Texas Law Temporarily,
issued by the Supreme Court of Texas on August 30, 2017

THIS FORM MUST BE COMPLETED IN FULL AND RECEIVED BY THE STATE
BAR MEMBERSHIP DEPARTMENT AS SOON AS PRACTICABLE

Provide the following information:

Attorney Name _____
Address of Permanent _____
Residence _____
Telephone Number(s) _____
Email Address _____

List every state in which you are licensed and provide the other information requested for each state:

<u>State</u>	<u>Bar Number</u>	<u>Date Licensed</u>	<u>Good Standing</u> (Y or N)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Provide Texas contact information for your temporary business office or the entity for which you are volunteering. You must update this information within five business days of any changes:

Organization Name: _____
Business Address: _____
Telephone Number(s): _____
Your E-mail Address: _____
Organization Contact Name: _____
Contact's Email and Address: _____

If associating with a Texas Attorney, please provide
the name and Texas Bar Number of the Texas Attorney _____

Do you intend to apply for admission to the State Bar of Texas? ____ Yes ____ No

DECLARATION UNDER PENALTY OF PERJURY

“My name is _____, my
(First) (Middle) (Last)
date of birth is _____, and my address is
_____, _____, _____, _____, and
(Street) (City) (State) (Zip Code)
_____. I declare under penalty of perjury that the foregoing is true and correct.
(Country)

Executed in _____ County, State of _____, on the ____ day of _____,
_____. (Month)
(Year)

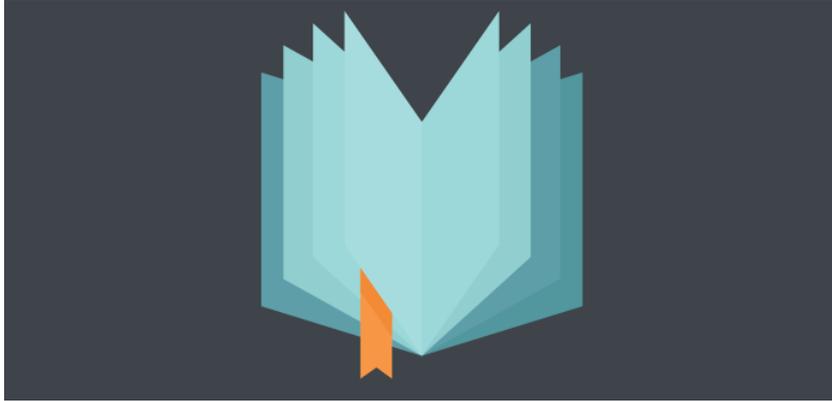
Declarant”

Return the original to the State Bar of Texas by one of the following methods: email to Sandra.Gavin@texasbar.com; fax to (512) 427-4311; or mail to the Membership Department, State Bar of Texas, P.O. Box 12487, Austin, Texas 78711-12487



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Lessons Learned in Providing Disaster Legal Services in Florida

BY ANTHONY J. PALERMO ON DECEMBER 14, 2017 ·



I learned a lot of lessons from Chesterfield. The difference between a great lawyer and a good lawyer. The importance of being 'for' something. To be somebody. The difference between doing well and doing good. —Martha Barnett (ABA President, 2000-01) about Chesterfield Smith (ABA President, 1973-74) at Smith's memorial service on July 22, 2003.

On August 30, 2017, Linda Anderson of Bay Area Legal Services and I worked together to revise and update the Disaster Legal Services Plan of Action for Florida to submit to the ABA YLD Director of Disaster Legal Services, Andrew VanSingel, as part of the ABA's agreement with the Federal Emergency Management Agency (FEMA) to jointly deliver legal assistance in the event of a disaster. Luckily, Linda had experience responding to disasters, and we had a prior plan to work from that my colleague and friend Austin Thacker from our firm's Orlando office had prepared when he served as the ABA YLD district representative for Florida. As we completed our plan, little did we know that Hurricane Irma would sweep across Florida less than two weeks later, creating an urgent, increased need for civil legal aid for many Floridians.

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Other than being born and raised in Florida and living through multiple hurricanes, nothing in my personal past or professional experience qualified me to be a leader in implementing disaster legal services. Several factors played to my advantage, however, and illustrate the importance of and benefits to lawyers volunteering to help those in need, especially after a disaster. As I learned through this experience, working to provide disaster legal services



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THE NEW YEAR ISSUE
DECEMBER 2017



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presents the perfect opportunity for a lawyer to develop personally and professionally, while giving back to the community.

FEMA and the ABA have coordinated the delivery of free legal aid in the wake of a disaster since 1978. The arrangement took a “significant step forward” in 2007, when a [new agreement](#) allowed participating attorneys to provide assistance with securing FEMA and other governmental benefits available to disaster survivors. The agreement increased the reach and array of legal services delivered in a two-year stretch in which volunteers responded to 19 designated disasters and fielded more than 75,000 calls. The expanded scope of the agreement also served as recognition of the significant role legal volunteers had played in aiding survivors of Hurricanes Katrina, Rita, Andrew, and Isabel, the Oklahoma City bombing, and the September 11th terrorist attacks.

In fact, in the agreement, FEMA and the ABA YLD define their missions as—respectively—(1) leading and supporting an emergency management system of preparedness, protection, response, recovery, and mitigation; (2) enhancing the professional and personal development of lawyers through educational, leadership, networking, advocacy, and public service opportunities.

Many resilient Floridians recently learned that they were not alone as they struggled to piece back together the basic necessities that we all too often take for granted. Volunteer attorneys stood ready to respond to their calls. These attorneys helped survivors resolve their housing, employment, or family matters. The volunteers immersed themselves in ensuring that the laudable missions set forth in the agreement became more than words on a page. Attorneys carried them out in practice, improving the quality of lives of those helped—as well as those helping—and upholding the best traditions of our profession.

FEMA and the ABA agreed that the YLD will assist FEMA and “will provide Disaster Legal Services (DLS) to low-income disaster survivors in the aftermath of a presidentially declared ‘major disaster,’” as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended. The express purpose of the agreement is the parties’ joint recognition of the importance of developing and maintaining a coordinated legal services delivery system to ensure the availability of lawyers and legal support personnel from diverse practice settings with the expertise, skills and experience necessary to meet the different needs of low-income disaster survivors. DHS/FEMA and the ABA have reaffirmed their joint commitment multiple times since 1978, most recently in June 2017.

Once the president declares a “major disaster” and DHS/FEMA provides a written request to YLD’s Director of Disaster Legal Services, the YLD coordinates the mobilization of volunteer attorneys to provide free legal counseling and advice, referrals and representation to disaster survivors who lack sufficient resources to secure adequate legal services, regardless of whether the insufficiency existed before the disaster. Volunteer attorneys must be licensed and in good standing in the affected jurisdiction. After the YLD mobilizes a sufficient number of volunteers, the YLD then works to monitor and report to DHS/FEMA on the number and types of cases handled by volunteers, maintaining direct communication with DHS/FEMA at various levels, and exercising the sole and complete authority to manage the delivery of legal services to disaster survivors.

To fulfill these responsibilities, the YLD must formulate disaster-specific programs that outline planned services and the methodology for implementing these services in response to a catastrophe. The agreement also identifies the various actors involved in a successful response and directs the YLD to collaborate with individual attorneys, law firms, not-for-profit legal service providers, Legal Services Corporation (LSC) entities, state and local bar associations, and pro bono organizations to make lawyers available to meet the legal assistance needs of disaster survivors, including through the use of established state and local bar telephone numbers that can serve as a hotline number for disaster legal services.

Soon after the two-member ABA DLS Team for Florida—consisting of Linda and me—submitted our initial plan of action to the director for DLS, our team began to grow as we learned of many individuals ready, willing, and able to donate their time and talents to others in the event of a disaster. Although Hurricane Irma had yet to turn to Florida, we knew we had strong, experienced partners in The Florida Bar and The Florida Bar YLD not only to help solicit volunteer attorneys and spread the word about the hotline upon its activation, but to take the laboring oar on setting up the hotline, staffing it, and coordinating referrals to volunteer attorneys, as well as disseminating training materials for those taking on cases.

In the days leading up to the storm, the ABA DLS team began reaching out to other partner organizations to ensure that legal aid would be available as soon as possible after the storm and that the public would receive word that the legal community would be available to help those in need. We emailed the leadership of every local bar association affiliated with the ABA YLD and The Florida Bar YLD, ensuring that 19 local bar organizations throughout Florida received a copy of our DLS Plan of Action. We asked them to not only disseminate the plan to their membership to help spread word of the relief available to Floridians in need, but to ask their members to volunteer to provide legal

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assistance to those calling the hotline for help. We explained that volunteers would sometimes be called on for small commitments—such as the provision of basic legal information (much of which we detailed in the Plan of Action), advice or brief legal services—but we cautioned that attorneys should be prepared to either engage in additional forms of representation or coordinate with their local legal aid organization to ensure that legal needs do not go unmet. The local bar leaders immediately stepped up and demonstrated why their peers have entrusted them with leadership roles. While preparing their practices and families for the impending storm, they read and shared the plan of action and made personal pleas to their membership to fill out a volunteer intake form. For example, the Hillsborough County Bar Association emailed the plan of action to its members, and the presidents of the HCBA and its YLD made additional calls for members to assist the relief efforts in various widely attended meetings and membership events. The HCBA also posted the [plan of action](#) and a [request for members to volunteer](#), along with additional information, on its website to further encourage members to get involved.

At the same time, we contacted the seven LSC-funded entities in Florida to advise them of our plan of action, our coordination with the local bar organizations, and that we would be working to drum up as many volunteers as possible to try to make sure that the LSC grantees did not become inundated as a result of the storm. As part of our coordination efforts, we gave advance notice that some of our volunteers might need to work with or refer matters to the LSC grantees if the volunteer attorneys needed to consult a subject matter expert or could not handle the commitment that a given case required.

In addition to connecting with the LSC entities, The Florida Bar Foundation's director of pro bono partnerships graciously connected us to 21 additional legal aid organizations that receive grants from the Foundation to provide free civil legal assistance to the poor. She also generously shared her time and expertise, and spread the plan of action to Foundation-grantee organizations, as well as numerous other legal aid programs, law schools, and law firms coordinating pro bono throughout Florida. Not only did the dedicated LSC entities and legal aid organizations throughout Florida embrace the ABA DLS team's efforts to coordinate the implementation of a disaster relief hotline, they also invited us to become a part of their established network of advocates who communicated regularly through various listservs and conference calls about the needs arising from the storm, the resources available to legal aid professionals and affected communities, and various developments in the provision of and qualifications for state and federal assistance.

Beyond these stalwart supporters, other unsung heroes stepped up. Leaders from the Association of Pro Bono Counsel (APBCo), which includes over 180 attorneys managing pro bono practices for over 100 of the country's largest law firms, reached out upon learning of our efforts. APBCo members encouraged their respective firms to provide volunteers for the hotline, offered office space and equipment for legal service organizations affected by the storm, and helped organize and prepare training for volunteer attorneys responding to Hurricane Irma. These firm leaders shared institutional knowledge and lessons learned from their recent efforts in mobilizing lawyers to aid disaster recovery projects after Hurricane Harvey and prior efforts following Hurricanes Sandy and Katrina and September 11th.

Law schools also embraced the call to service, recognizing the value in giving back and the experiential learning and networking opportunities for students who offered to provide research assistance to volunteer attorneys handling cases from the hotline. Stetson University College of Law led the way by [launching](#) Stetson's Disaster Research Project—an on-campus collaborative initiative to serve communities impacted by disaster. Through this project, Stetson law students conduct legal research for attorneys helping disaster survivors through the hotline. Law students not only aid the relief efforts, build relationships with current practitioners, and ensure that more people get the help they need, their research assistance also enable volunteer attorneys to take on more cases without getting overburdened while balancing other client demands. This encourages additional attorneys to get involved as they have the confidence of knowing that they have support to keep them from becoming inundated by volunteering on top of their already busy practices. The project undoubtedly presents a rewarding experience for the lawyers and students involved in addition to helping to keep the hard-working attorneys at Florida's legal aid organizations from receiving too great an influx of disaster legal work and helping to ensure that Floridians get the help they need. Stetson also welcomed and integrated law students from other schools outside of Florida into their relief efforts, offering to host and involve students from American University College of Law on their visit to Florida to provide relief.

Other law schools within Florida and beyond also reached out to lend support to the relief hotline and volunteers manning it. In bridging the gap from academia to practice, these schools and their students further ensured that Floridians need not rebuild their lives alone. Our director of DLS deftly balanced initiating and overseeing ongoing disaster relief efforts in Puerto Rico, the U.S. Virgin Islands, and in California to prepare timely briefs on strategy, progress and insights from the response in Texas to Hurricane Harvey and the other simultaneous recovery projects. We connected with these seasoned "second" responders to discuss what worked and how we could build

economies of scale and share materials we prepared to disseminate relief information and guidance to wider audiences.

The Florida Bar, The Florida Bar YLD, and the ABA YLD issued [press releases](#) about the hotline, compiled available resources, and [published websites](#) with calls to action and ways to get involved. The presidents of The Florida Bar, its YLD, and the ABA devoted their time and attention to advocating for more volunteers and awareness. Many others took to social media to disseminate information about the efforts and resources available to those affected. Various media outlets aided the relief efforts by spreading awareness of the hotline and other forms of assistance.

While the media announced its availability to the public, word of the hotline spread in legal circles to the most respected figure in the Florida judicial system. Chief Justice Labarga of the Florida Supreme Court recognized the many individuals who stepped up to establish, publicize and volunteer for the hotline, as well as other laudable initiatives implemented to help Floridians, in a [press release](#) published by the Supreme Court of Florida on October 11, 2017. This recognition cemented what many volunteers noticed as they joined in the effort: the operation of the hotline helped to fulfill the respective missions of FEMA and the ABA to support the response, recovery and mitigation of disasters and foster the professional and personal development of lawyers.

For attorneys like me, the experience has presented great opportunities for growth in learning about other practices and in building and working as a team. Having received training from FEMA, but not actually worked through a disaster response before, I learned that flexibility and dialogue lead to new opportunities. Linda, Andrew, Austin and others with the ABA contributed to the plan of action, which we realized need not be an immaculate law review article, but rather a working, accessible document that contained lists of relevant contacts, resources, and the “big picture” of our response while maintaining room for adaptation to best deliver legal services depending on the needs that arose and the partnerships we developed. We asked bar leaders, legal aid providers and lawyers in an array of practice settings to freely disseminate the plan, but we also invited feedback and ideas. This encouraged attorneys to engage in the effort and increased involvement as they tangibly and emotionally invested in what became a joint undertaking.

