

**FLORIDA DISASTER
ASSISTANCE MANUAL
for Legal Services Advocates**

August 2019 Edition

DISCLAIMER

The materials and content provided in this manual are for general information only and are not intended as legal advice. Although we strive to provide accurate and up to date legal information, we cannot promise it is error free or that it is suitable for your specific concern. Therefore, you should contact an attorney to obtain legal advice for any issues specific to your situation. If you use the materials and information provided in this manual, or linked to this manual, it does not create an attorney-client relationship between us or any providers of information you find in this manual, and we take no responsibility for any information linked to this manual.

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The law is generally described as of August 31, 2019.

ACKNOWLEDGMENTS

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In this latest 2019 update, Florida Legal Services had the fortune of collaborating with very dedicated pro-bono attorneys and legal aid attorneys who contributed to this effort with their knowledge and time. Specifically, we would like to thank Holland and Knight, Greenberg Traurig, P.A., Legal Services of North Florida, and Florida Legal Services' Equal Justice Works Disaster Recovery Fellow Delmarie Alicea.

Also a special thank you to all the legal aid advocates who have put disaster recovery materials together which assisted us in compiling our own.

IMPORTANT

This is an overview of disaster assistance available under various state and federal laws, 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.

ABOUT THE AUTHOR

This manual's original author, Terry Coble, was a public interest attorney with more than 35 years of experience advocating for low income people. Terry moved to Florida from California in 1992 and was a Senior Attorney at Legal Services of Greater Miami. After Hurricane Andrew swept through South Florida in August 1992, Terry started up and directed the legal services disaster project at LSGMI, and was physically present at the disaster assistance centers day after day—helping individual families and addressing systemic problems. As the need for direct services lessened, with the support of the Florida Bar Foundation Terry wrote the Disaster Assistance Guide for Legal Services Practitioners. She edited and updated it for a number of years, and it continues to be used by advocates throughout Florida and served as a model for other states that have experienced natural disasters. Terry also served as Policy Director for the Human Services Coalition of Miami-Dade County and the Miami Coalition for the Homeless, and was recognized as an expert on dealing with disaster housing. Terry passed away in 2015.

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PART I: FEMA ASSISTANCE

Federal Emergency Management Agency (FEMA)

A. Application for FEMA Assistance

a. FEMA Overview

FEMA provides assistance to individuals and families who have lost their homes as a result of a presidentially-declared disaster. If you are a renter or homeowner you may qualify for assistance. By law, FEMA assistance cannot duplicate the assistance you receive from your insurance company, but you may receive assistance for items not covered by insurance. If someone's home was impacted by a declared disaster, it is recommended that she [apply for assistance](#).

b. Statutory Authority

i. [Robert T. Stafford Disaster Relief and Emergency Assistance Act](#)

Public Law 100-707, signed into law November 23, 1988; amended the Disaster Relief Act of 1974, Public Law 93-288. It created the system in place today by which a presidential disaster declaration of an emergency triggers financial and physical assistance through the Federal Emergency Management Agency (FEMA). The Act gives FEMA the responsibility for coordinating government-wide relief efforts. It is designed to bring an orderly and systemic means of federal natural disaster assistance for state and local governments in carrying out their responsibilities to aid citizens.

Congress' intention was to encourage states and localities to develop comprehensive disaster preparedness plans, prepare for better intergovernmental coordination in the face of a disaster, encourage the use of insurance coverage, and provide federal assistance programs for losses due to a disaster.

This Act constitutes the statutory authority for most federal disaster response activities especially as they pertain to FEMA and FEMA programs.

ii. Presidential Declaration

When a state, territorial, or tribal government determines an incident has exceeded their capability to respond, the Governor or Tribal Chief Executive may request a declaration from the President through FEMA¹. They must request the declaration within 30 days of the incident. FEMA may extend the deadline if the Governor or Tribal Chief Executive submits a written time extension request within 30 days of the incident stipulating the reason for the delay.

<https://www.federalregister.gov/disaster-declarations-assistance>

c. Not Covered by FEMA

i. Business

FEMA does not offer assistance for small businesses impacted by a presidentially-declared disaster. FEMA does, however partner with the Small Business Administration (SBA), which offers low interest loans for business damages. Learn more about the [business loan application process](#).

ii. Secondary Home

FEMA does not offer assistance for your secondary home. Federal guidelines only allow housing assistance when your primary residence is impacted by a presidentially-declared disaster.

d. Application Deadlines

In most cases, a disaster survivor must “register” for Individual and Household Assistance within 60 days after the Declaration of Disaster. However, FEMA accepts late registrations for an additional 60 days beyond the deadline if the registrant produces documentation to justify the delay. 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.

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).

¹ Letter from Governor Ron Desantis to President Donald Trump requesting a disaster declaration for Hurricane Dorian.

<https://www.flgov.com/wp-content/uploads/2019/08/Trump-Letter.pdf>

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 Secretary of Agriculture on a case-by-case basis soon after the disaster. 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.

I. Application (Registration) Process

A. Registration Methods

To apply (or “register”) for assistance, disaster survivors must submit an application to FEMA in one of the following four ways:

1. Online at: www.disasterassistance.gov.
2. Visit a state/FEMA Disaster Recovery Center (DRC).
3. Call [800-621-3362](tel:800-621-3362), voice/VP/711. Multilingual operators are on duty. TTY 800-462-7585. Phone lines are open 7 a.m. to 10 p.m. local time.
4. Download the FEMA app on your smartphone at: www.fema.gov/mobile-app.

Survivors should let FEMA know they have a need or a reasonable accommodation request. FEMA can provide sign-language interpreters and materials in alternate formats, such as Braille, large-print and electronic versions. Multilingual operators are available.

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).

The **"Help after a Disaster"** brochure is available online at: https://www.fema.gov/media-library-data/1556219308001-5c39dce57da8b19bff274e5c5c79ea_d8/fema_4.pdf; this replaces the previous booklet. In addition, each registrant for Individual Assistance receives a letter explaining FEMA’s Individuals and Households program.

B. Disaster Recovery Centers (DRCs)

A Disaster Recovery Center is a readily accessible facility or mobile office where survivors may go for information about our programs or other disaster assistance programs, and to ask questions related to your case. Representatives from the Governor’s Office of Homeland Security and Emergency Preparedness, the Federal Emergency Management Agency, U.S. Small Business Administration (SBA), volunteer groups and other agencies are at the centers

to answer questions about disaster assistance and low-interest disaster loans for homeowners, renters and businesses. They can also help survivors apply for federal disaster assistance.

To find an open Disaster Recovery Center:

1. Go online to the [Search for a Disaster Recovery Center](#) page.
2. Disaster Recovery Center locations are listed in the [FEMA App](#). The app may be downloaded for free from the [App Store](#) or [GooglePlay](#).
3. You can text DRC and a zip code to 43362 (4FEMA) to locate a Disaster Recovery Center in your area. Standard message and data rates apply.

C. Information Required for Registration

When registering with FEMA, the following information will be required to complete the registration process:

- First and last name of the applicant, just as it appears on their social security card
- Social Security number
- Address of the location where the damage occurred (pre-disaster address)
- Current mailing address
- Current telephone number(s)
- Email address, if one is available
- Proof of primary residence
- Insurance information
- Total household annual income
- Routing and account number for a checking or savings account (this allows FEMA to directly transfer disaster assistance funds into the applicant's bank account)
- A detailed description of the survivor's disaster-caused damage and losses
- Pictures or video of the damage

After a disaster, it is very possible that survivors may not find their documents and some government agencies may be closed due to the disaster. We recommend registering for benefits anyway and working on obtaining the documentation.