Beyond building teamwork and leadership skills and creating mutually beneficial partnerships, additional benefits flow from volunteering to provide disaster legal services—an observation that many attorneys who donate their time through pro bono have [recently recounted](#). Among other things, you can [build your network](#) and develop mentors, both within your organization and beyond, to form friendships and sponsorships that will add meaning and longevity to your career. You can [help](#) increase access to justice, build transferable skills and gain experience, and boost morale. You can [collaborate](#) with in-house counsel to further build rapport and solidify client relationships. For these reasons, my firm and many others embraced the attorneys among their ranks who devoted their time to assisting these efforts. Partners, associates and firm leadership from numerous offices joined together to encourage attorneys in my firm to get involved, and other firms did the same. You don't need to cast aside your personal and professional development goals to pursue pro bono; rather they go hand-in-hand.

The benefits of pro bono have long been espoused by ABA leaders and ingrained in my firm, like many others. Former ABA President Chesterfield Smith left behind a large legacy in our firm. Among many other memorable lessons in leadership, he is often remembered for sharing two, oft-repeated pieces of advice: “be somebody” and “do good.” Through pro bono and in joining ongoing efforts to provide disaster legal services, you can be somebody in your community and the bar and do good for others.

Unfortunately, disaster will inevitably strike our communities again and affect vulnerable populations who lack adequate resources to obtain the legal guidance necessary to address the numerous disruptions caused by a catastrophe. I hope this article contributes to future recovery efforts by sharing an overview of what happened recently in Florida, and encourages attorneys to recognize the benefits of stepping up to serve their communities. This article sought to identify some of the many selfless and devoted groups and individuals involved in the response to Hurricane Irma. Future volunteers should have confidence that they won't be alone in lending their assistance to relief efforts, as attorneys rise to the challenge of ensuring that those in need aren't alone in rebuilding their lives.

About the Author



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Disaster Relief – FEMA Hotline

DEAR FLORIDA LAWYER:

I am requesting your help. To assist Florida citizens with legal issues following a disaster, we need volunteer lawyers to sign up below. The Young Lawyers Division (“YLD”) of The Florida Bar has in place a Statewide Emergency Legal Services Response Plan (the “Florida Plan”) and we are looking for Florida lawyers to help implement the plan should it become necessary. Certainly the most active time of year for the Florida Plan is hurricane season; however, the hotline is activated during any declaration of emergency in the state. This would include, but is not limited to, floods, tornadoes, wildfires, and other disasters.

The Florida Bar YLD, working in conjunction with the ABA Young Lawyers Section, is soliciting volunteers to help with ongoing and future disaster relief efforts, pursuant to the Florida Plan. Under the Florida Plan, volunteers provide basic legal services for low-income individuals in non-fee generating cases. The volunteers assist by returning calls placed to the YLD’s 1-800 hotline or at FEMA centers. The most pressing need is for volunteers to return calls.

To be a volunteer under the Florida Plan, you simply have to indicate a willingness to serve, and have a basic understanding of common problems experienced by disaster victims. The Florida Good Samaritan Act and the Federal Volunteer Protection Act provide protection for the volunteers who offer assistance. The legal assistance provided will be to people who cannot otherwise afford representation and counts as pro bono hours for reporting purposes. In addition, there is a manual which can be accessed [here](#) to help you answer victim’s questions. The types of legal questions most frequently asked as related to hurricane disasters involve landlord/tenant and other housing problems, consumer protection matters, and home repair contracts. Sign up to help by clicking on the tab below. Thank you for your time and please encourage other lawyers to volunteer their time as well to help the citizens of Florida who are affected by disasters.

Sincerely,
Christian George
The Florida Bar Young Lawyers Division President

RESOURCES

 [FEMA Training Manual](#)

 [Volunteer Sign-Up Form](#)

 [Legal Aid by County](#)

[Florida Legal Services - Irma Related Resources](#)

FREE LEGAL ASSISTANCE AVAILABLE FOR VOLUNTEER LAWYERS

Stetson Research Assistance Project: This program is intended to offer research assistance to the volunteer lawyers offering assistance to disaster survivors in Florida.

[Visit Website](#)

FREE LEGAL ASSISTANCE

The Florida Bar has prepared a full press release regarding Free Legal Assistance Available for Florida Hurricane Irma Survivors, please click the tab below for more information.

[Free Legal Assistance for Florida Hurricane Irma Survivors](#)

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📍 651 E. Jefferson St.
Tallahassee, FL. 32399

Thomas V. Miller, Program Administrator

✉ **Email:** tmiller@flabar.org

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FLORIDA
DISASTER ASSISTANCE
MANUAL
For Legal Services Advocates

June 2014 Edition

ACKNOWLEDGMENTS

This Manual was first published a decade ago by the Florida Bar Foundation, who has graciously allowed Florida Legal Services, Inc., to coordinate its revision. The original author of this Manual was Terry Coble, who was assisted with contributions from many lawyers in the legal services community. The enormous efforts of advocates involved in the initial development are too numerous to mention, but not unappreciated.

IMPORTANT

This is an overview of disaster assistance available under various state and federal law, 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. The Manual is neither exhaustive nor a substitute for legal research or advice. Law and policy discussed in this Manual are subject to periodic change. It is important to verify continued accuracy of the law and policy discussed herein before relying on any of this Manual's content.

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PART ONE: FEMA ASSISTANCE

A. INITIAL ADVOCACY

FEMA assistance to meet disaster-related needs is authorized under the Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).¹ Although FEMA is prohibited by federal law from discriminating based on race, ethnicity and income in administering the Stafford Act,² the responsibility for ensuring that disaster benefits are made equally available to low-income people and people of racial or language minorities often falls on legal services and legal aid programs. This is because 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, even though low-income people are usually the individuals most severely affected by disasters,

In a disaster, legal aid advocates can safeguard the rights of low-income people by (1) getting to know the officials and other players³ involved in providing disaster assistance

¹ 42 U.S.C. §§ 5121, *et seq.* Although not a comprehensive repository, FEMA's catalogue of the forms and policies it uses to implement the Stafford Act is at FEMA, *Policies* at <http://www.fema.gov/policies> (site with centralized links).

² 42 U.S.C. § 5151; 44 C.F.R. § 206.11.

³ This includes, but is not limited to, on-going relationships with local Emergency Management, DCF, and Florida Voluntary Organizations Active in Disasters (FLVOAD) (<http://www.flvoad.org/>), such as the Red Cross.

(in advance to the extent possible); (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.

1. Contacting Officials and Other Players

Immediately after the Declaration of Disaster, Florida Legal Services (FLS) ordinarily obtains the identity of, and available contact information for, the Federal Coordinating Officer (FCO)⁴ and the Disaster Recovery Manager (DRM).⁵ FLS will also obtain the identity of, and available contact information for, Florida's State Coordinating Officer (SCO) and the Governor's Authorized Representative (GAR).⁶ Finally, FLS will secure information about the Young Lawyers Division (YLD) of the American Bar Association's legal hotline.⁷ 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.

a) Obtaining Background Information

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

⁴ The FCO is responsible for coordinating all disaster assistance programs administered by FEMA.

⁵ The DRM is responsible for managing FEMA assistance programs.

⁶ The SCO and GAR are usually the same person and have historically been the Director of Florida's DEM.

⁷ Traditionally, the YLD's legal hotline is not up and running until several weeks post-disaster.

Agreement, which is required to be published in the Federal Register.⁸ 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,⁹ 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.¹⁰ If the state will be administering this program, FLS will obtain and disseminate 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.

b) Additional Necessary Contacts

FLS, and local legal aid programs, when appropriate, will also obtain information about establishment of the Disaster Supplemental Nutrition Program (D-SNAP), the Disaster Unemployment Assistance program (DUA), and the Crisis Counseling program (CCP).¹¹ The most important information to obtain are (1) the eligibility

⁸ See <https://www.federalregister.gov/>. Additional sources include the FEMA Regional Office, the FEMA website, www.fema.gov, the Governor's office, and the website of the Florida Division of Emergency Management, www.floridadisaster.org.

⁹ Historically, disasters in Florida have been declared by county.

¹⁰ As of the 2014 hurricane season, FEMA is administering the Financial Assistance to Meet Other Needs program.

¹¹ Comprehensive information about D-SNAP is at http://www.fns.usda.gov/disasters/response/D-SNAP_Handbook/guide.htm; DUA is at <http://www.fema.gov/recovery-directorate/disaster-unemployment-assistance-fact-sheet>; and CCP is at <http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit/recovery-directorate/crisis-counseling>.

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.

In most disasters, critical decisions as to whether to request D-SNAP and CCP, including whether to have a program at all, are initially made at the local level. Since there is considerable latitude in setting up D-SNAP or CCP, legal aid programs should contact local officials as quickly as possible in order to determine whether -- and the manner in which -- they intend to ask for and/or implement these programs in the disaster areas. It may be necessary for local programs to aggressively advocate for establishment of such programs in their area.

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.

2. Advocating for Emergency and Other Disaster Programs

a) 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 note 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.¹² While driving, staff should also note whether grocery stores and convenience stores

¹² See section VIII.A.1 for suggestions and resources in conducting a census of affordable housing.

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 D-SNAP, legal aid staff should find out how long electricity has been interrupted (and in what geographic area) to determine the need for disaster SNAP to replace food lost due to spoilage. 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 D-SNAP, the need for DCF to advertise the program, and the need to extend the D-SNAP program).¹³

When interviewing clients, legal aid staff should also inquire 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

¹³ See Part Two re: advocating for D-SNAP. Local advocacy about community impact is indispensable for establishing D-SNAP. As FNS explains:

FNS will ask the State to provide data or other evidence that at least 50% of households in a certain defined area (i.e., county, neighborhood, Zip Code, etc.) have been impacted by the disaster... The most commonly used data are power outage charts and maps which indicate an extended outage of four hours or more affecting the majority of the population.

FNS, *D-SNAP Guidance* at p. 26 at http://www.fns.usda.gov/disasters/response/D-SNAP_Handbook/D-SNAP_Handbook.pdf.

begin to work with local officials, FLS, and other appropriate organizations, 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 D-SNAP immediately, since these benefits are generally awarded within the first few weeks after the disaster.

b) Advocacy for Additional Programs

As soon as the local program has information regarding the unmet needs of low-income disaster victims, staff should work in conjunction with FLS and other appropriate organizations 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.¹⁴ 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.

¹⁴ In many cases, advocacy should begin in advance of the hurricane season. For example, it may be necessary to advocate with the county or city over code enforcement ordinances that regulate temporary housing. See section , *infra* re: the criteria used by FEMA to determine the necessity for mobile homes and travel trailers.

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.¹⁵ 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.¹⁶ Thus, buy-in from local EM officials about the type of assistance needed is, for all practical purposes, a necessity. However, because of its knowledge of the low- income community, the legal aid program may be able to provide valuable information to assist the state in requesting additional assistance. Intervention by federal legislators may also be helpful.

c) 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 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), needs of persons with disabilities, and, if there are significant numbers 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).

¹⁵ 44 C.F.R. § 206.40(c)

¹⁶ *Id.*

3. Ensuring that Low-Income People Receive Information

a) Advocacy Regarding Publicity

Ordinary means of communication are often disrupted by a disaster. Since low-income people are likely to be especially affected by disasters, legal aid programs should carefully examine the manner in which FEMA publicizes disaster benefits. Depending on how each type of medium has been affected, legal aid staff should monitor 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 housing in low-income communities has been destroyed, residents 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 multi-lingual flyers door-to-door, 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 this information can be very useful to the low-income community.

b) Notice Regarding Disaster Housing Assistance

Once emergency sheltering needs are met, it is crucial that low-income disaster victims are aware of available housing assistance. FEMA can reimburse for short-term hotel expenses, provide money to pay rent,¹⁷ or pay to help either repair damaged homes¹⁸ or buy a new house.

If a survivor's home is uninhabitable and no rental units are available while repairs are being made, FEMA may provide FEMA-owned manufactured housing units. However, FEMA issues mobile homes only if the community allows mobile homes and the disaster victim would be unable to make use of rental assistance.¹⁹ If much of the affordable housing stock within the community has been rendered uninhabitable, it is important that low-income disaster victims be told of the mobile home option and the need to show that they would be unable to use cash rental assistance because of the lack of available housing.

c) Development of Written Informational Material

¹⁷ See <http://asd.fema.gov/inter/hportal/home.htm>

¹⁸ This includes Rapid Temporary Repair (RTR) for homes with minimal damage. Although "blue tarps" were commonly used under RTR in the past, FEMA has begun to "think outside the box" to use this program to help depopulate temporary shelters. One repair that can be provided under RTR is the professional installation of a weather mask to allow power companies to tie in minimal electricity. Craig Fugate, Administrator of FEMA, describes RTR at http://www.fema.gov/pdf/about/programs/legislative/testimony/2011/7_14_2011_fema_reauthorization_and_cutting_red_tape_in_recovery.pdf as:

Another form of transitional housing available to individuals is the Rapid Temporary Repair initiative, which provides limited direct assistance for sheltering purposes during a federal major disaster recovery effort after a request for activation by a Governor. This initiative, a partnership between the U.S. Army Corps of Engineers, FEMA and participating State, expedites temporary repairs to disaster damaged windows and doors and provides debris removal to allow access to the dwelling, enabling disaster survivors to continue to live in their homes.

¹⁹ 44 C.F.R. § 206.117(b)(1)(ii).

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 has gathered some of the most necessary information, they should begin preparing disaster flyers outlining the availability of benefits, and pamphlets regarding legal rights.

d) 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 use 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 consider volunteers 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. Check with the local FLVOAD at <http://www.flvoad.org/about-flvoad> and the State of Florida's Volunteer Florida at <http://www.volunteerflorida.org/volunteer/> for possible help in recruiting volunteers.²⁰

²⁰ In addition, legal aid programs are cautioned to obtain approval of their Executive Director prior to recruiting volunteers to assure that liability issues have been considered and addressed.

B. APPLICATION FOR DISASTER ASSISTANCE

One of the most common federal assistance available to survivors of a disaster is through FEMA's Individual and Household Assistance Program (IA).²¹ To apply (or "register") for IA, disaster survivors must submit an application to FEMA in one of the following ways: 1) online at <http://www.disasterassistance.gov/>; 2) by telephone through a FEMA call center ((800) 621-3362 (TTY (800) 462-7585 for people with speech or hearing disabilities or 1-800-621-3362 for people who use 711 or Video Relay Service (VRS)); or, 3) by smart phone. See <http://www.fema.gov/news-release/2010/07/19/applying-disaster-aid-your-smart-phone>. In addition, if Disaster Recovery Centers (DRC) are operational, it may also be possible to apply for disaster assistance in-person at a DRC.

If an applicant applies by phone, FEMA will send the applicant a copy of their application either by U.S. mail or, if the applicant elected to receive email correspondence, in their Disaster Assistance Account (notification via email). FEMA will also send the applicants an *Applicant Guide to the Individuals and Households Program*, which provides information about the application process and available benefits. <http://www.fema.gov/help-after-disaster>. All applicants who complete an application will also be provided a FEMA application number. Legal aid programs should caution registrants to save that number.

FEMA applicants with an email address have the option of creating an online

²¹ 42 U.S.C § 5174. Of course, applicants may be referred to other agencies located at the DRC as determined appropriate by the FEMA interviewer or the legal aid program, especially to assist with needs that will not be met by FEMA.

account at <https://www.disasterassistance.gov/DAC/displayPage.do?forward=findRgsnByDOBAndSSN>. An online account allows applicants to check the status of their application, update their insurance and bank information, add or update contact information, apply for assistance with other agencies, view and print information from FEMA, or change their address. When setting up an online account, applicants will be asked to create a password. Warn applicants to keep a record of their password in a safe place. They will also be provided a temporary PIN number via email. Once they receive the temporary LOGIN and log on to their account, applicants can create a permanent PIN (also called “token”). <http://www.fema.gov/faq-details/Creating-an-online-account-1370032124762/>. At present, creating an internet account is not mandatory.

Applicants (or their spouses or a minor in the home) must have, or apply for, a social security number. http://www.disasterassistance.gov/sites/default/files/pdf/DAIP_Checklist_EN_508.pdf.

In addition to submitting an application, all applicants must complete and submit a Declaration and Release form (O.M.B. No. 1660-0002) directly to FEMA or the FEMA inspector. Among other things, the form requires the applicant to attest to alien status,²² allows FEMA to verify information, and acknowledges penalties for fraud.

http://www.disasterassistance.gov/sites/default/files/pdf/Declaration%20and%20Release_EN_1.pdf.

²² Persons who are ineligible based on their alien status are not necessarily out-of-luck. Another person in their household can serve as the applicant, even if that person is a child. See discussion *infra* at ____

In some cases, applicants for FEMA benefits are required to submit a loan application to the Small Business Administration.²³ Although it seems counter-intuitive to require non-businesses to apply for a Small Business Administration (SBA) loan, SBA disaster loans are not just for businesses. Instead, the Small Business Administration simply administers this particular loan program.²⁴ However, not all FEMA applicants have to apply for an SBA loan. No SBA loan is required if a FEMA applicant applies for certain *temporary housing assistance or grants for public transportation expenses, medical and dental expenses, or funeral and burial expenses.*²⁵ *On the other hand, if an applicant asks*

²³ FEMA does not require claimants to apply for an SBA disaster assistance loan application to qualify for FEMA grants for medical, dental and funeral expenses. See <http://www.fema.gov/news-release/2013/06/03/sba-disaster-assistance-loan-application-key-some-fema-grants>. See also <http://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/disaster-loans> <http://www.sba.gov/sites/default/files/SOP%2050%2030%207.pdf>

Most applicants for SBA loans are rejected. This is because applicants for SBA loans must have good credit and sufficient income to repay the loan. For example, although the figures are adjusted periodically, SBA's minimum income level for most families of three is currently \$27,465. See SBA, *Standard Operating Procedure* 50 30-7 at App. 8 at <http://www.sba.gov/about-sba-services/7481/11546>. Note that this is above the federal poverty guidelines. See Department of Health and Human Services, *2014 Poverty Guidelines* at <http://aspe.hhs.gov/poverty/14poverty.cfm>

²⁴ See FEMA *Individual Assistance through the Small Business Administration* at <http://www.fema.gov/faq-details/Individual-Assistance-through-the-Small-Business-Administration-1370032115517>.

²⁵ See <http://www.fema.gov/news-release/2013/03/06/sba-loan-applications-also-renters-homeowners> stating that:

FEMA's temporary housing assistance and grants for public transportation expenses, medical and dental expenses, and funeral and burial expenses do not require individuals to apply for an SBA loan. However, applicants who receive SBA loan applications must submit them to SBA loan officers to be eligible for assistance that covers personal property, vehicle repair or replacement, and moving and storage expenses

See also 42 U.S.C § 5174(a)(2).

*for assistance that covers personal property, vehicle repair or replacement, and moving and storage expenses, FEMA will require that the applicant make an SBA loan.*²⁶

SBA approves disaster loans with terms of up to 30 years. Post-disaster mitigation loans for fixes to the home that help prevent the risk of future property damage caused by a similar disaster may be approved for up to 20 percent of the verified loss up to \$200,000. 13 C.F.R § 123.107. In some cases, SBA will even loan money to refinance all or part of an existing mortgage if the applicant's home is totally destroyed or substantially damaged and the applicant does not have credit available elsewhere. 13 C.F.R § 123.106. Finally, renters and homeowners may borrow up to \$40,000 to replace or repair **personal property** (such as clothing, furniture, cars and appliances) that was damaged or destroyed in a disaster. See FEMA, *Home and Property Disaster Loans* at <http://www.disasterassistance.gov/disaster-assistance/forms-of-assistance/4477/1/468>. Since the SBA will not duplicate benefits, insurance proceeds on home or property will be deducted from the total damage estimate to determine the eligible loan amount for applicants. See SBA, *Types of Disaster Loans* at <http://www.sba.gov/content/home-and-personal-property-loans>. Further, interest rates differ depending on whether the applicant is able to obtain credit from another source. If applicants cannot get credit elsewhere,²⁷ the interest rate will be at 4 percent or below. If applicants are able to obtain credit

²⁶ Homeowners can borrow up to \$200,000 to replace or repair their **primary residence**. 13 C.F.R. § 124.105(a) (2). See also <http://www.disasterassistance.gov/disaster-assistance/forms-of-assistance/4477/1/468>; program. Loans for this purpose may not be used for upgrades unless required by local building requirements. 13 C.F.R. § 124.105(a)(2).

²⁷ SBA makes the determination as to whether an applicant can obtain credit elsewhere. *Id.*

elsewhere, their interest rate will not exceed 8 percent. Loans for more than \$14,000 must be secured with collateral to the extent possible. *Id.*

Disaster survivors with questions about SBA loans can contact the SBA disaster assistance customer service center by phone at 1-800-659-2955 (TTY: 1-800-877-8339) or by e-mail at disastercustomerservice@sba.gov.

1. Application Deadlines

In most cases, a disaster victim must “register”²⁸ 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.²⁹ The 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.³⁰ 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).

Keep in mind that application deadlines for other non-FEMA programs may be shorter. For example, the application deadline for Disaster SNAP is established by the

²⁸ “Register” is another word for “apply.”

²⁹ 44 C.F.R. § 206.112.

³⁰ 44 C.F.R. § 206.112(b).

Secretary of Agriculture on a case-by-case basis soon after the disaster.³¹ Disaster Unemployment Assistance must be applied for within 30 days of the Declaration, unless the applicant shows good cause for late filing.³² 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.³³

2. 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. Inspection, which is scheduled in advance with an inspector, is free-of-charge and usually occurs within 2 weeks of the date of application. See *FEMA, Individual Assistance Inspection Process* at <http://www.fema.gov/faq-details/FEMA-Individual-Assistance-inspection-process-1370032116957/individual,inspection,process> Applicants who have not been contacted by an inspector to set up an inspection within 10 days of the date of application should contact the FEMA Helpline at 1-800-621-FEMA (3362) (persons with a speech disability or hearing loss who use a TTY should call 1-800-462-7585; persons needing Video Relay Service (VRS) should call 1-800-621-3362). *Id.*

³¹ 7 C.F.R. § 280.1. The FNS application period for D-SNAP is usually 7 days. FNS, Disaster SNAP Guidance, *Policy Guidance, Lessons Learned, and Toolkits to Operate a Successful D-SNAP*, at § 2.1 at http://www.fns.usda.gov/disasters/response/D-SNAP_Handbook/D-SNAP_handbook.pdf

³² 20 C.F.R. § 625.8(a).

³³ 13 C.F.R. § 123.3(b).

In addition to determining the condition of the dwelling and its contents, FEMA's inspector also makes a determination as to whether the applicant is the 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.

Errors in FEMA inspection reports are not uncommon. Therefore, whenever possible, advocates should advise disaster victims to take photographs of the damage to their property. If an applicant disagrees with the inspection report, photographs and sworn statements from landlords, neighbors, or friends regarding the extent of the damage will provide evidentiary proof of the damage for an appeal, if an appeal is necessary.

3. Eligibility of Immigrants

Immigrant eligibility for disaster-related assistance is program-specific. For FEMA cash assistance, immigrants must be a U.S. Citizen, Non-Citizen National, or a "Qualified Alien" as defined under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). See FEMA, *Questions and Answers for Undocumented Immigrants Regarding FEMA Assistance* at <http://www.fema.gov/news-release/2004/06/17/questions-and-answers-undocumented-immigrants-regarding-fema-assistance#note1>. FEMA explains that this includes:

...Green Card holders – individuals with U.S. government permission to live and work in the country permanently.

Others in the Qualified Alien category include those who have legal U.S. resident status because of:

- Asylum;

- Refugee status;
- Parole (admission into the United States for humanitarian purposes) for at least one year;
- Withholding of deportation;
- Immigration from Cuba or Haiti; and
- Severe forms of human trafficking, including persons with “T” and “U” visas.

FEMA, *Financial Disaster Aid Available for U.S. Citizens, Non-Citizen Nationals and Qualified Aliens* at <http://www.fema.gov/news-release/2012/12/13/financial-disaster-aid-available-us-citizens-non-citizen-nationals-and>. See also National Immigration Law Center, Disaster Assistance, *Help for Victims* at <http://www.nilc.org/disaster-help.html>.

Determining whether a client meets the definition of “qualified alien” can be a difficult, which can be a problem in the quick ad-hoc decision-making often required in a disaster setting. As a result, workers on the ground often make errors in deciding which applicants are eligible.³⁴ In many cases, these are well-intentioned efforts to help families in desperate need. Nonetheless, FEMA will likely attempt to recoup benefits that are improperly paid, even when it was itself at fault in creating the overpayment.³⁵

Undocumented immigrants are eligible for limited assistance from FEMA. This consists primarily of short-term non-monetary assistance that is necessary to prevent injury or death, such as evacuation, search and rescue, emergency medical care, emergency shelter, emergency food and water and medicine. See, e.g., FEMA, *Questions and Answers for Undocumented Immigrants Regarding FEMA Assistance* at

³⁴ Under the Disaster Assistance Recoupment Fairness Act of 2011 (Pub. L. 112-74) (DARFA), IA overpayments due to FEMA’s error were waived by FEMA so long as there was no fault on the part of the survivor, and the survivor had income of \$90,000 or less. However, that law does not apply to recoupment efforts for disasters declared after Jan. 1, 2011.

³⁵ See Section III.D.4.d below for a discussion of FEMA’s recoupment process.

<http://www.fema.gov/news-release/2004/06/17/questions-and-answers-undocumented-immigrants-regarding-fema-assistance>.

Even if the head of household is an ineligible alien, FEMA policy allows entire households to qualify for assistance through either a child under 18 years of age or an adult member who meets citizenship criteria. See *Questions and Answers for Undocumented Immigrants Regarding FEMA Assistance* at <http://www.fema.gov/news-release/2004/06/17/questions-and-answers-undocumented-immigrants-regarding-fema-assistance>. See also *FEMA Citizenship/Immigration Requirements* at https://faq.ready.gov/app/answers/detail/a_id/452/~/fema-citizenship%2F-immigration-requirements.

C. TYPES OF FEMA DISASTER ASSISTANCE

1. **Section 403 Transitional Sheltering Assistance** (formerly called Emergency Housing Assistance or Short-term Lodging Program)

42 U.S.C. § 5170b(a)(3)(B), also known as the Stafford Act's "public assistance" provision, gives FEMA the power to perform "work or services essential to saving lives and protecting and preserving property or public health and safety, *including ... emergency shelter...*"³⁶ Under this authority, FEMA provides short-term Transitional Sheltering Assistance to disaster survivors who cannot return home after congregate shelters have closed. In most cases, assistance is provided through direct payments to hotels and motels. See *FEMA Fact Sheet: Transitional Sheltering Assistance* at http://www.in.gov/dhs/files/dad_trans_sheltering_asst.pdf; FEMA, *Transitional*

³⁶ 42 U.S.C. § 5170b(a)(3)(B).

Sheltering Assistance for Displaced Individuals and Households at http://www.fema.gov/media-library-data/20130726-1751-25045-5830/transitional_sheltering_final.txt.

Unlike housing-related assistance provided under 42 U.S.C. § 5174, Transitional Sheltering Assistance is subject to state cost-sharing. Transitional Housing Assistance is provided in intervals of 5-14 days, with 14-day extensions possible, for up to 6 months from the date of the disaster declaration.³⁷ Households of four or less will be authorized for one room; households of five or more will be authorized for two rooms. See FEMA, *Transitional Sheltering Assistance for Displaced Individuals & Households*, DAP9443.2 at http://www.fema.gov/media-library-data/20130726-1751-25045-3464/dap9443.2_transitional_sheltering_assistance.pdf. See also FEMA, *Fact Sheet: Transitional Shelter Assistance* at

http://www.fema.gov/pdf/media/factsheets/2011/dad_trans_sheltering_asst.pdf The rate that FEMA will pay for rooms is based on the applicable maximum lodging rate plus taxes for the locality, as identified by the U.S. General Services Administration (GSA) at http://www.gsa.gov/portal/content/104877?utm_source=OGP&utm_medium=print-

³⁷ Termination of Transitional Sheltering Assistance was the subject of litigation when FEMA announced that it would cease funding Section 403 Short-Term Lodging for Hurricane Katrina survivors in fifteen days. A class action suit was filed to enjoin termination. *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 still remaining in the Short-Term Lodging Program were the most economically disadvantaged of all 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. *McWaters v. FEMA*, Civ. No. 05-5488 (E.D. LA, Dec. 12, 2005). The court ordered FEMA to continue assistance under the Short-Term Lodging Program at least until January 7, 2006, and to give disaster victims 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. *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. LA, 2006).