D. FEMA Registration Number

Applicants receive a nine-digit FEMA registration number which will be needed to update your application with any new information or to discuss any issues with FEMA. Encourage the applicant to secure that number.

E. Online Account

Survivors may create an online account at <https://www.disasterassistance.gov/>. 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. At present, creating an internet account is not mandatory.

- **Technical Issues:** If you are having technical issues, call FEMA's Internet Help Desk at 1-800-745-0243. They are available 24 hours a day, 7 days a week.

F. Declaration and Release Form

Applicants may be asked to complete a [Declaration and Release Form](#) (FEMA form 009-0-3).

a. Principal purpose of this form

This information is being collected for the primary purpose of determining eligibility and administering financial assistance under a Presidentially-declared disaster. Additionally, information may be reviewed internally within FEMA for quality assurance purposes and used to assess FEMA's customer service to disaster assistance applicants. FEMA collects the social security number (SSN) to verify an applicant's identity and to prevent a duplication of benefits.

b. Ways to submit the form

Download and e-sign the form on your computer or mobile device. Then upload the signed form through the **Upload Center** in your [online account](#). (You can use [Adobe Reader](#) – desktop or mobile app – to save and e-sign the form.)

In the upload screen:

- For Assistance Type select **Other/Miscellaneous**.
- For Document Type select **Citizen Declaration/Release Authorization**.

OR Print the e-signed form or a blank form to fill out. Submit the completed form using one of the methods below:

1. Fax the form to: 1-800-827-8112
2. Mail the form to: FEMA – Individuals & Households Program
National Processing Service Center
P.O. Box 10055
Hyattsville, MD 20782-8055

For help filling out the form, please call the FEMA Disaster Assistance Helpline, 7 a.m.

to 11 p.m. ET, 7 days a week:

- [1-800-621-3362](tel:1-800-621-3362) (also for 711 & VRS)
- TTY [1-800-462-7585](tel:1-800-462-7585)

The requested information is voluntary. But if you choose not to provide it, FEMA may delay or deny assistance.

II. I Applied for Assistance, What's Next?

A. Small Business Administration

a. Overview

Although it seems counterintuitive 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 disaster loan program. Some applications for disaster assistance require you to also submit an SBA application before FEMA can determine your eligibility for assistance. Learn more about the [home and property disaster loan application](#). After you apply for disaster assistance from FEMA, you may be contacted by the U.S. Small Business Administration (SBA). If you are asked to submit an application for a low-interest SBA disaster loan, please know it is an important step in the federal disaster assistance process.

If SBA determines you are eligible for a loan, you do not have to accept it. If you do not qualify for a home loan, SBA will refer you back to FEMA and you could be considered for other FEMA grants for Other Needs Assistance, which covers items like disaster-related car repairs, clothing, household items and other expenses. You cannot be considered for these grants unless you complete and return the SBA home loan application. Some types of Other Needs Assistance do not depend on completing the SBA application. These include medical, dental and funeral expenses. So it's not necessary to submit the application for those kinds of grants.

b. Types of Disaster Assistance Loans

i. [Home and Property Disaster loans](#)

If you are in a [declared disaster area](#) and have experienced damage to your home or personal property, you may be eligible for financial assistance from the SBA — even if you do not own a business. As a homeowner, renter and/or personal property owner, you may apply to the SBA for a loan to help you recover from a disaster.

1. Loan Amounts and Use

Homeowners may apply for up to \$200,000 to replace or repair their **primary residence**. The loans may not be used to upgrade homes or make additions, unless required by local building code. If the homeowner makes improvements that help prevent the risk of future property damage caused by a similar disaster, the homeowner may be eligible for up to a 20 percent loan amount increase above the real estate damage, as verified by the SBA.

In some cases, SBA can refinance all or part of a **previous mortgage** when the applicant does not have credit available elsewhere and has suffered substantial disaster damage not covered by insurance.

Renters and homeowners may borrow up to \$40,000 to replace or repair **personal property** — such as clothing, furniture, cars and appliances — damaged or destroyed in a disaster.

2. Eligibility and Terms

Secondary homes or vacation properties are not eligible for these loans. However, qualified rental properties may be eligible for assistance under the SBA [business disaster loan program](#).

Proceeds from insurance coverage on your home or property will be deducted from the total damage estimate to determine the eligible loan amount. The SBA is not permitted to duplicate any benefits.

For applicants unable to obtain credit elsewhere, the interest rate will not exceed 4 percent. For those who can obtain credit elsewhere, the interest rate will not exceed 8 percent. The SBA will determine whether an applicant can obtain credit elsewhere. SBA disaster loans are offered with up to 30-year terms.

Home loans for more than \$25,000 in Presidential and Agency declarations must be secured with collateral to the extent possible. The SBA will ask the applicant for available collateral, but will not decline a loan for lack of collateral. A first or second mortgage on the damaged real estate is commonly used as collateral for an SBA disaster loan.

3. How to Apply

- Apply online using SBA's secure website at <https://disasterloan.sba.gov/ela>.
- Visit www.sba.gov/disaster for more information on SBA disaster

assistance.

- You may also call SBA's Customer Service Center at [800-659-2955](tel:800-659-2955) or email: disastercustomerservice@sba.gov for more information. Individuals who are deaf or hard-of-hearing may call [800-877-8339](tel:800-877-8339).

Disaster loan application forms can be found online at:
<https://disasterloan.sba.gov/ela/Information/PaperForms>

SBA will send an inspector to estimate the cost of your damage once the applicant has completed and returned the loan application. The applicant must submit the completed loan application and a signed and dated **IRS Form 4506-T** giving permission for the IRS to provide SBA the applicant's tax return information.

For additional information, please contact the SBA disaster assistance customer service center. Call [1-800-659-2955](tel:1-800-659-2955) (TTY: [1-800-877-8339](tel:1-800-877-8339)) or e-mail: disastercustomerservice@sba.gov.

ii. **[Economic Injury Loans](#)**

If a survivor has suffered substantial economic injury and are one of the following types of businesses located in a **declared disaster area**, she may be eligible for an SBA Economic Injury Disaster Loan (EIDL):

- Small Business
- Small agricultural cooperative
- Most private nonprofit organizations

1. **Loan Amounts and Use**

Substantial economic injury means the business is unable to meet its obligations and to pay its ordinary and necessary operating expenses. EIDLs provide the necessary working capital to help small businesses survive until normal operations resume after a disaster.

The SBA can provide up to \$2 million to help meet financial obligations and operating expenses that could have been met had the disaster not occurred. Your loan amount will be based on your actual economic injury and your company's financial needs, regardless of whether the business suffered any property damage.

2. Eligibility and Terms

The interest rate on EIDLs will not exceed 4 percent per year. The term of these loans will not exceed 30 years. The repayment term will be determined by your ability to repay the loan. EIDL assistance is available only to small businesses when SBA determines they are unable to obtain credit elsewhere. A business may qualify for both an EIDL and a physical disaster loan. The maximum combined loan amount is \$2 million.

3. How to Apply

- Apply online using SBA's secure website at <https://disasterloan.sba.gov/ela>.
- Visit www.sba.gov/disaster for more information on SBA disaster assistance.
- You may also call SBA's Customer Service Center at 800-659-2955 or email disastercustomerservice@sba.gov for more information. Individuals who are deaf or hard-of-hearing may call 800-877-8339.