[radio&utm_term=portal/category/21287&utm_campaign=shortcuts](#). *Id.*

2. Assistance Under Individual and Household Program (IHP)

The Individual and Household Program (IHP)³⁸ contains two parts: Housing Assistance³⁹ and Financial Assistance to Address Other Needs (ONA).⁴⁰ FEMA publishes notice of the level at which the maximum amount for assistance is set in the Federal Register in October of each year. The maximum amount of assistance that an individual or household may receive under both programs for 2013-2014 is \$32,400.⁴¹ See FEMA, *Notice of Maximum Amount of Assistance Under the Individuals and Households Program* at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-29/pdf/2013-25626.pdf>.

IHP assistance is provided for up to 18 months from the date that a disaster is declared, unless FEMA extends it due to extraordinary circumstances that make an extension in the public interest. 44 C.F.R. § 206.110(e). To be eligible for IHP, a disaster victim must “register.” Although IHP assistance is a need-based benefit, there are no income or resource eligibility guidelines. In order to be eligible,

³⁸ 44 C.F.R § 206.110.

³⁹ 44 C.F.R. § 206.117. See <http://www.floridadisaster.org/Recovery/Individual Assistance/Disaster temporaryhousing/sdhpi.htm>, <http://www.floridadisaster.org/Recovery/IndividualAssistance/FAQ.html#temphousing>, <http://www.floridadisaster.org/Recovery/IndividualAssistance/Disastertemporaryhousing/documents/State%20Strategy%20May%202012%20FINAL.pdf> and <http://www.floridadisaster.org/Recovery/Individual> for links and/or discussion of Florida-specific housing policies.

⁴⁰ 44 C.F.R. § 206.119. This program was formerly known as the Individual and Family Grant (IFG) Program.

⁴¹ 44 C.F.R. § 206.110(b)(setting the maximum amount of assistance at \$25,000 adjusted annually for inflation).

applicants must establish that they have incurred a disaster- related serious need in the state in which the disaster has been declared.⁴² Residency in the state is not required;⁴³ however, in order to qualify for housing assistance, the applicant must show that the disaster-related damage is to the applicant’s primary residence.⁴⁴

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).⁴⁵ 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.⁴⁶ When assistance is received to repair or construct a home, the

⁴² 44 C.F.R. § 206.113(a).

⁴³ 44 C.F.R. § 206.113(a)(1).

⁴⁴ 44 C.F.R. § 206.113(a)(8),(9).

⁴⁵ 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.

⁴⁶ 44 C.F.R. § 206.110(k)(3). FEMA will not pay a homeowner for flood damage to the same home more than one time. After that, FEMA requires that the household maintain flood insurance. This requirement follows the property and applies even if the household is a new owner and has never received FEMA assistance in the past. See FEMA, http://www.fema.gov/media-library-data/20130726-1630-20490-6612/f695_firerequirements_11aug11.pdf and FEMA, *Purchasing a flood insurance policy after a disaster*, at <https://www.fema.gov/faq-details/Purchasing-a-flood-insurance-policy-after-a-disaster-1370032119691/maintain,flood,insurance> (stating that persons who “live in an Special Flood Hazard Area (SFHA) and have received disaster assistance in the form of a federal grant or loan... must cover the building for flood insurance for as long as ...[they] own it. Should you sell the building, you are required to inform the new owner of the necessity to purchase and maintain flood insurance. Failure to carry flood insurance could result in the denial of future federal disaster assistance.”)

flood insurance requirement is transferred to any subsequent owner.⁴⁷

IHP assistance will 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.⁴⁸ IHP assistance is exempt from garnishment, levy, seizure, encumbrance, execution, pledge, attachment, release, and waiver.⁴⁹ This exemption does not apply to the recovery of FEMA assistance that was either obtained by fraud or mis-applied.

a) Temporary Housing Assistance (THA)

The housing assistance portion (THA)⁵⁰ of the Individual and Household Program is administered directly by FEMA. This program provides financial assistance or actual housing to victims whose primary residences were destroyed or made uninhabitable or inaccessible as a result of the disaster.⁵¹ For renters, their primary residence must be unavailable as a result of the disaster.

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

⁴⁷ 44 C.F.R. § 206.110(k)(3)(i)(A).

⁴⁸ 42 U.S.C. § 5155(d); 44 C.F.R. § 206.110(f).

⁴⁹ 44 C.F.R. § 206.110(g).

⁵⁰ 44 C.F.R. § 206.117(b)(1).

⁵¹ 44 C.F.R. § 206.113(a)(8),(9).

(4) money for replacement of owner-occupied housing.⁵²

FEMA determines the appropriate type of housing assistance based on cost effectiveness, convenience to the disaster victims, and the suitability and availability of assistance.⁵³ Disaster victims are expected to accept the first offer of housing assistance, and “unwarranted” refusal can result in forfeiture of housing assistance.⁵⁴

(1) Eligibility

To obtain THA, applicants must show that (1) as a direct result of a major disaster or emergency; (2) their home was destroyed or made uninhabitable, 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 either not covered by the applicant’s insurance policy, or that the amount of insurance is insufficient to cover the damage.⁵⁵ Two federal district courts have held that disaster victims have a property interest in THA protected by the Due Process Clause of the 5th amendment once FEMA has made the finding that they satisfy this eligibility criteria.⁵⁶

Applicants registering for IHP will be asked about insurance coverage.

⁵² 42 U.S.C. § 5174(c); 44 C.F.R. § 206.117(b). Previously, FEMA administered a program of rental and mortgage assistance for those who remained in their pre-disaster housing but were unable to pay their 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, households may qualify for disaster unemployment assistance (DUA).

⁵³ 42 U.S.C. § 5174(b)(2)(A); 44 C.F.R. § 206.110(c).

⁵⁴ *Id.*

⁵⁵ 44 C.F.R. § 206.113(a).

⁵⁶ *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. LA, 2006); *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C. 2006). *But see Ridgley v. FEMA*, 512 F 3d 727 (5th Cir. 2008).

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).⁵⁷ Applicants with adequate insurance coverage who refuse insurance proceeds are ineligible.⁵⁸

Registrants will also be asked who is in their household. For FEMA purposes, 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.”⁵⁹ 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.⁶⁰

Federal law 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.⁶¹ Despite this specific

⁵⁷ 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).

⁵⁸ 44 CFR. § 206.113(b)(6).

⁵⁹ 44 C.F.R. § 206.111.

⁶⁰ 44 C.F.R. § 206.117(b)(1)(i)(A) and(b)(ii)(B).

⁶¹ 42 U.S.C. § 5174(a)(2). The prohibition on requiring that a FEMA registrant apply for an SBA loan pertains to rental assistance, temporary housing assistance, financial assistance for the replacement of owner-occupied private dwellings, and financial assistance in limited situations to construct permanent or semi-permanent housing where no other type of housing assistance is possible. In contrast, by law, SBA loans may be required before FEMA assistance is provided for repair of owner-occupied private residences; hazard mitigation measures to reduce the likelihood of future damages to the residence, utility or infrastructure; and, personal property, transportation, and moving and storage expenses. See, e.g., FEMA, *SBA Loan Applications Also For Renters, Homeowners* at <http://www.fema.gov/news->

prohibition, following Hurricane Katrina, FEMA required many applicants to apply for an SBA loan, which caused their THA assistance to be delayed or denied. The federal district court in *McWaters v. FEMA*⁶² 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.

(2) Types of Assistance

(i) Financial Assistance for Housing.

The primary type of housing assistance provided by FEMA following a disaster is money to rent alternate housing.⁶³ 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 and number of bedrooms required.⁶⁴

FEMA regulations provide that, although THA rental assistance may not ordinarily be used to pay security deposits,⁶⁵ exceptions will be made in extraordinary circumstances so long as the recipient reimburses FEMA for the full amount of the deposit when the temporary housing assistance ends. Note, however, that, beginning in

[release/2013/03/06/sba-loan-applications-also-renters-homeowners](https://www.fema.gov/press-release/2013/03/06/sba-loan-applications-also-renters-homeowners).

⁶² *McWaters*, 436 F. Supp at 823.

⁶³ 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.*

⁶⁴ 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).

⁶⁵ 44 C.F.R. § 206.117(b)(1)(i)(D).

2013, FEMA permitted Hurricane Sandy survivors to use temporary rental assistance funds for security deposits without any obligation to repay.⁶⁶ Note also that FEMA recently issued policy stating that up to one month's worth of assistance may be used toward security deposits. See FEMA, *Temporary Housing Assistance FAQs* at <http://www.fema.gov/media-library/assets/documents/32502>

Under FEMA regulations, THA may be used to pay utility costs only if the costs are part of the rental charge.⁶⁷ This restriction was upheld by the 5th Circuit in *Watson v. FEMA*.⁶⁸

(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.⁶⁹ In the past, FEMA has not provided handicapped-accessible mobile homes equipped with wheelchair ramps, grab bars in bathrooms and wheelchair maneuvering room. This practice was challenged in *Brou v. FEMA*,⁷⁰ 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

⁶⁶ FEMA, *FEMA Rental Assistance May be Used for Security Deposits* at <https://www.fema.gov/news-release/2013/01/16/fema-rental-assistance-may-be-used-security-deposits>.

⁶⁷ *Id.*

⁶⁸ *Watson v. F.E.M.A.* 2006 WL 3420613 C.A.5,2006. September 06, 2006

⁶⁹ 42 U.S.C. § 5174(c); 44 C.F.R. §206.117(b)(1)(ii).

⁷⁰ *Brou v. FEMA*, Civ. No. 06-0838 (E.D.LA, filed Feb. 16, 2006).

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.⁷¹

Mobile homes must be placed on FEMA approved sites and comply with all local zoning ordinances.⁷² FEMA does not pay utility costs unless utility services are part of the site rental.⁷³ 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.⁷⁴ FEMA may charge fair market rent to people remaining in units after 18 months.⁷⁵

FEMA regulations provide that FEMA may stop providing 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.⁷⁶ The regulations also state that FEMA will provide 15 days notice of the termination, and specify the reason for the termination

⁷¹ *Brou v. FEMA*, Civ. No. 06-0838 (E.D.LA, Sep. 26, 2006) at <http://www.nclj.org/pdf/BrouSettlement.pdf>.

⁷² 44 C.F.R. § 206.117(b)(1)(ii)(C), (E).

⁷³ 44 C.F.R. § 206.117(b)(1)(ii)(D).

⁷⁴ 42 U.S.C. § 5174(c)(1)(B)(ii); 44 C.F.R. §206.110(e).

⁷⁵ 42 U.S.C. § 5174(c)(B)(iii). See also FEMA, *Disaster Housing Rent Collection* at http://www.fema.gov/media-library-data/20130726-1751-25045-9331/ia_direct_housing_rent_collection.pdf.

⁷⁶ 44 C.F.R. § 206.117(b)(1)(ii)(G).

and the process to be followed on appeal.⁷⁷ If a client is being ejected in this manner, advocates should consider initiating an action in a court of competent jurisdiction for violation of state landlord/tenant law.

(iii) Grants for Home Repairs

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 that restore the building to a safe and sanitary living or functioning condition.⁷⁸ 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; 4) the component to be repaired was functional immediately prior to the disaster; and, 5) repair is necessary to ensure the safety or health of the occupant or to make the residence functional.⁷⁹ Repairs must conform to local and state building codes.⁸⁰ 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.⁸¹

Although recipients of home-repair grants under the IHP housing assistance program must show that the damage for which they seek assistance is not covered by

⁷⁷ 44 C.F.R. § 206.117(b)(1)(ii)(H).

⁷⁸ 42 U.S.C. § 5174(c)(2)(A); 44 C.F.R. § 206.117(b)(2)(i),(iii).

⁷⁹ 42 U.S.C. § 206.5174(c)(2); 44 C.F.R. § 206.117(b)(2).

⁸⁰ 44 C.F.R. § 206.117(b)(2)(v).

⁸¹ 44 C.F.R. § 206.113(b)(5).

insurance, they cannot be required to show that they are unable to obtain assistance from any other means.⁸² In particular, and in contrast to Financial Assistance to Address Other Needs,⁸³ an uninsured homeowner cannot be required to show that the homeowner is ineligible for an SBA disaster loan in order to qualify for home-repair or hazard-mitigation assistance.⁸⁴ 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.⁸⁵

(iv) Replacement of Primary Residence.

If the disaster declaration so provides, FEMA may award up to the annual IHP maximum for replacement of a primary residence that is not repairable.⁸⁶ This type of assistance must be individually approved by FEMA's Regional Administrator. The applicant may either purchase a replacement residence or apply the grant toward the purchase of a more costly home.⁸⁷ See FEMA, *Recovery Policy, Replacement*

⁸² 42 U.S.C. § 5174(c)(2)(B); 44 C.F.R. § 206.117(b)(2)(iv).

⁸³ See Part C.2.b below

⁸⁴ 42 U.S.C. § 5174(a)(2), (c)(2)(B); 44 C.F.R. § 206.117(b)(2)(iv). See also *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. LA, 2006) (permanently enjoining FEMA from requiring applicants for THA to complete an SBA loan application as a prerequisite to receiving THA).

⁸⁵ 13 C.F.R. § 123.101(c). See also 42 U.S.C. §5155(a),(b);

⁸⁶ 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.*

⁸⁷ *Id.*

Assistance -Individuals and Households Program at <http://www.fema.gov/media-library-data/13923297345520a52ef31f35dc76278174a9a9ff7189d/Replacement+Assistance+Individuals+and+Housholds+RP+9443+9+Feb+10+2014.pdf>.

b) Financial Assistance to Address Other Needs

To be available to disaster survivors, the Financial Assistance to Address Other Needs (ONA) component of the IHP program must be requested by the Governor, and listed as a designated type of assistance in the presidential Declaration of Disaster.⁸⁸

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.⁸⁹ For 2013-2014, ONA assistance cannot exceed \$32,400 less the amount of any other IHA received.⁹⁰ See FEMA, *Notice of Maximum Amount of Assistance Under the Individuals and Households Program* at <http://www.gpo.gov/fdsys/pkg/FR-2013-10-29/pdf/2013-25626.pdf>.

Depending on the arrangement chosen by the state, the ONA program may be administered by the state or by FEMA.⁹¹ If the state chooses to administer the program, it must have in place an approved State Administrative Plan (SAP).⁹² If the state will be

⁸⁸ 42 U.S.C. § 5174(e); 44 C.F.R. § 206.40(a).

⁸⁹ 42 U.S.C. § 5174(e); 44 C.F.R. § 206.119(a),(b).

⁹⁰ 42 U.S.C. § 5174(h); 44 C.F.R. § 206.110(b).

⁹¹ 44 C.F.R. § 206.120(a),(b).

⁹² 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 stating that the SAP is still current, for FEMA's review and approval by December 31. *Id*

administering the ONA program, legal aid advocates should obtain a copy of the State Administrative Plan from FLS or the State Coordinating Officer (SCO) as soon as possible.⁹³ Florida typically relies on FEMA to administer ONA.

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.⁹⁴

(1) Eligibility Requirements

Like THA, ONA is needs based, but not means tested. To be eligible, applicants must show that 1) they incurred necessary expenses or have serious needs as a result of the disaster; and, 2) that they cannot obtain relief through other means, including a Disaster Loan from the SBA.⁹⁵ To get ONA, 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.⁹⁶ If the disaster-related expense is covered by an insurance policy, the applicant for ONA must demonstrate that insurance proceeds either

⁹³ 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).

⁹⁴ 44 C.F.R. § 206.120(d)(3).

⁹⁵ 44 C.F.R. §§ 206.110(a); 206.119(a)(1),(2),(3).

⁹⁶ *Id.*

1) will be insufficient to cover the expense; 2) are less than the maximum amount of assistance available through FEMA;⁹⁷ or, 3) have been unduly delayed and the applicant has agreed to repay FEMA from insurance proceeds.⁹⁸ With respect to an SBA Disaster 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.⁹⁹

(2) Application Process

After receiving a registrant's application for ONA, FEMA will determine whether the applicant, based on income, is potentially eligible for an SBA loan.¹⁰⁰ If the applicant is found to be potentially eligible, FEMA will mail the applicant a loan application, which the survivor must complete and resubmit to be considered for ONA. If the applicant fails to complete the application, the applicant will likely be denied ONA.

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 decision on both 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. Since inspection reports may contain inaccuracies, advise registrants to take photographs of the damage to their homes or personal property. If an applicant disagrees with the inspection report, photographs and sworn statements from

⁹⁷ 44 C.F.R. § 206.113(a)(4).

⁹⁸ 44 C.F.R. § 206.113(a)(3).

⁹⁹ 44 C.F.R. § 206.119(a)(1)-(3).

¹⁰⁰ *Id.*

landlords, neighbors, or friends regarding the extent of the damage will provide evidentiary proof of the damage for an appeal, if an appeal is necessary.

(3) Types of Assistance

ONA grants are available in any amount up to the \$32,400 maximum (2013-2014 level) for all IHP assistance to the individual or household. 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.¹⁰¹ See FEMA, *Individuals and Households Program - Other Needs Assistance* at <http://www.disasterassistance.gov/disaster-assistance/forms-of-assistance/4473/1/805>.

(i) Medical and Dental Expenses.

Medical expenses are generally limited to medical costs, dental costs, and repair or replacement of medical equipment.¹⁰²

(ii) Funeral Expenses.

This coverage is generally limited to the cost of funeral services, burial or cremation and other related funeral expenses.¹⁰³

(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

¹⁰¹ 44 C.F.R. § 206.119(b)(1), (2).

¹⁰² 44 C.F.R. § 206.119(c)(3).

¹⁰³ 44 C.F.R. § 206.119(c)(4).

equipment required by an employer as a condition of employment,¹⁰⁴ (4) computers, uniforms, school books and supplies required for educational purposes, and (5) cleaning or sanitizing eligible personal property items.¹⁰⁵

(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.¹⁰⁶

(v) Other Expenses.

This category includes (1) moving and storage expenses to avoid additional disaster damage;¹⁰⁷ (2) purchase of a Group Flood Insurance Policy;¹⁰⁸ and, (3) other miscellaneous items or services determined to be necessary expenses and serious needs.¹⁰⁹

c) IHP Decisions and Appeals

FEMA notifies applicants of its decisions on IHP applications in a letter (also called an “award letter”). Normally, FEMA sends this letter within 10 days of the day that the inspector visits the applicant’s property. Explanations of the denial codes that FEMA

¹⁰⁴ 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.

¹⁰⁵ 44 C.F.R. § 206.119(c)(1)(v).

¹⁰⁶ 44 C.F.R. § 206.119(c)(2).

¹⁰⁷ 44 C.F.R. § 206.119(c)(5).

¹⁰⁸ 44 C.F.R. § 206.119(c)(6).

¹⁰⁹ 44 C.F.R. § 206.119(c)(6).

uses in the award letters are in FEMA, *Help After a Disaster - Applicant's Guide to the Individuals and Households Program* at <http://www.fema.gov/help-after-disaster> and FEMA, *Why am I not Eligible for Assistance?* at <http://www.fema.gov/why-am-i-not-eligible-assistance>.

Any decision regarding eligibility for assistance, or its amount, may be appealed within 60 days after the date that FEMA notifies the applicant of the award or denial.¹¹⁰ In addition to denials and insufficient awards, appealable decisions include, but are not limited to, recoupment 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.¹¹¹ The appeal must be in writing and signed by the appellant or his/her representative.¹¹² Applicants or their representatives may request copies of their files.¹¹³ FEMA must issue a decision within 90 days of receipt of the notice of appeal.¹¹⁴ FEMA's decision is final.¹¹⁵

d) Advocacy Issues

¹¹⁰ 42 U.S.C. § 5189a; 44 C.F.R. § 206.115(a). FEMA says that this means that the appeal must be filed "within 60 days of the date listed on the... decision letter." See FEMA, *Appealing a FEMA Assistance Denial Decision*, at <http://www.fema.gov/blog/2012-11-09/appealing-fema-assistance-denial-decision>.

¹¹¹ 44 C.F.R. § 206.115(a)(1)-(10).

¹¹² 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.*

¹¹³ 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.* See also FEMA, *Copy of your FEMA application*, at http://www.fema.gov/faq-details/Copy-of-your-FEMA-application-1370032117606/copy_of_your for further instructions on obtaining copies of FEMA files.

¹¹⁴ 42 U.S.C. § 5189a(b); 44 C.F.R. § 206.115(f).

¹¹⁵ 44 C.F.R. § 206.115(f).

(1) FEMA Denial Notices: Due Process Rights

To date, at least two federal district courts have held that disaster victims have a property interest in Temporary Housing Assistance protected by the Due Process Clause of the Fifth Amendment so long as FEMA has made the finding that they satisfy eligibility criteria.¹¹⁶ Advocates should 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 <http://www.disasterlegalaid.org/>.

(2) Availability of Rental Housing: The Need for Trailers (for short-term housing needs).

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 meet short-term housing needs for people who “lack available housing resources”¹¹⁷ and would be “unable to make use of” rental assistance.¹¹⁸ Therefore, after a catastrophic disaster, advocates should begin assessing the availability of intact rental

¹¹⁶ *McWaters v. FEMA*, 436 F. Supp. 2d 802 (E.D. LA, 2006); *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C. 2006). *But see Ridgley v. FEMA*, 512 F 3d 727 (5th Cir. 2008).

¹¹⁷ “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.” *Id.* “Reasonable commuting distance” is defined as “a distance that does not place undue hardship on an applicant.” *Id.*

¹¹⁸ 44 C.F.R. § 206.117(b)(1)(ii).

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 housing assistance to applicants who have previously turned down rental assistance.¹¹⁹

FEMA may also fail to either provide or adequately disseminate information on the availability of mobile homes and how to obtain them, especially among the low-income community. Advocates should urge FEMA to provide adequate information to disaster-affected populations about 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.

Just because trailers may be available from FEMA does not mean that an eligible disaster survivor will get one. The site selected for the trailer must: be outside the floodplain; have water, sewer and electrical utilities; and, be inspected by local and state authorities. An even greater barrier may be local reluctance to allow FEMA trailers in the community. FEMA trailers must be allowed under local zoning and building codes, comply with occupancy permits, and meet local and state environmental rules and other restrictions.¹²⁰

(3) Accessibility of Trailers to People with Disabilities

¹¹⁹ 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.*

¹²⁰ See 44 C.F.R. § 206.117(b)(ii)(C). See also, e.g., FEMA, *Travel Trailers and Mobile Homes, Temporary Housing Options* at <http://www.fema.gov/news-release/2004/08/31/travel-trailers-and-mobile-homes-temporary-housing-options>.

In the past, FEMA has failed to provide 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*,¹²¹ challenging this practice as violating Section 504 of the Rehabilitation Act¹²² and the Fair Housing Act.¹²³ 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.

(4) The “Shared Household” Issue

FEMA provides assistance to “households,” which is defined as those “who lived in the pre-disaster residence who request assistance,” as well as those “expected to return during the assistance period.”¹²⁴ FEMA typically issues one check in the name of the “head of household” and/or one mobile home per pre- disaster household.¹²⁵ If the

¹²¹ See *Brou v. FEMA*, Case No. 06-0838 (Settlement Agreement) (E.D. La. Aug. 15, 2006) at http://www.fema.gov/pdf/library/brou_fema.pdf.

¹²² 29 U.S.C. § 794(a).

¹²³ 42 U.S.C. § 3604.

¹²⁴ 44 C.F.R. § 206.111.

¹²⁵ 44 C.F.R. § 206.117(b)(1)(i)(A).

person who FEMA has determined to be the “head of household” fails to share the assistance, other household members are effectively denied all IHP assistance.¹²⁶

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 likely be denied because assistance has already been provided to the first family.¹²⁷

FEMA regulations allow the Regional Director to determine that “the size or nature of the household requires” that FEMA provide assistance for more than one residence.¹²⁸ 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

¹²⁶ 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. “If more than one person from the same home address registered, the applications will be flagged until the head of household can be determined.” See, FEMA, *Ineligible? FEMA May Just Need More Information*, at <http://www.fema.gov/news-release/2013/05/21/ineligible-fema-may-just-need-more-information>.

¹²⁷ A similar situation can occur if a couple splits up after the disaster and FEMA issues a check to one of them.

¹²⁸ 44 C.F.R. § 206.117(b)(1)(i)(A).

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,¹²⁹ 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 assistance to different members of a single pre-disaster household who were scattered after the storm.

(5) Requirements for Continued THA

FEMA often fails to tell disaster victims who are granted temporary housing assistance what they will be required show to continue to be eligible once the initial grant expires. For example, FEMA often neglects 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.

¹²⁹ *Locket v. FEMA*, 836 F.Supp. 847 (S.D. Fla. 1993).

The federal district court in *McWaters v. FEMA*¹³⁰ and *ACORN v. FEMA*¹³¹ both hold that disaster victims have a property interest in temporary housing assistance (THA) protected by the Fifth Amendment to the United States constitution. The courts base 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 finds that since recipients of THA "have protected due process interests in *continuing receipt* of said assistance," FEMA is required to "clearly delineate to recipients the necessary standards and requirements to continue receiving such rental assistance."¹³²

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. If needed, 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

(6) 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

¹³⁰ *McWaters v. Federal Emergency Management Agency*, 436 F.Supp.2d 802 (E.D.La. Jun 16, 2006).

¹³¹ *ACORN v. FEMA*, 463 F.Supp.2d 26 (D.D.C., 2006).

¹³² *McWaters* at 826 (*emphasis added*).

substantive and procedural protections outlined under federal regulations.¹³³ The tenant must be given 15 days notice of the termination of the lease agreement¹³⁴ and has a right to appeal the decision within 60 days of such notice.¹³⁵ 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.¹³⁶ The occupant may ask for a copy of the information in his or her file.¹³⁷

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;¹³⁸ (3) the occupant obtained the housing assistance through fraud or misrepresentation; (4) the occupant failed to comply with the lease or other site rules; or, (5) the occupant failed to provide evidence showing that s/he is working toward a permanent housing plan.¹³⁹

In addition to requiring FEMA to abide by its own procedural and substantive rules regarding eviction, the advocate should also insist that FEMA follow applicable

¹³³ 44 C.F.R. §§ 206.117(b)(1)(ii)(G),(H); 206.115(a)(7).

¹³⁴ 44 C.F.R. § 206.117(b)(1)(ii)(H).

¹³⁵ 44 C.F.R. § 206.115(a)(7).

¹³⁶ 44 C.F.R. § 206.117(b)(1)(ii)(H).

¹³⁷ 44 C.F.R. § 206.115(d).

¹³⁸ "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.

¹³⁹ 44 C.F.R. § 206.117(b)(1)(ii)(G).

state law and obtain an order from a court of competent jurisdiction in order to legally evict a tenant from a mobile home.

(7) 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. Sadly, FEMA's recoupment procedures can be intimidating to low-income people, especially among the elderly and newly arrived immigrants. As a result, recipients 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 while they attempt to resolve the issue with FEMA. Those who enter into a repayment agreement may be forced to choose between eating, keeping a roof over their heads, obtaining necessary medical care or medication, and repaying FEMA. Advocates may want to address this issue with FEMA, federal legislators or federal courts, based on the recoupment process' discriminatory impact on low-income disaster victims.¹⁴⁰ Common reasons for overpayments among low-income clients include:

¹⁴⁰ See 42 U.S.C. §5151(a); 44 C.F.R. §206.11(b).

FEMA “Shared Household” rule

44 C.F.R. §206.117(b)(1)(i)(A) states 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.” Because so many low-income people “double-up” to save money on housing prior to a disaster, this rule disproportionately affects low-income disaster victims. After a disaster, either (a) they may 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

In the past, FEMA has interpreted 42 U.S.C. § 5155 and 44 C.F.R. § 206.110(h) (limiting duplication of assistance from other programs or from insurance) as prohibiting 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

When FEMA determines that a recipient of disaster assistance has been overpaid, recoupment is required by federal law. 44 C.F.R. § 206.116. See *also* Ready.gov at *Appealing Recoupment Decision* at <http://www.ready.gov/faq-details/Appealing-Recoupment-decision-1370032123041> Because FEMA requires households to “re-pay

now” and “appeal later,” its recoupment process disadvantages low-income disaster victims. 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.