You must submit the completed loan application and a signed and dated [IRS Form 4506-T](#) giving permission for the IRS to provide SBA your tax return information.

For additional information, please contact the SBA disaster assistance customer service center. Call 1-800-659-2955 (TTY: 1-800-877-8339) or e-mail: disastercustomerservice@sba.gov.

iii. [Military Reservist Economic Injury Disaster Loans](#)

The Military Reservist Economic Injury Disaster Loan (MREIDL) provides funds to help an eligible small business meet its ordinary and necessary operating expenses that it could have met, but is unable to, because an essential employee was called-up to active duty in his or her role as a military reservist.

1. Loan Amounts and Use

The maximum MREIDL loan amount is \$2 million. The amount of each loan is limited to the actual economic injury as calculated by SBA. The amount is also limited by business interruption insurance and whether the business and/or its owners have sufficient funds to operate. If a business is a major source of employment, SBA has authority to waive the \$2 million statutory limit.

The purpose of MREIDL loans is not to cover lost income or lost profits. MREIDL funds cannot be used in lieu of regular commercial debt, to

refinance long-term debt, or to expand the business.

2. Eligibility and Terms

Businesses with the financial capacity to fund their own recovery are not eligible for MREIDL assistance. Federal law requires SBA to determine whether a business has credit available elsewhere — that is, if credit in an amount needed to accomplish full recovery is available from non-government sources without creating an undue financial hardship. The filing period for MREIDL assistance begins on the date the essential employee receives a notice of expected call-up and ends one year after the essential employee is discharged or released from active duty.

Collateral is required for all MREIDL loans more than \$50,000. SBA accepts real estate as collateral when it is available. SBA will not decline a loan for lack of collateral, but will require the borrower to pledge collateral that is available.

The MREIDL interest rate is 4 percent and has loan repayment terms up to 30 years. SBA determines the term of each loan in accordance with the borrower's ability to repay.

3. How to Apply

- Apply online using SBA's secure website at <https://disasterloan.sba.gov/ela>.
- Visit www.sba.gov/disaster for more information on SBA disaster assistance.
- You may also call SBA's Customer Service Center at [800-659-2955](tel:800-659-2955) or email disastercustomerservice@sba.gov for more information. Individuals who are deaf or hard-of-hearing may call [800-877-8339](tel:800-877-8339).

You must submit the completed loan application and a signed and dated [IRS Form 4506-T](#) giving permission for the IRS to provide SBA your tax return information.

For additional information, please contact the SBA disaster assistance customer service center. Call 1-[800-659-2955](tel:800-659-2955) (TTY: 1-[800-877-8339](tel:800-877-8339)) or e-mail: disastercustomerservice@sba.gov.

iv. Farm Emergency Loans

The U.S. Department of Agriculture's Farm Service Agency (FSA) provides emergency loans to help producers recover from production and physical losses due to tornado, hurricane, drought, flooding, other natural disasters or quarantine.

Farm Emergency loan funds may be used to:

- Restore or replace essential property;
- Pay all or part of production costs associated with the disaster year;
- Pay essential family living expenses;
- Reorganize the farming operation; and
- Refinance certain debts.

For more information, visit the following link:

https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/archive_d-fact-sheets/emergency_loan_program_march2017.pdf

B. Home Inspection

If your reported damages require an on-site FEMA inspection, you will be contacted by FEMA within ten (10) days of submitting your application to schedule an appointment for a home inspector to visit you. It is important for the applicant to answer FEMA's calls and correspondence.

In the event of a catastrophic disaster, an inspector may take longer to visit the applicant. If an inspection is not possible or delayed, FEMA may offer an advance of the assistance. If the damages are insured, the applicant needs to submit the insurance settlement or denial before a FEMA home inspection can be scheduled.

If the applicant cannot be present during the inspection, he can leave a person older than eighteen in charge of receiving the inspector.

a. Documents for Inspection

The applicant should have the following documents available at the time of the inspection:

- FEMA registration number
- Identification and social security number
- Pictures and/or video of the damage
- A detailed description in writing of the damages incurred
- Proof of ownership or residence, depending on the case
- Receipts and quotes for the repair of the damages

b. Purpose of the Inspection

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. The inspection, which is scheduled in advance with an inspector, is free-of-charge and usually occurs within two (2) weeks of the date of application. Applicants who have not been contacted by an inspector to set up an inspection within ten (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).

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.

c. Rights Related to the Inspection

i. Identifying the Inspector

Usually the inspectors are subcontractors of FEMA. They should have a badge or document identifying them. It is important to educate applicants not to allow unidentified persons in their residence. It is recommended that they write down the name, date, and information related to the inspection, such as the duration of the inspection, what the inspector looked at, and any other pertinent information.

ii. Understanding and Being Part of the Process

This includes requesting that the person that does the inspection is able to communicate with the applicant in their language or that she comes accompanied by an interpreter. It also includes special accommodations for persons with diverse abilities. The applicant has a right to be a part of the process, provide their documents, show the damage, and ask questions. And to receive a respectful and dignified treatment.

iii. Errors in FEMA Inspection Report

Errors in FEMA inspection reports are not uncommon. Therefore, whenever possible, advocates should advise disaster survivors to take photographs and/or video of the damage to their property. If an applicant disagrees with the inspection report, photographs, video 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.

d. After the Inspection

If you qualify for a grant, FEMA will provide you:

- A check by mail, or a direct deposit into your checking or savings account, and
- A letter describing how you are to use the money.

If you do not qualify for a grant, FEMA will provide you:

- A letter explaining why you did not qualify, and
- An opportunity to appeal the decision.

You can also visit FEMA's [Frequently Asked Questions library](#).

III. Right to Appeal a FEMA Decision

A. Filing a Written Appeal

a. Denial Reasons

If you got a letter, email, or text from FEMA denying your application for assistance and you disagree with the determination, you have the right to appeal. It's important to read the determination letter carefully to identify the reason for being declared ineligible. Some common reasons include:

- The person is insured and needs to provide an insurance settlement or denial to be considered for assistance
- Additional information is needed from the survivor, i.e. proof of identity, proof of occupancy, annual income, or a child care assistance letter
- There were multiple registrations using the same address
- Damages occurred to a secondary residence (where the survivor lives less than six months of the year)
- The home is safe to occupy, and/or personal property had minimal or no damages
- Missed inspections and no follow-up communication with FEMA
- FEMA is unable to contact the applicant

Once an applicant understands the reason for being ineligible, they can decide whether to appeal the decision. To do so, they need to submit all required information along with a letter describing in detail their reason (or reasons) for appealing.

b. Insufficient Coverage

It is also possible that FEMA may have provided insufficient assistance for the damages incurred.

c. 60 Day Appeal

If the applicant has received a letter from FEMA saying that they are ineligible for disaster relief or that the application is incomplete, they have the right to appeal the decision within 60 days of receiving the mailed notification. An appeal is a written request to review the file again with additional information provided by the applicant that may affect the decision. The ability to appeal is time-sensitive. The appeal must be faxed or postmarked within 60 days of the date of FEMA's decision letter. This term can be extended based on extenuating circumstances.

The appeal should explain in writing why the applicant disagrees with the decision. It may include documents which support the applicant's explanation: for example, a contractor's estimate showing how much it will cost to repair your home.

d. The Appeal Must Include

- Applicant's full name and signature
- Last 4 digits of the Social Security Number
- Date of Birth
- FEMA registration number
- Physical address of the damaged property
- Current mailing address
- Disaster number

It is also recommended to include information about the date of the application and the date of receipt of the negative determination letter (or of the other communications sent requesting the determination letter).

e. Explaining the Fundamentals

The letter should be clear as to whether FEMA provided assistance, the amount, and the date when the assistance was received. Whether it is a denial or an insufficient award for damages, the letter should explain why the determination is incorrect. It should include a narrative of the damages to the real estate and personal property. This mechanism may also be used to request a re-opening of a case closed for alleged inactivity.

f. Request the FEMA File

In addition to the appeal letter, the applicant should request a complete copy of their file. The determinations made by FEMA are made exclusively based on the applicant's file. This is particularly useful if letters have been lost or letters from FEMA were not received.

g. Attachments

The appeal letter is not usually enough. The letter should be accompanied by

supporting documentation. For example, it should include the expenses incurred after the disaster to either repair your home or replace personal property. It should also include quotes related to the repairs and the corresponding sworn affidavits. This is especially important for applicants who were denied because FEMA did not accept their proof of ownership or occupancy.

FEMA recommends the following documentation, although this list is not exhaustive:

Denial Reason	Acceptable Documentation
Identity not verified	<ul style="list-style-type: none"> ● Official government document (social security statement, etc.) ● Copy of driver's license
Ownership not verified	<ul style="list-style-type: none"> ● Deed, title, or official record ● Real estate tax bill or receipt ● Will or proof of inheritance ● Mortgage statement ● Proof of insurance coverage (settlement or denial), or statement from insurance provider
Occupancy not verified	<ul style="list-style-type: none"> ● Official government document (social security statement, etc.) ● Copy of driver's license ● Landlord's statement or copy of lease ● Rent receipts ● Utility bill reflecting damaged residence address ● Voter registration card or merchant's statement
Insufficient damage/ Damage not disaster-caused	<ul style="list-style-type: none"> ● Contractor's statement or estimate ● Mechanic's statement or estimate ● Statement from local official ● Receipts for expenses caused by the disaster
Insurance may cover losses	<ul style="list-style-type: none"> ● Receipts for expenses caused by the disaster ● Proof of insurance coverage (settlement or denial), or statement from insurance provider

h. Under Oath and Signed

- You can have your letter notarized. If you choose this option, please include a copy of a state-issued identification card.
- Or include the following statement: **“I hereby declare under penalty of perjury that the foregoing is true and correct.”** You must sign the letter.

i. Preparer Other than the Applicant

If someone other than you is writing the letter, there must be a signed statement from you affirming that the person may act on your behalf. You should keep a copy of the appeal for your records.

j. How to Submit the Appeal

To file an appeal, letters must be postmarked, received by fax, or personally submitted at a disaster recovery center within 60 days of the date you received the FEMA determination letter.

3 ways to submit it:

1. [Online by uploading to your account.](#)

2. By mail:

FEMA – Individuals & Households Program
National Processing Service Center
P.O. Box 10055
Hyattsville, MD 20782-7055

3. By fax

[800-827-8112](tel:800-827-8112)

Attention: FEMA – Individuals & Households Program

If you have questions, call the FEMA Helpline at [800-621-3362](tel:800-621-3362). Those who use 711 or Video Relay Services may call [800-621-3362](tel:800-621-3362). Those who use TTY may call [800-462-7585](tel:800-462-7585). Operators are available from 7 a.m. to 10 p.m. local time seven days a week

IV. Individual Assistance Program

A. What is FEMA’s Individual Assistance Program?

The Federal Emergency Management Agency’s Individuals and Households Program (IHP) provides financial help or direct services to those who have necessary expenses and serious

needs if they are unable to meet these needs through other means. Up to \$33,000 (adjusted each year) is available in financial help, although some forms of IHP assistance have limits. Flood insurance may be required.

To access **The Individual Assistance Program and Policy Guide (IAPPG)** FP 104-009-03 from March 2019, visit:

<https://www.fema.gov/media-library-data/1551713430046-1abf12182d2d5e622d16accb37c4d163/IAPPG.pdf>

To review the **Individual Assistance Program and Policy Guide (IAPPG) Summary of Changes** visit:

<https://www.fema.gov/media-library-data/1552497518029-108f92dfa18cfdc0e5c534a69a62ee5d/iapg.pdf>

B. Types of Help Available

a. Housing Assistance

i. Temporary Housing

Money to rent a different place to live or a temporary housing unit (when rental properties are not available).

1. Temporary Shelter Assistance (TSA) Facts

FEMA may provide TSA to eligible disaster survivors who have a continuing need for shelter after the congregate shelters have closed because they are unable to return to their homes for an extended period of time. This initiative is intended to provide short-term lodging for eligible disaster survivors whose communities are either uninhabitable or inaccessible due to disaster-related damages.

TSA is funded under Section 403 of the Stafford Act and is subject to a State cost-share. The State may request that FEMA authorize the use of TSA for the declared disaster in specific geographic areas.

Under TSA, disaster survivors may be eligible to stay in a hotel or motel lodging for a limited period of time and have the cost of the room and taxes covered by FEMA. However, FEMA does not cover the cost of incidental room charges or amenities, such as telephone, room service, food, etc. For those who are eligible, FEMA will authorize and fund, through direct payments to participating hotels/motels, the use of hotels/motels as transitional shelters.

The initial period of assistance will be 5-14 days from the date of TSA implementation. FEMA, in conjunction with the State, may extend this

period of assistance, if needed.

2. TSA Eligibility

Individuals And Households May Be Eligible For TSA, If:

- They register with FEMA for assistance;
- They pass identify verification;
- Their pre-disaster primary residence is located in a geographic area that is designated for TSA and occupancy is verified; and
- As a result of the disaster, they are displaced from their pre-disaster residence and they are currently not living in their primary residence.

Eligible individuals have the ability to locate a participating hotel/motel online. Individuals and households who are ineligible for TSA will be referred to local agencies or voluntary organizations for possible assistance.

ii. **Repair**

Money for homeowners to repair damage from the disaster that is not covered by insurance. The goal is to repair the primary home to a safe and sanitary living or functioning condition. FEMA may provide up to \$33,000 for home repair; then the homeowner may apply for a Small Business Administration disaster loan for additional repair assistance. FEMA will not pay to return a home to its condition before the disaster. Flood insurance may be required if the home is in a Special Flood Hazard Area.

Repair and replacement items include:

- Structural parts of a home (foundation, outside walls, roof) Windows, doors, floors, walls, ceilings, cabinetry
- Septic or sewage system
- Well or other water system
- Heating, ventilating, and air conditioning system
- Utilities (electrical, plumbing, and gas systems)
- Entrance and exit ways from the home, including privately owned access roads
- Blocking, leveling and anchoring of a mobile home and reconnecting or resetting its sewer, water, electrical and fuel lines and tanks.

iii. **Replacement**

Money to replace a disaster-damaged home, under rare conditions, if this can be done with limited funds. FEMA may provide up to \$33,000 for primary home

replacement. If the home is located in a Special Flood Hazard Area, the homeowner must comply with flood insurance purchase requirements and local flood codes and requirements.

iv. Semi-Permanent or Permanent Housing Construction

Direct assistance or money for the construction of a home. This type of assistance occurs only in very unusual situations, in locations specified by FEMA, where no other type of housing assistance is possible. Construction shall follow current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area. Construction will aim toward average quality, size, and capacity, taking into consideration the needs of the occupant. If the home is located in a Special Flood Hazard Area, the homeowner must comply with flood insurance purchase requirements and local flood codes and requirements.

b. Other Needs Assistance

The Other Needs Assistance provision of the Individuals and Households Program provides grants for uninsured, disaster-related necessary expenses and serious needs. Flood insurance may be required on insurable items (personal property) if they are to be located in a Special Flood Hazard Area.