Claimants or their representatives are entitled to copies of their FEMA debt-related records if they make the request for those records in writing. Among other requirements, the request must be notarized or include a statement attesting to the truth and accuracy of the information in the records request. See FEMA, *Debt Repayment Process: Your Rights and Options*, § C (referenced in FEMA, *Notice, Collection of Overpayments*, 76 Fed. Reg. 14039, at <http://www.gpo.gov/fdsys/pkg/FR-2011-03-15/html/2011-6036.htm>).

If FEMA determines that an applicant was ineligible, it initiates recoupment procedures by sending a notice to the recipient.¹⁴¹ FEMA asks that the recipient to repay the entire amount or enter into a repayment agreement within 30 days of this letter. See FEMA, *Options Related to a FEMA Debt* at <https://www.fema.gov/faq-details/Options-related-to-a-FEMA-debt-1370032122419/>. If the recipient does not do so, (s)he is charged interest (presently 1%).¹⁴² See FEMA, *Interest, Penalties and Fees on FEMA Debts* at <https://www.fema.gov/faq-details/Interest-penalties-and-fees-on-FEMA-debts-1370032123039/>. The recipient may appeal in writing within 60 days, but this does not toll

¹⁴¹ See, e.g., FEMA, Bill for Collection, <http://s3.documentcloud.org/documents/682556/fema-recoupment.pdf>; 6 C.F.R. § 11.3(a); 31 C.F.R. § 901.2.

¹⁴² See 6 C.F.R § 11.10(a). See also <http://www.fms.treas.gov/cvfr/index.html>.

the repayment obligation.¹⁴³ The recipient may obtain a copy of his/her file, but this does not toll the time within which to appeal.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶

Administrative offset allows recoupment via: (a) income tax refunds (including any Earned Income Tax Credit);¹⁴⁷ (b) Social Security benefits and other federal benefits of more than \$9,000 per year.¹⁴⁸ FEMA may also offset a debt from wages,¹⁴⁹ and may sell or assign the debt to a credit collection agency.

Recoupment is done in three stages. In the first stage, FEMA sends the claimant a Notice of Debt. In the second stage, FEMA sends a Letter of Intent. In the third stage, FEMA sends the overpayment to the United States Department of Treasury for collection. See *FEMA Debt Repayment Process: In Summary* (referenced in FEMA, *Notice, Collection of Overpayments*, 76 Fed. Reg. 14039, at <http://www.gpo.gov/fdsys/pkg/FR-2011-03-15/html/2011-6036.htm>).

¹⁴³ 44 C.F.R. § 206.115(a) and (b).

¹⁴⁴ 44 C.F.R. § 206.115(d).

¹⁴⁵ 6 C.F.R. § 11.10(a); 31 CFR § 901.9(d).

¹⁴⁶ 6 C.F.R. § 11.4

¹⁴⁷ 31 U.S.C. § 3716; 31 CFR 901.2(d)

¹⁴⁸ 31 U.S.C. § 3716(c)(3)(A)(ii).

¹⁴⁹ 5 U.S.C. § 5514.

Stage 1

The Notice of Debt (the Notice) is an individualized bill from FEMA's National Processing Service Center (NPSC). It informs the claimant how much money is owed and the reasons for the overpayment. If the claimant does not repay the debt within 30 days of the date of the Notice, FEMA begins charging interest. *Id.* However, claimants are given four options in the Notice of Debt:

1) Pay the debt in full.

FEMA accepts payment by check (including electronic check), money order, or credit card. In the alternative, claimants can return uncashed FEMA checks by mail. *Id.* at *Your Rights and Options*, A.

2) Request a payment plan.

Requests for a payment plan are appropriate if the claimant "cannot pay the full amount now." *Id.* at B. Note that claimants who enter into payment plans will be charged interest if the debt is not repaid in full within 30 days of the Notice of Debt. However, they will not be charged the additional penalty (6% per year) that is otherwise imposed on unpaid debts. *Id.* at E.

3) Request compromise.

Compromise requests are granted based on inability to pay. *Id.* at C. In cases with compelling facts, nothing prevents an advocate from including and arguing other persuasive grounds. Note that, while claimants whose debt is in compromise will be charged interest if the debt is not repaid in full within 30 days of the Notice of Debt, they will not be charged the additional penalty (6% per year) that is otherwise imposed on

unpaid debts. *Id.* at E.

4) Appeal within 60 days.

An administrative appeal may be taken if a claimant disagrees with anything about the debt or the debt amount. *Id.* at D. Claimants must file their appeal within 60 days of the date of the Notice of Debt. However, even if a claimant appeals and that appeal is still pending, interest will still begin to accrue if the debt is not paid in full within 30 days of the date of the Notice of Debt. For this reason, FEMA urges claimants to pay the debt in full, or negotiate a repayment or compromise plan, within those 30 days. Repaid money will be returned to claimants who are successful on appeal.

FEMA permits claimants to have an appeal hearing (an “oral hearing”) if credibility is an issue or, *sua sponte*, if FEMA is unable to decide the appeal based on record evidence and additional documentation. Claimants who want an oral hearing must give a sufficient reason. Oral hearings are conducted by telephone, or, in some cases, in person, by an oral hearing officer with FEMA’s Alternative Dispute Resolution Division. If requests for oral hearings are denied, FEMA will decide the appeal through a paper review of the complete case file, including the claimant’s appeal letter and any documents that the claimant has provided on appeal. *Id.* at (D)(2).

Appeals can only be submitted by mail or fax, not electronically. *Id.* at D. FEMA decides appeals and issues final written decisions within 90 days after it receives the appeal letter. *Id.* at D(3). FEMA cautions, however, that this deadline may be extended for oral hearings. *Id.*

Stage 2

In the second stage, the claimant is sent a “Letter of Intent” warning that the debt will be forwarded to the U.S. Department of Treasury (Treasury) for collection. The claims of persons who do not pay the debt in full, request a payment plan or compromise, or file an appeal within 60 days are considered “final” and subject to stage 2 of the recoupment process. See *Id.* at *FEMA Debt Repayment Process: In Summary*.

Stage 3

In the third stage, the claimant’s debt is forwarded to Treasury for collection. Collection methods used by Treasury include, but are not limited to, referral to a private collection agency, wage garnishment, an offset from Social Security, or tax refund intercept. The claims of persons who did not appeal, whose appeal was denied, or who did not negotiate a payment plan or compromise at Stage 2 are subject to State 3 collection. *Id.* Claims referred to Treasury continue to accrue interest. *Id.* at *FEMA Debt Repayment Process: Your Rights and Options*, § G.

A Few 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: 1) the other individual relocated to another area; 2) the client was unable to locate the other individual; or, 3) another reason existed which made sharing the money or mobile home impossible (*e.g.*, in 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.

3. SBA Disaster Loans

The Disaster Loan Program is administered by the Small Business Administration (SBA) in coordination with FEMA.¹⁵⁰ 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.¹⁵¹ Disaster home loans are available to individuals; business disaster loans and economic injury loans are provided to businesses. This chapter addresses disaster home loans only.

SBA disaster home loans are available to disaster victims only when the disaster declaration authorizes IHP Assistance.¹⁵² 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.¹⁵³

(a) Application Process

When a disaster survivor applies for disaster benefits, FEMA makes an initial

¹⁵⁰ 15 U.S.C. § 636(b); 13 C.F.R. Part 123.

¹⁵¹ 13 C.F.R. § 123.5.

¹⁵² 13 C.F.R. § 123.3(1)

¹⁵³ 15 U.S.C. § 636(b)(1); 13 C.F.R. § 123.2.

“desk determination” of the applicant’s eligibility for an SBA loan based on income and family size. Applicants who are “desk denied” are automatically referred for a grant from the “Other Needs” portion of the IHP program.¹⁵⁴

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.¹⁵⁵

Because SBA will not verify the loss until after the application is received, applicants should file promptly with SBA. If not, delays may make verification of loss difficult. Applicants who relocate after a disaster are responsible for insuring that SBA is informed of their current address and telephone number. If SBA is unable to verify loss 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 reconsideration in writing.¹⁵⁶

b) Eligibility

¹⁵⁴ 44 C.F.R. § 206.119(a).

¹⁵⁵ 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.*

¹⁵⁶ 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.¹⁵⁷ An applicant must establish (1) a verifiable disaster-related physical loss to personal or real property owned by the applicant, (2) that the loss is not covered by insurance, and (3) the ability to repay a loan.¹⁵⁸ Loan officers review completed applications received by SBA 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.¹⁵⁹

Loans for the repair or replacement of real property may be made only to homeowners, and “beneficial owners.”¹⁶⁰ Home disaster loans may not be used to repair or replace a secondary home.¹⁶¹ Individuals living in a disaster-damaged dwelling who are not dependents of the owner-occupant may qualify for personal property loans.¹⁶² Such loans may not be used to repair or replace a vehicle of a type normally used for recreational purposes.¹⁶³

c) Other Requirements

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

¹⁵⁷ 13 C.F.R. § 123.7.

¹⁵⁸ 13 C.F.R. §§ 123.6, 123.100.

¹⁵⁹ 15 U.S.C. § 636c.

¹⁶⁰ 13 C.F.R. § 123.100(b).

¹⁶¹ 13 C.F.R. § 123.101.

¹⁶² 13 C.F.R. § 123.100(a)(2).

¹⁶³ 13 C.F.R. § 123.101(f).

property located in a flood zone.¹⁶⁴ 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.

d) Amount of Loans

A loan for repair or replacement of household or personal effects may not exceed \$40,000.¹⁶⁵ A loan for repair or replacement of a primary residence may not exceed \$200,000.¹⁶⁶ 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.¹⁶⁷

e) Terms of Loans

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 \$200,000.¹⁶⁸ Loan interest rates are established by regulation, and are lower for applicants who cannot obtain credit elsewhere.¹⁶⁹ SBA determines each applicant's loan maturity and installment terms

¹⁶⁴ 13 C.F.R. § 123.17.

¹⁶⁵ 13 C.F.R. § 123.105(a)(1).

¹⁶⁶ 13 C.F.R. § 123.105(a)(2).

¹⁶⁷ 13 C.F.R. § 123.11.

¹⁶⁸ 13 C.F.R. § 123.105(a),(c).

¹⁶⁹ 13 C.F.R. § 123.104.

based on the borrower's needs and ability to pay.¹⁷⁰ Monthly installment payments beginning five months after the signing of the note are usual, but variations in these terms may be arranged.¹⁷¹ Payment amounts may be modified if the economic conditions of the borrower change. There is no penalty for prepayment of a loan.¹⁷²

f) 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.¹⁷³ 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.¹⁷⁴

g) Advocacy Issues

(1) 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.¹⁷⁵ 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

¹⁷⁰ 13 C.F.R. § 123.105(c).

¹⁷¹ *Id.*

¹⁷² 13 C.F.R. § 123.105(c).

¹⁷³ 13 C.F.R. § 123.12.

¹⁷⁴ 13 C.F.R. § 123.9.

¹⁷⁵ 44 C.F.R. § 206.119(a).

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.¹⁷⁶ 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.

(2) 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.¹⁷⁷ 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.

(3) 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.¹⁷⁸ 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.¹⁷⁹ Borrowers who wish to

¹⁷⁶ 13 C.F.R. § 123.15.

¹⁷⁷ 44 C.F.R. § 206.119(a)(3).

¹⁷⁸ 13 C.F.R. § 123.16(b).

¹⁷⁹ 13 C.F.R. §§ 123.18, 123.20.

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.

PART TWO: FOOD ASSISTANCE

A. FOOD ASSISTANCE OVERVIEW

The public assistance formerly called “food stamps” is now known nationally as Supplemental Nutrition Assistance Program (SNAP) benefits.¹⁸⁰ In Florida, these federal benefits are statutorily referred to as “food assistance” but may be called by other names in other states.¹⁸¹ Food assistance is 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 assistance**.¹⁸² Second, households are entitled to **replacement food assistance** if they were participating in SNAP at the time of the disaster and their food was destroyed as a result of the disaster.¹⁸³ And, third, disaster victims may be eligible for **D-SNAP** following a disaster, under criteria developed for that particular disaster.¹⁸⁴ All three types of food assistance

¹⁸⁰ 7 U.S.C. § 2011.

¹⁸¹ § 414.31, Fla. Stat. The program is administered by the Department of Children and Families.

¹⁸² 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i).

¹⁸³ 7 U.S.C. § 2014(h)(3)(A); 7 C.F.R. § 280.1.

¹⁸⁴ 7 U.S.C. § 2014(h)(1); 7 C.F.R. § 280.1.

are provided through the Department of Children and Families, the designated state agency that administers federal SNAP benefits.¹⁸⁵

The availability of **replacement food assistance** and **D-SNAP** is governed by decisions made by the Food and Nutrition Service of the U.S. Department of Agriculture in conjunction with the state agency following each disaster. In order for the Department of Agriculture to authorize issuance of replacement and disaster food assistance, 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) commercial channels of food distribution have again become available.¹⁸⁶

Administrative decisions regarding whether to make **replacement food assistance** and **D-SNAP** available are made within the first few days or weeks after the disaster. Because many operational decisions on implementing the **replacement assistance** and **D-SNAP programs** are left to the state agency's regional and district staff, local legal aid programs must take the lead role in advocating with regional and district authorities for replacement and disaster benefits 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 assistance.

1. Expedited Food Assistance

¹⁸⁵ In Florida, D-SNAP is known as the Food for Florida Program. See <http://www.dcf.state.fl.us/programs/access/fff/>.

¹⁸⁶ 7 U.S.C. § 2014(h)(1); 7 C.F.R. § 280.1.

Expedited food assistance is available to needy people, whether or not a disaster has occurred. An eligible applicant must receive benefits within seven calendar days of application.¹⁸⁷ 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.¹⁸⁸ Although the normal processing time for a SNAP application should be no more than 30 days, state agencies try to make food assistance benefits available under expedited time standards when there has been a disaster.¹⁸⁹

2. Replacement Food Assistance

Following a declaration of disaster, the Secretary of Agriculture must provide for issuance of replacement food assistance benefits to households receiving SNAP at the time of the disaster to replace food destroyed during the disaster.¹⁹⁰ Replacement food assistance 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.¹⁹¹ DCF can make replacement benefits automatically available to all SNAP participants living in the

¹⁸⁷ 7 C.F.R. § 273.2(i)(3)(i).

¹⁸⁸ 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).