Assistance includes:

- Medical and dental expenses;
- Funeral and burial costs;
- Repair, cleaning, or replacement of clothing or household items (room furnishings, appliances);
- Specialized tools or protective clothing and equipment required for your job;
- Necessary educational materials (computers, school books, supplies);
- Clean-up items (wet/dry vacuum, air purifier, and dehumidifier);
- Fuel (fuel, chain saw, firewood);
- Repairing or replacing vehicles damaged by the disaster, or providing for public transportation or other transportation costs;
- Moving and storage expenses related to the disaster (including evacuation, storage, or the return of property to a home);
- Other necessary expenses or serious needs (for example, towing, or setup or connecting essential utilities for a housing unit not provided by FEMA); and
- The cost of a National Flood Insurance Program group flood insurance policy to meet the flood insurance requirements.

c. Conditions and Limitations of IHP Assistance

i. Non-discrimination

All forms of FEMA disaster housing assistance are available to any affected household that meets the conditions of eligibility. No federal entity or official (or their agent) may discriminate against any individual on the basis of race, color, religion, sex, age, national origin, disability, or economic status.

ii. Residency Status in the United States and its Territories

To be considered for disaster housing assistance, you or a household member must provide proof of identity and sign a declaration stating that you/they are a United States citizen, a non-citizen national, or a qualified alien.

iii. Supplemental Assistance

Disaster housing assistance is not intended to substitute for private recovery efforts, but to complement those efforts when needed. FEMA expects minor housing damage or the need for short-term shelter to be addressed by homeowners or tenants. Furthermore, the Disaster Housing Program is not a loss indemnification program and does not ensure that applicants are returned to their pre-disaster living conditions.

iv. Household Composition

People living together in one residence before the disaster are expected to continue to live together after the disaster. Generally, assistance is provided to the pre-disaster household as a unit. If, however, the assistance provided to the household is not shared with you, or if the new residence is too small or causes you undue hardship, you may request assistance separate from your pre-disaster household.

v. Type of Assistance

Generally, more than one type of IHP assistance may be provided to the household. Only FEMA has the authority to determine which type of assistance is most appropriate for the household and the period of assistance to be covered.

vi. Proper Use of Assistance

All financial assistance provided by FEMA should be used as specified in writing: to rent another place to live, to make the home repairs identified by FEMA, or to prevent eviction or foreclosure, or to replace or repair personal property. Failure to use the money as specified may make you ineligible for additional assistance. All money provided by FEMA is tax-free.

vii. Documentation

It is the claimant's responsibility to provide all documentation necessary for

FEMA to evaluate the claimant's eligibility. She may need to provide proof of occupancy, ownership, income loss, and/or information concerning the housing situation prior to the disaster. She should keep all receipts and records for any housing expenses incurred as a result of the disaster. This includes receipts for repair supplies, labor, and rent payments. Even if the client does not have all the documentation, encourage them to apply and assist them in obtaining the documentation or the equivalent.

viii. Insurance

If the survivor has insurance, any assistance provided by FEMA should be considered an advance and must be repaid to FEMA when they receive the insurance settlement payment. If the settlement is less than FEMA's estimated cost to make the home habitable, the survivor may qualify for funds to supplement their insurance settlement, but only for repairs relating to the home's habitability. FEMA does not provide replacement value amounts or assistance with non-essential items.

ix. Duration of Assistance

Repair and Replacement Assistance is provided as a one-time payment. Temporary Housing Assistance (or a mobile home/travel trailer) is provided for an initial period of one, two or three months. To be considered for additional assistance, the survivor must demonstrate the expenditure of any previous assistance from FEMA as instructed, and must demonstrate efforts to re-establish permanent housing. Additional assistance is generally provided for one, two, or three months at a time. The maximum period for IHP assistance is 18 months, unless extended by the president.

Appeal Rights: If you disagree with FEMA's determination of eligibility or the form of assistance provided, you have the right to appeal within 60 days of the date of your notification letter. Send appeal letters to: Appeals Officer FEMA- Individuals & Households Program National Processing Service Center P.O. Box 10055, Hyattsville, MD 20782-7055 Telephone: 1-800-621-FEMA or TTY 1-800-462-7585

V. Recoupment

A. Audit and Recoupment

One of the biggest worries shared by legal advocates regarding FEMA is the possibility of an audit and the recoupment of funds. FEMA can require that money which was used improperly

or given by error or fraud, be returned. Although this legitimate mechanism of the agency is used to ensure the efficient use of public funds, the process leaves particularly vulnerable persons who did not properly preserve their documents and do not have the necessary supporting information or with the legal assistance necessary. It must be taken into account that the recoupment process can take years to begin.

Survivors should be advised of the following to prevent recoupment in the future:

- Funds received by FEMA are restricted; they can only be used for the specific need that was identified by the agency.
- It is recommended that survivors keep copies of all of their receipts of the expenses paid with FEMA funds.
- All documents should be kept in a safe place for at least seven (7) to ten (10) years.

VI. Disaster Recovery Reform Act of 2018 (DRRA)

Amendments made to the [Stafford Act](#) apply retroactively to disasters declared on or after August 1, 2017, but some elements reach as far back as 2004. The following summarizes key provisions applicable to FEMA's Public Assistance (PA) program:

A. Removal of Alternate Project Funding Reduction

Previously, the Stafford Act provided that applicants that used FEMA funding for alternate projects (in lieu of repairing, restoring, reconstructing, or replacing the damaged facility) had to take a haircut on the federal share of the costs – states and local governments could only get 90 percent of the federal share, while private non-profits could get 75 percent. The DRRA amends the Stafford Act to remove the reduction in funding. An applicant can now choose to pursue an alternate project without facing a reduction in otherwise eligible assistance.

B. Relief from "Stacked" Mandatory National Flood Insurance Program (NFIP) Reductions

Previously, the Stafford Act provided that assistance to repair or replace any facility in a Special Flood Hazard Area that was not covered by flood insurance must be reduced by the lesser of (1) the value of the facility on the date of the disaster, or (2) the insurance proceeds that would have been payable had the building been insured to the maximum extent available under the NFIP. This reduction had been applied to each individual building in the case of multi-unit campuses, such as large educational or medical facilities. The DRRA amends this requirement so that it "shall not apply to more than one building of a multi-structure educational, law enforcement, correctional, fire, or medical campus." This amendment is temporary: it applies to disasters declared between January 1, 2016 and December 31, 2018.

C. No Mandatory Use of Stafford Act Section 428 Alternative Procedures

Stafford Act Section 428 provides that FEMA may implement alternative procedures to approve projects under the PA program. Under one such program, the Alternative Procedures

Pilot Program for Permanent Work, FEMA and the applicant agree to a fixed cost estimate for a particular project, and the disaster assistance is capped by that fixed estimate. If the applicant's costs are below this cap, it can use excess funding for certain eligible purposes; if the costs exceed the cap, it may not request additional funding from FEMA. Participation is voluntary, but after Hurricanes Irma and Maria, applicants in Puerto Rico were required to opt into the program as a condition of assistance. The DRRRA confirms that the President may not condition the provision of federal assistance on participation in the alternative procedures allowed by Section 428. How this provision will be implemented in Puerto Rico remains unclear.

D. Estimates Under Section 428

Significantly, the DRRRA also amends Section 428 to provide that fixed estimate grants made under the alternative procedures program are "presumed to be reasonable and eligible costs" (in the absence of fraud) once certified by a professionally licensed engineer and accepted by the FEMA Administrator.

E. Duplication of Benefits

The Stafford Act contains a general prohibition against the receipt of benefits from more than one source for the same loss (a "duplication of benefits"). The prohibition applies to funding from any source, including insurance and through private party donations. The DRRRA amends the Stafford Act to permit the President to waive the general prohibition upon the request of a governor if doing so is in the public interest and will not result in waste, fraud, or abuse. This amendment applies to disasters declared between January 1, 2016 and December 31, 2021. It does not apply to work funded under Stafford Act Sections 406 or 408, but appears applicable primarily to debris removal and emergency protective measures, including rental assistance and sheltering programs funded under Section 403.

F. Management Costs

Previously, the Stafford Act defined "management costs" as indirect and administrative expenses that are "not directly chargeable to a specific project." FEMA provides funding for management costs, according to a set percentage, to the state recipient which then determines how much, if any, will be passed through to subrecipients. Additionally, costs that are directly chargeable to a specific project – direct administrative costs" – are reimbursed directly to subrecipients. The DRRRA simplifies this by grouping all into "management costs" and sets the following percentage rates for calculation of available funding:

G. FEMA's Hazard Mitigation Grant Program funding under Section 404

Up to 15 percent of the total amount of the grant award; of which up to 10 percent may be used by the recipient and 5 percent by the subrecipient.

H. FEMA's PA program including funding under Sections 403, 406, 407, and 502

Up to 12 percent of the total award under such sections; of which up to 7 percent may be used by the recipient and 5 percent by the subrecipient. FEMA strongly advocated for this change as absolutely critical to allow state recipients and applicants to take on a greater share of the administrative burden of disaster grants.

I. Statute of Limitations on Recoupment of PA Under Stafford Act Section 705

Stafford Act Section 705 contains a statute of limitations applicable to efforts by the federal government to recover disaster assistance paid to a state or local government. FEMA had previously interpreted the clock as starting with the state's transmission to FEMA of the final expenditure report for all projects an applicant received under a declared disaster or emergency. This provision did little to protect applicants from late deobligations as this report is often submitted many years after an event – after the very last of an applicant's projects were closed out. The DRRRA amends the Stafford Act to instead start the clock on a project-by-project basis. FEMA is now prohibited from initiating any action to recover assistance after "the date that is 3 years after the date of transmission of the final expenditure report for project completion as certified by the grantee." Significantly, this amendment applies retroactively to disasters declared on or after January 1, 2004 and terminates any pending action that would now be prohibited under amended Section 705(a).

J. Right of Arbitration

The DRRRA amends the Stafford Act to grant a right of arbitration to any applicant disputing a FEMA decision regarding the eligibility for or repayment of assistance where the amount in dispute is more than \$500,000, or more than \$100,000 for applicants in rural areas. Arbitrations will be conducted before the Civilian Board of Contract Appeals using a process similar to that previously open only to applicants impacted by Hurricanes Katrina and Rita in 2005. Arbitration may be requested at any time after FEMA issues a first appeal determination, as long as FEMA has not issued a decision on second appeal.

K. Increased Funding for Hazard Mitigation

The DRRRA provides that, with respect to each major disaster, the President may set aside from the Disaster Relief Fund an amount equal to six percent of the estimated aggregate amount of the grants to be made under Sections 403, 406, 407, 408, 410, 416, and 428 in order to provide technical and financial assistance. At the rate and intensity of the occurrence of disaster events, this is likely to equate to billions of dollars in mitigation funding in a given year (including for the 2017 and 2018 seasons). Because the allocation is made by statute, there is no need for a separate legislative appropriation for these funds.

L. Codes and Standards

Previously, the Stafford Act only required payment of eligible costs for the repair, restoration, reconstruction, or replacement of a facility based on its pre-disaster design and "in conformity

with codes, specification, and standards...applicable at the time which the disaster occurred." Often, however, applicants found themselves having to rebuild to codes and standards applicable at the time the actual work was done, which differed from the codes and standards applicable at the time of the disaster. This resulted in significant costs for the applicant that were not eligible for reimbursement. The DRRRA amends the Stafford Act to fund work consistent with "the latest published editions or relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities that may be eligible for assistance under this Act for the purposes of protecting the health, safety, and general welfare of a facility's users against disasters." This amendment applies retroactively to "disasters declared on or after August 1, 2017, or disasters in which a cost estimate has not yet been finalized for a project, or for any project for which the finalized cost estimate is on appeal." It is not clear how this language will apply to codes and standards (such as setbacks and height restrictions) that are not based on making structures more resilient to disaster damage.

M. Closeout Incentives

The FEMA Administrator is directed to develop incentives and/or penalties to motivate state, local, or tribal governments to close out expenditures and activities on a timely basis. The DRRRA is silent on what form these incentives or penalties may take, but the provision is to be implemented by regulation, which could take several years. The overall objective of this change is to improve closeout practices and expedite disaster program closeout. This provision demonstrates Congress's concern with FEMA's inability to close disasters in a timely manner.

As FEMA moves to implement these amendments, it will be forced to make substantial changes to existing policies.

VII. Immigrant Eligibility for Disaster Assistance

A. Which disaster services are "unrestricted" available to all disaster victims no matter what their immigration status is?

- All victims of disaster should be able to get services provided by community, nonprofit, or other "non-governmental" organizations. "All victims" includes undocumented immigrants.
- Examples of such organizations include: the American Red Cross; United Way, other nonprofit agencies that help disaster victims; community organizations; and religious groups, such as churches, synagogues, mosques, and temples.
- The disaster assistance such organizations provide may include emergency shelter, food, water, first aid, clothing, and sometimes a small amount of cash to help with

immediate expenses. When a big disaster hits an area, the federal government may declare it a “disaster area.” The Federal Emergency Management Agency (FEMA) provides emergency services in places the federal government has declared disaster areas.

- FEMA provides some unrestricted emergency services. It provides short-term, noncash, emergency help to disaster victims no matter what their immigration status is.
- For example, FEMA warns people about dangers, helps them leave dangerous places, and searches for lost people and rescues them.
- FEMA also provides transportation, emergency medical care, crisis counseling, and emergency shelter to whomever needs them. And it provides emergency food, water, medicine, and other supplies to meet disaster victims’ basic needs.
- State and local government agencies also help victims of disaster. Usually, the noncash emergency help they provide immediately after a disaster is available to all disaster victims no matter what their immigration status is.

B. Which disaster services are “restricted” — available only to U.S. citizens and immigrants who are “qualified aliens”?

The federal government sometimes also provides cash assistance and longer-term help to disaster victims. This help usually is restricted. Restricted services are available only to U.S. citizens and “qualified aliens” (people in certain immigration categories who are in the U.S. lawfully).

Examples of restricted services include:

- FEMA’s “Individuals and Households Program.” This program helps disaster victims rent temporary housing, repair and replace destroyed housing, replace possessions, and pay medical and funeral costs.
- U.S. Small Business Administration loans to repair or replace damaged homes, property, or businesses. Persons applying for these services generally must provide a Social Security number. Usually, they also must sign a declaration that says they are a “U.S. citizen,” a “noncitizen national,” or a “qualified alien.”

a. Who are “qualified aliens”?