¹⁸⁹ See e.g. DCF, PAPER APPLICATIONS FOOD FOR FLORIDA EBT ADDITIONAL INFORMATION FLIER ("If you are approved, your Food for Florida benefits should be available in your EBT account in about a week after you apply") available at http://www.dcf.state.fl.us/programs/access/fff/docs/2010EBT_OTC2EngPaper.pdf.

¹⁹⁰ 7 U.S.C. § 2014(h)(3); 7 C.F.R. § 280.1.

¹⁹¹ *Id.*

designated disaster area but also makes a form, CF-ES 3515, available to individual recipients for the purpose of requesting replacement benefits.¹⁹²

3. D-SNAP (Disaster Food Stamps) (Food for Florida)

After consultation with the Federal Coordinating Officer (FCO), the Secretary may also authorize issuance of SNAP benefits to all disaster victims in households found to be in need of temporary food assistance.¹⁹³ To be eligible, the household's total income received or expected during the disaster period PLUS its accessible liquid assets MINUS a deduction for disaster-related expenses cannot exceed the disaster gross income limit. Other eligibility criteria for this type of D-SNAP food assistance is determined by the Secretary after the disaster and may be very broad, so that persons who would not ordinarily be eligible for SNAP are rendered eligible for D-SNAP.¹⁹⁴ The Secretary typically dispenses with burdensome verification of the income and resource criteria for D-SNAP and authorizes the maximum food stamp allotment to each disaster-affected household based on its size.¹⁹⁵ The Secretary is also required to establish a Disaster

¹⁹² Available at <http://www.dcf.state.fl.us/dcf/forms/Search/OpenDCFForm.aspx?FormId=597>.

¹⁹³ 7 U.S.C. § 2014(h)(1); 7 C.F.R. § 280.1.

¹⁹⁴ *Id.* For D-SNAP, a state agency often relaxes verification requirements because the usual documents might be lost or destroyed following a disaster. In addition, citizenship and alien status criteria are not applicable and D-SNAP applications should not be denied for lack of a Social Security Number. Nevertheless, identity must be verified although official documents are not required and the state agency may accept a paper as informal as a neighbor's letter. Food and Nutrition Service, USDA, DISASTER SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM GUIDANCE 10 (2008) http://www.fns.usda.gov/disasters/response/D-SNAP_Handbook/D-SNAP_Handbook.doc.

¹⁹⁵ See USDA Fact Sheet, UNDERSTANDING THE DIFFERENCES BETWEEN USDA'S DISASTER SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM AND THE SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM available at http://www.fns.usda.gov/Disasters/response/pdf/Comparison_92911.pdf

Task Force to assist states in implementing and operating the D-SNAP program, and may send members of the Task Force to the disaster area.¹⁹⁶

4. Advocacy Issues

Since the Department of Agriculture has broad authority to establish standards of eligibility for disaster food assistance 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 disaster food assistance and collaborate with local officials and community agencies to collect information about power outages, business and industry closures, and the incidence of property destruction. The local program should provide this information to FLS, which will coordinate with the state food assistance agency on state level efforts to have disaster assistance, including D-SNAP, authorized. FLS and field programs should press the state to apply as quickly as possible and will monitor its progress. FLS will encourage the state to ask for authority to automatically replace existing participants' benefits, broad criteria for new applicants, and food loss to be considered as a sufficient criterion for assistance. Local programs should 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.

Once these benefits are authorized, local legal aid staff should work closely with regional and district offices of the state food assistance agency, as well as local media, elected officials, and a broad array of community agencies, especially food banks, to

¹⁹⁶ 7 U.S.C. § 2014(h)(2).

ensure that D-SNAP is adequately advertised. Local legal aid programs should press these outlets and FEMA to specifically mention the availability of D-SNAP in public announcements. Local programs should let FLS know whether D-SNAP is being made available for a meaningful time and administered in a manner that enables low-income people to learn about and receive the benefits for which they are eligible. 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. Local legal aid programs may need to brainstorm beyond their usual outreach channels to devise new methods of communication as the disaster situation requires. Of course, local staff will need to advocate for individual clients who fall through the cracks of disaster relief efforts.

Finally, local legal aid programs should work collaboratively with FLS as needed to press the state coordinating officer to request an extension of D-SNAP when there have been transportation problems or difficulties in disseminating and receiving information and/or when the need for disaster victims to take care of more immediate needs, such as shelter, has impacted the ability of affected individuals to access D-SNAP benefits. Federal law requires the Secretary to adjust issuance methods and other application requirements in accordance with conditions in the disaster area.¹⁹⁷ In particular, the Secretary must consider conditions that make reliance on electronic

¹⁹⁷ 7 U.S.C. § 2014(h)(3)(B).

benefit transfers impracticable, and any disruption in transportation and communications.¹⁹⁸

¹⁹⁸ *Id.*

PART THREE: RIGHTS OF RESIDENTIAL TENANTS

A. 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 transient occupancy in a mobile home park, recreational vehicle park, or to hotels, motels, rooming houses or similar public lodging. Florida Statute § 83.42(3). 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

B. 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 not less than seven days prior to termination, while a month to month tenancy requires not less than fifteen days prior notice for termination and a year to year tenancy requires not less than 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. But see, Florida Statute § 83.63 for rights of tenants whose rental premises are damaged or destroyed.

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.

C. 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 or interruption of utility services including, but not limited to water, heat, light, electricity, gas, elevator, garbage collection or refrigeration, whether or not 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. The presumption does not apply if the rent is current or the tenant has notified the landlord in writing of an intended absence. Florida Statute § 83.59(3)(a).

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.

D. SECURITY DEPOSITS

Florida Statute 83.49 § governs a landlord's 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.

E. RENT WITHHOLDING AND MAINTENANCE OF PREMISES

1. 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;**

2. 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 acts or omissions 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 § 83.56. 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 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.

F. 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).

G. 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 personalty 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.

H. 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.

PART FOUR: DISASTER RECOVERY FOR MOBILE HOME RESIDENTS

A. 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.

B. IMMEDIATE ACTION STEPS

1. Conduct a “windshield survey”

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.

2. 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.

3. 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.

4. 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.

5. 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).

C. 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. § 723.022 -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 (i.e., 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 financial assistance 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 receive a cash award for the "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.¹⁹⁹

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.

D. RECERTIFICATION AND LONG TERM HOUSING ISSUES

1. Recertification

Individuals who receive temporary housing in the form of FEMA travel trailers or mobile homes are required to recertify their status typically every 30 days. The

¹⁹⁹ 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.

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.

2. The FEMA Sales Program

The Federal Emergency Management Agency (FEMA) does not usually sell travel trailers or manufactured housing to the families who live in them. However, if the option becomes available, FEMA will contact the eligible individuals to participate in the Sales to Occupants 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 cannot 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.

PART FIVE: DISASTER UNEMPLOYMENT ASSISTANCE

A. DISASTER UNEMPLOYMENT ASSISTANCE OVERVIEW

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).²⁰⁰ 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, DUA is administered by the Department of Economic Opportunity (DEO), the state agency responsible for administering unemployment compensation benefits. DUA 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.²⁰¹

A disaster victim must apply to the state unemployment office for DUA within 30 days of the declaration of disaster, but can apply beyond the deadline if s/he shows good

²⁰⁰ 42 U.S.C. § 5177(a).

²⁰¹ 42 U.S.C. § 5177(a).

cause for late filing.²⁰² However, the victim cannot apply after the expiration of the DUA benefit period.

B. ELIGIBILITY

Applicants for DUA must show that their unemployment is a direct result of the disaster.²⁰³ As with ordinary UC, applicants must generally be able and available to work.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶

Applicants may apply online through www.fluidnow.com or call the Department of Economic Opportunity at 1-800-204-2418 to request a paper application if internet filing is

²⁰² 20 C.F.R. §625.8(a).

²⁰³ 20 C.F.R. § 625.4(d); 20 C.F.R. §625.5(c).

²⁰⁴ 20 C.F.R. § 625.4(g).

²⁰⁵ 20 C.F.R. § 625.4(g); 20 C.F.R. §625.5(a)(5).

²⁰⁶ 20 C.F.R. § 625.5(a)(2)-(4).

impractical or the claimant needs special assistance to apply.²⁰⁷ Paper applications may be mailed to:

Department of Economic Opportunity
Unemployment Compensation Records Unit
P.O. Drawer 5750
Tallahassee, FL 32314-5750

or faxed to the Department of Economic Opportunity, Unemployment Compensation Records Unit at (850) 921-3912.²⁰⁸ Applications may also be accepted at a location designated by the DEO after the disaster.²⁰⁹

For information on what is needed to apply go to <http://www.floridajobs.org/office-directory/division-of-workforce-services/unemployment-programs/disaster-unemployment-assistance>.

C. ADVOCACY ISSUES

There are four areas of systemic advocacy that require attention: publicity regarding DUA and re-employment assistance, application access for those lacking internet services/access, 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 Department of Economic Opportunity to publicize them on available local media.

²⁰⁷ Fla. Admin. Code R. 73B-11.013(1)(a),(b).

²⁰⁸ Fla. Admin. Code R. 73B-11.013(1)(d)(1),(2).

²⁰⁹ Fla. Admin. Code R. 73B-11-013(1)(d)(3).

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.

Third, disaster victims may find it impossible to file DUA claims online due to power outages and the lack of access to public-use computers. Local legal aid advocates should collaborate with FLS to obtain and provide evidence on whether disaster victims are able to apply for DUA online. Advocacy may be needed to persuade the DEO to provide and accept paper applications at Disaster Relief Centers, One Stop Career Service Centers, as well as designating other locations where paper applications may be delivered, faxed, or mailed.

Fourth, even disaster victims who do not qualify for DUA are eligible for re-employment services if they have become unemployed because of the disaster.²¹⁰ Services that must be provided include counseling, job referrals, and training to assist unemployed disaster victims to obtain re-employment as soon as possible.²¹¹ These services are available whether or not they apply for DUA.²¹² It is therefore important to widely disseminate information on the availability of these services to low-income disaster

²¹⁰ 42 U.S.C. § 5177(b); 20 C.F.R. § 625.3.

²¹¹ 20 C.F.R. § 625.3.

²¹² 20 C.F.R. § 625.3.

victims.

Finally, in addition to the systemic advocacy issues noted above, legal aid advocates should assist DUA applicants who are denied DUA. Currently, an applicant has sixty (60) days from the date of the denial determination to appeal.²¹³ Advocates may be able to assist claimants in determining what evidence will support a DUA claim on appeal such as: photographs of the damaged store or business where they worked, medical records and doctors' notes to confirm inability to work and cause of injury, copies of tax returns and bank statements that may serve as proof of self-employment earnings, and proof of authorization to work in the United States for non-citizens.

²¹³ 20 C.F.R. § 625.10(a).

PART SIX:

The EDUCATIONAL RIGHTS OF CHILDREN AFFECTED BY A DISASTER

A. 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.

B. QUALIFICATIONS

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.

C. 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 district²¹⁴ decides to place the 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 liaison²¹⁵ 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

²¹⁴ Public school districts are denoted as "Local Educational Agencies (LEAs)".

²¹⁵ 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).

youth must be immediately admitted to the school in which enrollment is sought, 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, 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.²¹⁶

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

²¹⁶ 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.

school, or in a separate program within a school, based on their homelessness.

States and public school districts must 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).

D. 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;

²¹⁷ 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.

(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.fldoe.org/bsa/title1/titlex.asp>

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.fldoe.org/bsa/title1/titlex.asp>. Other sources of information regarding the McKinney-Vento Homeless Assistance Act:

National Center on Homelessness and Poverty
www.nlchp.org
(202) 638-2535

National Association for the Education of Homeless Children and Youth
www.naehcy.org
(512)475-8765

National Center for Homeless Education
www.serve.org/nche

PART SEVEN: CONSUMER HOME REPAIR PROTECTIONS

A. INTRODUCTION

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.

B. HOME SOLICITATION SALES

1. 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).

2. Violations

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.* (2013); the advocate should examine each case for possible dual violations.

3. Check List

- Did the seller have a permit? F.S. § 501.022(1) (a) (2013). Permits are obtained from the Clerk of the Circuit Court. F.S. § 501.022 (2) (2013).
- 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 (2013).
- Is the notice of the buyer's right to cancel conspicuous? F.S. § 501.031(2)(a) (2013).

- 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) (2013).

- 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 (2013).

- Did the seller misrepresent the terms and conditions of the sale, lease or rental? F.S. § 501.047(1) (2013).

- Did the seller misrepresent an affiliation with the parent company or sponsor? F.S. § 501.047(2) (2013).

- 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) (2013).

- Did the seller indicate that the agreement to purchase, lease or rent goods or services was non-cancelable? F. S. § 501.047(4) (2013).

- What work or goods were actually promised? Are the specifications contained in the contract are complete?

4. 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 or a federal holiday. F.S. §§ 501.021, 501.025 (2013). (Federal holidays are listed at 5 U.S.C. § 6103.)

5. 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 (2013).

6. 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 (2013).

7. If the Seller Has Performed Any Services Prior To Cancellation

The seller is not entitled to compensation for any services performed before cancellation. F.S. § 501.045 (2013).

8. 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 (2013).

C. THE FTC “COOLING OFF” RULE FOR DOOR-TO-DOOR SALES

1. 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:

- a. 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);
- b. Oral notification of the right to cancel, 16 C.F.R. § 429.1(e);
- c. 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);

d. An easily detachable Notice of Cancellation filled out in duplicate, 16 C.F.R. § 429.1(a)(c).

2. The FTC rule also deems the following actions on the part of the seller to be unfair and deceptive:

a. 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).

b. Failing to provide or misrepresenting the right to cancel, 16 C.F.R. § 429.1(f).

c. 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).

d. Negotiating, transferring, selling, or assigning any note within five (5) business days of the contract, 16 C.F.R. § 429.1(h).

e. 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)

3. 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.

4. The FTC Rule does not apply when a Truth-in-Lending rescission is required, 16 C.F.R. § 429.0(a)(2).

5. 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).

6. 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).

7. There is no private cause of action under the FTC Rule.

D. 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.

E. THE HOME IMPROVEMENT SALES AND FINANCE ACT (F.S. §§ 520.60-520.98)

1. 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:

- a. Notice of the right to rescind within three (3) days following the execution of the contract, F.S. § 520.72 (2013);
- b. The names, addresses and license number of the contractor and salespeople who solicited or negotiated the contract. F.S. §

520.73(1)(a)(2013);

c. Approximate dates the work will begin and a description of the work and material to be used, F.S. § 520.73(1)(c),(d) (2013);

d. 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) (2013);

e. The following notice to the owner, in substantially the following form:

1. Do not sign this home improvement contract in blank.

2. You are entitled to a copy of the contract at the time you sign.

Keep it to protect your legal rights.