1. Lawful permanent residents (people who have “green cards”)
2. Refugees, asylees, or persons granted “withholding of removal/ deportation”
3. Persons paroled into the U.S. for at least one year
4. Cuban or Haitian entrants
5. Certain victims of domestic violence. Victims of trafficking, although not “qualified aliens,” are eligible for services in the same manner as refugees.

C. What if some family members are U.S. citizens or “qualified aliens” and others are not?

Many families have members with different immigration statuses. For example, in some families the parents are undocumented and some or all of the children are U.S. citizens. In such families all members may receive unrestricted disaster services. But in these families only the members who are U.S. citizens or “qualified aliens” may receive restricted disaster services.

For example, undocumented parents living with their U.S. citizen children who are under age 18 may apply on behalf of those children for restricted FEMA benefits, such as cash assistance through the Individuals and Households Program.

Undocumented parents who apply for restricted services on behalf of their minor U.S. citizen children generally must provide the children’s Social Security numbers.

The parents should not be required to provide their own Social Security numbers. They should not be required to provide any information or sign any documents about their own immigration status.

D. What if an immigrant has lost identification or other documents and has trouble proving lawful status or identity?

- It is common and understandable for people to lose documents when disasters strike. Fire, water, and wind can destroy documents. People evacuated quickly from a danger zone may not have time to gather their documents.
- Agencies that provide disaster services understand this. Often they will relax normal application requirements about proving citizenship, immigration status, or identity.

Immigrants who apply or ask for help after a disaster should describe their situation. If they lost or left their documents behind when the disaster hit, they should explain this to any agency official who asks for their documents.

E. Public Charge Facts

On Aug. 14, 2019, DHS published the Final Rule related to the public charge ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act. The rule is effective on Oct. 15, 2019. For more information, see the [Final Rule on Public Charge Information page](#).

Under Section 212(a)(4) of the Immigration and Nationality Act (INA), an individual seeking admission to the United States or seeking to adjust status to permanent resident (obtaining a green card) is inadmissible if the individual "at the time of application for admission or adjustment of status, is likely at any time to become a public charge." If an individual is inadmissible, admission to the United States or adjustment of status will not be granted.

Immigration and welfare laws have generated some concern about whether a noncitizen may face adverse immigration consequences for having received federal, state, or local public benefits. Some noncitizens and their families are eligible for public benefits – including disaster relief, treatment of communicable diseases, immunizations, and children’s nutrition and health care programs – without being found to be a public charge.

Under the agency guidance, non-cash benefits and special-purpose cash benefits that are not intended for income maintenance are not subject to public charge consideration. Such benefits include disaster relief.

PART II: OTHER TYPES OF DISASTER ASSISTANCE

A. Food Assistance

a. Disaster Supplemental Nutrition Assistance Program (D-SNAP)

i. Program Description

The Disaster Supplemental Nutrition Assistance Program (D-SNAP) gives food assistance to low-income households with food loss or damage caused by a natural disaster.

The U.S. Department of Agriculture's Food and Nutrition Service (USDA FNS) must approve states to operate D-SNAP in a disaster area. The President must declare Individual Assistance for the disaster area and your state must request FNS approval to operate D-SNAP.

If approved for D-SNAP benefits, you will get an Electronic Benefits Transfer (EBT) card to access them. You use it just like a debit card to buy food at most local grocery stores.

ii. General Program Requirements

Because of the unique needs of disaster survivors, D-SNAP uses different standards than normal SNAP. If you would not normally qualify for SNAP, you may qualify for D-SNAP if you had one of the disaster-related expenses below:

- Home or business repairs
- Temporary shelter expenses
- Evacuation or relocation expenses
- Home or business protection

- Disaster-related personal injury, including funeral expenses
- Lost or no access to income due to the disaster, including reduced, terminated, or delayed receipt of income, for a large part of the benefit period
- In some cases, food loss after a disaster like flooding or power outages

If you're a current SNAP client, you can request a supplement when your state operates a D-SNAP if you meet the conditions below:

- You currently get benefits that are less than the monthly maximum, and
- You have losses from the disaster.

The supplement brings your benefits up to the maximum for your household size. This way benefits are equal between D-SNAP and SNAP households after a disaster.

Current SNAP clients may also request replacement benefits for food that was lost in the disaster and bought with SNAP benefits. Just contact your local office.

iii. **Application Process**

As a disaster survivor, you may apply for D-SNAP benefits at special sites in your community. Before the program begins, state agencies release information through local media and press. This can help you learn the location of application sites, their days of operation, and the eligibility requirements.

You can also view the [SNAP state directory](#) to call for other benefit details

B. Disaster Unemployment Assistance

a. Disaster Unemployment Assistance (DUA) Overview

The Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1974, as amended, authorizes the President to provide benefit assistance to individuals unemployed as a direct result of a major disaster. The U.S. Department of Labor oversees the DUA program and coordinates with the Federal Emergency Management Agency (FEMA), to provide the funds to the state UI agencies for payment of DUA benefits and payment of state administration costs under agreements with the Secretary of Labor. This program works as follows:

1. The Governor must request assistance.
2. The President of the United States approves assistance.
3. A signed agreement must be in effect prior to any action being taken.

4. After a disaster is declared, an official announcement regarding the availability of Disaster Unemployment Assistance funds must be made by the state employment security agency.

b. Purpose

Disaster Unemployment Assistance provides financial assistance to individuals whose employment or self-employment has been lost or interrupted as a direct result of a major disaster and who are not eligible for regular unemployment insurance benefits.

c. Eligibility

When a major disaster has been declared by the President, DUA is generally available to any unemployed worker or self-employed individual who lived, worked, or was scheduled to work in the disaster area at the time of the disaster; and due to the disaster:

- no longer has a job or a place to work; or
- cannot reach the place of work; or
- cannot work due to damage to the place of work; or
- cannot work because of an injury caused by the disaster.

An individual who becomes the head of household and is seeking work because the former head of household died as a result of the disaster may also qualify for DUA Benefits.

d. Benefits

DUA benefits are payable to individuals (whose unemployment continues to be a result of the major disaster) only for weeks of unemployment in the Disaster Assistance Period (DAP). The DAP begins with the first day of the week following the date the major disaster began and continues for up to 26 weeks after the date the disaster was declared by the President.

The maximum weekly benefit amount payable is determined under the provisions of the state law for unemployment compensation in the state where the disaster occurred. However, the minimum weekly benefit amount payable is half (50%) of the average benefit amount in the state.

e. Filing a Claim

All eligible individuals have 30 days from the announcement date to file a claim for Disaster Unemployment Assistance. If the date of separation is later than the announcement date, state law will apply.

The disaster period is the 26-week period beginning with the first week following the date the major disaster began and ending with the 26th week subsequent to the date the major disaster was declared.

Depending on the date of the declaration, it is possible for individuals to receive more than 26 weeks of benefits.

An individual must exhaust all entitlement (Reemployment Assistance, Emergency Unemployment Compensation) prior to being eligible for Disaster Unemployment Assistance. A claimant who is disqualified from receiving regular reemployment benefits may be entitled to Disaster Unemployment Assistance.

The Disaster Unemployment Assistance entitlement will be calculated with a base period of the most recent tax year that ended prior to the individual's unemployment that was a direct result of a disaster.