3. 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) (2013).

f. In addition, no home improvement contract may contain any of the provisions prohibited under F. S. § 520.74 (2013).

g. 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 (2013).

2. Under the Act, the seller is prohibited from engaging in the following acts:

a. Substantial misrepresentations in procurement of contract, false promises

of character likely to influence, persuade or induce, F.S. § 520.90(3) (2013);

b. Abandonment, willful failure to perform, F.S. § 520.90(1) (2013);

c. Committing fraud in execution of contracts and mortgage, (such as notary fraud), F.S. § 520.90(4) (2013);

d. Deceptive advertising, F.S. § 520.90(6) (2013);

e. 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 (2013)). § F.S. 520.90(7) (2013).

f. Willful misrepresentation of any matter required to be disclosed to owner, F.S. § 520.90(15);

3. Mortgages or mortgage notes must contain a boldface notice that it is subject to a home improvement sales contract, F.S. § 520.80;

4. 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 (2013);

5. However, Goldsten v. Betty Ginsburg Interior Design, Inc., 519 So. 2d 645 (4th DCA 1987) interpreting F.S. § 520.61, now F.S. § 520.69(1) (2013): A contract that does not create a security interest does not qualify under the “Home Improvement Act”;

6. 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;

7. The FTC holder in Due Course Rule (16 C.F.R. Part 433) is similar to F.S.

§ 520.88(4) (2013). Assignees are subject to all claims or defenses.

F. 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.

1. 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.
2. If a written warranty is given, the seller is prohibited from disclaiming implied warranties, 15 U.S.C. § 2308(a).
3. 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).

4. Violations of the Act include:
 - a. The failure to honor written warranties, 15 U.S.C. § 2304(a)(1), or implied warranties 15 U.S.C. § 2304(a)(2);
 - b. 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,
 - c. The failure to comply with the disclosure requirements of the Act, 15 U.S.C. § 2302(a).
5. 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).

G. COMMON LAW AND OTHER STATUTORY CLAIMS

1. 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 (2013) sets forth the requirements for creating an express warranty under the U.C.C., while F.S. § 672.315 (2013) outlines the U.C.C.'s implied warranty of fitness for a particular purpose.
2. 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.

3. 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.

4. 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.

5. 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.

6. Florida's Civil Remedies for Criminal Practices Act. – F.S. Chapter 772.11(1)(2013) 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.

7. Fraudulent Practices – The following crimes listed under F.S. chapter 817 may be used as a predicate act for a RICO claim:

- a. F.S. § 817.54, which defines the crime of obtaining a mortgage or promissory note by false representation.
- b. F.S. § 817.38, which defines the crime of simulated process;
- c. F.S. § 817.40, which defines the crime of false, misleading and deceptive advertising and sales;
- d. F.S. § 817.412, which defines the crime of sale of used goods as new.

8. Theft - F.S. § 812.014 defines the crime of theft. This crime can also be used as a predicate act for a RICO claim.

9. 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 that is described in 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 817 (Fla. 1973).

Usury is unlawful in Florida, F.S. § 687.03(1) (2013); 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).

10. 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.

PART EIGHT: HOMEOWNERS INSURANCE

A. INTRODUCTION

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.

B. 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.

C. 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.

D. 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.

E. 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.

F. 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. 1st DCA 1970) and Taylor v. USAA, 684 So. 2d 890 (Fla. 5th 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. 3rd DCA 1994). Similarly, one who is away in military service can still be a resident of his/her primary physical residence. Taylor, supra.

G. 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.

1. 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).

2. 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.²¹⁸ See State Farm Fire & Casualty Co. v. 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).

H. 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

²¹⁸ Most property insurers will provide ordinance and law coverage by way of a policy endorsement for an additional premium

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. 4th DCA 1995) and Stringer v. Fireman’s Fund Insurance Co., 622 So. 2d 145 (Fla. 3rd 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.

I. 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.

J. 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. 4th DCA 1974) and Coleman v. American Bankers Ins. Co. of Florida, 228 So. 2d 410 (Fla. 3rd DCA 1969).

K. 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.

1. 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. Romay, 744 So. 2d 467 (Fla. 3rd 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. Romay, 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”). Romay, 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. Romay, 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 107th 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.

2. 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.

3. 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. 3rd DCA 1997); U.S. Fire Ins. Co. v. Franko, 443 So. 2d 170 (Fla. 1st DCA 1983) and Finn v. Prudential-Bache Securities, Inc., 523 So. 2d 617 Fla. 4th 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. 3rd DCA 1996); Transamerica Ins. Co. v. Weed, 420 So. 2d 370 (Fla 1st 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. 4th 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. 1st 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).

4. 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.

5. 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. 3rd 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. 3rd 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. 3rd DCA

1998).

6. 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. 3rd DCA 2002), wherein the Court held that such clause contemplates an informal process which is not governed by the Florida Arbitration Code.

7. 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.

L. 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. 2nd 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. 4th DCA 2005). Compare with Nationwide Property & Casualty Insurance Co. v. Bobinski, 776 So. 2d 1047 (Fla. 5th 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. 3rd DCA 1993) and American Indemnity Co. v. Coneau, 419 So. 2d 670 (Fla. 5th 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. 3rd 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 1st 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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PART NINE: LONG TERM RECOVERY FROM CATASTROPHIC DISASTERS

A. INTRODUCTION

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, 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.

Legal services advocates have a unique and vital obligation in that they are often an initial point of contact for the low income community once the initial disaster medical, food and shelter needs have been resolved. They also often have unique access to decision makers in longer term response structures whether they be federal, state or local government, PHAs or other *ad hoc* response entities. It is vital to take that obligation seriously and to serve as a conduit for the needs of the community to those decision makers, to introduce community leaders into those forums and to transmit policy discussions from those forums to the local communities.

These are observations based on work in Florida after Hurricane Andrew in 1992 and in Florida and the Gulf Coast after the multiple hurricanes of the 2004 and 2005 Hurricane seasons. As is stressed throughout this article, each disaster is unique. Too often communities respond to the needs of the last disaster, only to realize later that the impact of the newest event is entirely different. Indeed, even within the same communities the impact of the disaster can have dramatically different effects and create significantly different needs.

What follows is an attempt to alert the reader to the existence of the longer term issues we have seen, provide some overview as to identification and response and, finally, to point the direction in addressing a solution.

B. AFFORDABLE HOUSING RECOVERY

1. Introduction

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 housing affordable to low income households is repaired and returned to the market as housing, and continues to be affordable to those same households. This includes not only subsidized housing but also low income market rate housing.

While disaster related damage is the most significant threat to the long term loss of that housing it is not the only one. Owners of rental 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 rental 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. By far one of the most important tasks is 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 these units 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 most needy clients to the “new” post-disaster city.

2. Identification of Low Income Housing Resources

The first step in any effort to insure that loss 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 pre-storm 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, even before the disaster hits. However, recently there are a few sources which can greatly assist in providing a relatively complete listing of subsidized units. None of these sites are perfect so the information provided by them while useful should be verified.

The Shimberg Center at the University of Florida has become a national leader in developing a comprehensive "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 further provides detailed information on each project, including developer, number of units, types of subsidy, and expiration dates of subsidies. The website is available at www.flhousingdata.shimberg.ufl.edu/ and has largely solved the difficult issue of locating preexisting subsidized housing for housing advocates in Florida.

A list of all units assisted with Low Income Housing Tax Credits can be found at <http://lihtc.huduser.org>.

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>. The information provided by this site is often dated and should be verified wherever possible.

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.

This housing is also the least likely to survive a hurricane undamaged. Since these units often have little property management, and are seldom visited by the

landlords after a hurricane, it often falls to the legal services advocates and their partners in the local community to document the needs of the occupants of these units.

3. Interim Policy Advocacy on Behalf of Displaced Tenants (Coordination and Communication among Affordable Housing Providers)

a) Introduction

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.

b) 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.

c) 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. Our experience has been that this should be presented as the norm as soon as possible. When this policy is presented shortly after the disaster, it can be attractive to all parties as the landlords and the tenants simply want things to return to normal.

d) 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. It is difficult for very poor tenants to maintain contact under the best of circumstances. By obtaining an early “right of return”

commitment, it is possible to provide tenants with an initial friendly and valuable communication from the landlord - which will keep lines of communication open and provide an incentive for the tenants to stay in touch. 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.

e) 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.

4. Insuring the Restoration of All Affordable Housing (Establishing 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.

a) 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.

b) Economic Disincentives to Repair

For certain private subsidized developers, the disaster could provide an excuse for exiting the affordable housing restrictions on their units. Owners of Project Based Section 8 developments, for example, who are committed to long term contracts with U.S. HUD at fixed rents, may find it is 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. 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.*

C. PARTICIPATION IN POST DISASTER RESOURCE ADVOCACY

1. Introduction

After a serious disaster, every community will organize to focus local, state and federal 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.²¹⁹

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 low wage workers, 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

²¹⁹ The National Disaster Housing Strategy, the Florida Disaster Housing Strategy and several County Disaster Housing plans are available at http://www.tbrpc.org/tampabaydisaster/disaster_housing/reference_documents.html

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.²²⁰

2. Increased Availability of Housing Vouchers and Rental Assistance

a) 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.

After the 2005 Hurricanes Rita and Katrina, FEMA, through a partnership with HUD, created a disaster specific housing voucher program, the Disaster Housing Assistance Program (DHAP) - modeled on the Section 8 program but with eligibility tied to the specific disaster. The program was limited to those affected by Rita and Katrina.

After Hurricane Sandy hit the northeast in 2013 HUD reinstated a Sandy related DHAP

²²⁰ 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 season of 2004.

program. The DHAP program may be the future model for interim housing assistance. Since it is disaster specific and uses FEMA funding, the rules can be more easily adapted to the needs of the particular disaster. Since it is now administered by HUD it can utilize the experience of that agency. However, it is temporary and does not, and cannot provide the continuous long term rental assistance that a Section 8 housing voucher can provide. We must remember that many low income people could not afford their housing before the disaster and are unlikely to ever find affordable housing after the disaster. Thus all advocacy must be focused, at least partly, on what will be the permanent housing solution for these households.

b) 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.

c) 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 month’s rent which are not provided for by FEMA. Such a fund can also be used for temporary storage of household furnishings, moving costs, etc.

d) *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.

3. Prioritization of Funding

a) 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.

b) 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:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

4. 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 panoply of services and funds which they otherwise would be unable to obtain from a single agency.



OP-ED

Low-income hurricane victims being denied legal assistance

BY CHARLES ELSESSER
communityjusticeproject.com

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We can all agree that equal justice under the law is a right, not a privilege.

When Hurricane Irma destroyed a quarter of the housing in the Florida Keys, Jeff Scurlock of Islamorada lost almost everything he owned. To make matters worse, his job at the mobile home park where he lived was also gone. The third strike came two months later when FEMA denied his applications for housing assistance and help replacing personal property.

Meanwhile, the residents of Seahorse RV Park in Big Pine Key thought they had fared better. Irma damaged, but did not destroy, their homes. With no place else to go, many moved back in. But their relief quickly turned to panic when a representative of the property owner taped unlawful eviction notices to their doors. “Within the next week,” the notes said, “we will be removing damaged trailers and disassembling any utility hookups.”

On the surface, disasters appear democratic, affecting entire geographic areas without regard to income. Media coverage tends to focus on the immediate crisis, leaving the impression that life is back to normal when the power comes back on and Disaster Recovery Centers close. While that narrative is attractive, it is false. After 25 years of advocating for disaster survivors in Florida, I know that low-income residents suffer much longer.

For anyone struggling to make ends meet, a disaster like a hurricane is likely to wreak financial havoc.

Evacuation can be expensive. Relocation can disrupt custody arrangements, education, and/or employment. Food spoiled by power outages can leave parents to choose between paying rent and feeding their children. Unscrupulous landlords refuse to make repairs, demand rent for ruined housing and price gouge to take advantage of the housing shortage. Families who return home might be met by damage that creates serious health issues. Shady contractors target elderly homeowners. Insurers may wrongfully deny coverage.

Often, these problems require legal help to solve. But too many times people are forced to live with their rights trampled and their economic livelihoods ruined because they cannot afford legal help.

The people in the examples above are lucky compared to others; Legal Services of Greater Miami (LSGMI), a federally funded civil legal aid organization, was able to help. Attorney Maria Alvarez worked with Scurlock to navigate the complex appeals process, and within a week FEMA had reversed its denial. At Seahorse RV Park, attorney Nejla Calvo negotiated with the park owner to halt the unlawful evictions and find a fair resolution.

The Legal Services Corporation (LSC) estimates that in the counties hit by hurricane force winds, more than 1.2 million people live in households with annual incomes at or below 125 percent of the federal poverty level. Without access to civil legal aid, these Floridians are shut out of the justice system.

The legal needs of low-income people left in Irma's wake are piling on to a justice system that is already struggling under an excess of cases in which one or both parties are unrepresented. In *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-Income Americans*, LSC reports that seven in 10 low-income households experienced at least one civil legal problem during 2016, including issues with healthcare, housing conditions, disability access, veterans' benefits, and domestic violence. Yet federally funded legal aid providers have the funding to serve only a small fraction of those who need their help.

Congress does not provide enough funds to meet even the basic civil legal needs of low-income Americans. The funding shortage is even greater in Florida, which has the distinction of being one of only two states with not one dollar in the budget to provide for the civil legal needs of its poorest citizens. The Legal Services Corporation has asked Congress for supplemental funding to provide civil legal aid to low-income survivors of hurricanes Irma and Maria. Of the \$12 million requested to serve them, LSC proposes to hire much-needed additional staff and pro bono coordinators. Their work would benefit thousands of hurricane survivors, speed Florida's recovery and restore prosperity to communities.

Congress must appropriate funding that permits legal aid groups to provide legal help, including representation, for as long as necessary for recovery, which we know can take years. In the aftermath of a disaster, rights are meaningless unless recovery resources include civil legal aid.

CHARLES ELSESSER IS A CO-FOUNDER AND MEMBER OF THE BOARD OF DIRECTORS OF THE COMMUNITY JUSTICE PROJECT IN MIAMI.

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