For any week that the claimant's earnings are in excess of the calculated weekly benefit amount, the individual receives no payment for the week.

f. Appeals Information

The claimant will have 60 days to appeal a determination or redetermination.

All Disaster Unemployment Assistance appeals will be decided within 30 days of receipt.

The claimant will have 15 days to appeal the referee's decision to the Regional Administrator.

The Regional Administrator will have 45 days to obtain the records and issue a decision.

The decision by the Regional Administrator must be issued within 90 days after the day on which the claimant's original decision was received by the state agency.

g. Aliens

Aliens may receive Disaster Unemployment Assistance benefits if they meet the "able and available" criteria by state law, Aliens must be "able and available" for work and authorized by Immigration and Naturalization Service to work in the United States.

h. How to Apply

In Florida, survivors may apply for disaster unemployment assistance through the Department of Economic Opportunity's application portal at:

<https://connect.myflorida.com/Claimant/Core/Login.aspx>

Applicants must provide the following information to complete the application:

- Social Security number.
- Alien registration number and expiration date (if applicable).
- Name and address of your last employer.
- If you worked in another state during the past two years, have the name and address of the out-of-state employer.
- If self-employed and have proof of self-employment for the past two years. (For example, W-2 statements, state or federal tax returns, bank records of accounts, statement from a bank showing your business account, or a copy of title or deed to a business property.)
- If you were scheduled to work but could not work due to the disaster, you must have the name and address of the employer and the date you were scheduled to work.

In the event of a disaster, the affected state will publish announcements about the availability of Disaster Unemployment Assistance.

Individuals who have moved or have been evacuated to another state should contact the affected state for claim filing instructions. Individuals can also contact the [State Unemployment Insurance agency](#) in the state where they are currently residing for claim filing assistance.

C. Florida Low-Income Home Energy Assistance Program (LIHEAP)

a. Program Description

Florida's Low-Income Home Energy Assistance Program provides grants to local governments and non-profit agencies to assist eligible low-income Florida households in meeting the costs of home heating and cooling. The majority of the funds are used for utility payment assistance. The Low-Income Home Energy Assistance Program can assist customers pay their home energy expenses. The program has three categories of assistance: home energy assistance, crisis assistance, and weather related or supply shortage energy crisis assistance. Each category has unique requirements.

b. Program Requirements

In order to qualify for this benefit program, you must be a resident of the state of Florida and you must need financial assistance for home energy costs.

In order to qualify, you must have an annual household income (before taxes) that is less than or equal to the following amounts:

Household Size*	Maximum Income Level (Per Year)
1	18,735
2	25,365
3	31,995
4	38,625
5	45,255
6	51,885
7	58,515

For households with more than seven people, add \$6,630 per additional person. Always check with the appropriate managing agency to ensure the most accurate guidelines.

A person who participates or has family members who participate in certain other benefit programs, such as the Supplemental Nutrition Assistance Program (SNAP), Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) or certain needs-tested Veterans benefits may be automatically eligible.

c. Application

To get an application and to find out how and where to apply for help, [contact your local LIHEAP provider](#). Look for the county in which you live- the agency's name, address and telephone number will be located below the name of the county. Call that agency and they will help you with the application process. For more information, please visit the [LIHEAP homepage](#).

D. CDBG-DR

HUD provides flexible grants to help cities, counties, and States recover from Presidentially declared disasters, especially in low-income areas, subject to availability of supplemental appropriations. In response to Presidentially declared disasters, Congress may appropriate additional funding for the Community Development Block Grant (CDBG) Program as Disaster Recovery grants to rebuild the affected areas and provide crucial seed money to start the recovery process. Since CDBG Disaster Recovery (CDBG-DR) assistance may fund a broad range of recovery activities, HUD can help communities and neighborhoods that otherwise

might not recover due to limited resources.

PART III: OTHER LEGAL ISSUES RELATED TO DISASTERS

I. 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 the tenant 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, the landlord must then file an action for possession in the county court where the property is located. The landlord 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.

a. 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.

b. 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

a. Landlord's Responsibilities

Florida Statute 83.51 describes the landlord's obligation to maintain the premises. These include:

- i. 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.
- ii. 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 ii) may be modified in writing in the case of single family homes or duplexes.

b. Tenant's Responsibilities

The tenant has a duty to keep the premises clean and sanitary, and to repair any damage caused by the tenant's 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 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 the tenant's rental unit may find that the action constitutes a lease violation. However, under the terms of Florida Statute § 83.56(2)(b), the tenant should be sent a notice giving the tenant 7 days in which to correct the violation before any eviction action could proceed.

I. Important FAQs Related To HUD/Section 8 Tenants After a Disaster

a. What if I have to or want to leave my home?

If displaced in an emergency, renters are responsible for telling the owner and/or the owner's representative of their temporary housing location and their intentions during and after the emergency or disaster. If you have a new, temporary address or telephone number, you should provide it to the owner or agent of the development from where you were displaced.

If a property's rental office has to be vacated, the owner should publish where he or she can be contacted and should regularly inform residents as to the progress of making repairs and when they might re-occupy their residence.

b. What if I cannot access my possessions due to potentially dangerous conditions?

If renters do not have ready access to their possessions, owners are responsible for securing the property to the best of their ability immediately after the emergency, and to protect the personal property of the renter. If you have renter's insurance, contact your insurance agent for any coverage on your personal property.

c. Can the landlord dispose of my personal property?

Disposal of any personal property must be done in accordance with Florida law. Additionally, owners may take action to terminate a lease and dispose of personal property only in accordance with Florida law when displaced renters indicate they will not return or fail to respond to the owner's notice.

d. Do I have to apply for FEMA?

Those impacted by the disaster must apply with FEMA for disaster assistance, receive an application number, and obtain a letter of eligibility that describes the type of eligibility. To qualify for many disaster relief or assistance programs, you must have been certified by FEMA as eligible. However, residents displaced by a Presidentially Declared Disaster have a right to return regardless of whether they registered with FEMA or not. Usually, applicants for individual assistance only have sixty days from the date of the disaster declaration to apply and may do so at a Disaster Recovery Center, online at [disasterassistance.gov](https://www.disasterassistance.gov) or by calling 1-800-621-3362 from 7 AM to 11 PM ET, 7 days a week. TTY 1-800-745-0243. If denied by FEMA, appeals are usually considered within sixty days of the denial.

e. What if the property is damaged?

Under Florida law, landlords cannot evict you because the unit is damaged or needs repair. If the home is completely damaged, you can ask the owner to have HUD temporarily transfer the rental assistance for your unit to another home while repairs are being made. If a HUD property is destroyed, condemned, or substantially damaged and its subsidies are transferred to another complex, then the current tenants have the right to move to the new property.

f. What if there is a waitlist for HUD housing?

Displaced residents may be moved to the top of the waitlist in HUD 221(d) and 236 projects for temporary or permanent rental housing as long as the residents are displaced and are FEMA certified as disaster victims. This preference is only available after a disaster has been declared by the President. The disaster-displaced resident is required to provide their FEMA certification to qualify for priority on the waiting list and must also be eligible for the unit (cannot be over- or under-housed).

When displaced residents secure temporary housing using this preference rule and they decide to remain in the unit and not return to the unit which they occupied at the time of the disaster they are considered permanently housed. They lose their right to return to the unit they occupied at the time of the disaster when it is repaired, and they are no longer afforded any preference.

g. What if multiple displaced families want to stay in the same apartment?

HUD will allow multiple occupants who were displaced to live in the same apartment unit provided it does not create a health and safety problem. Only FEMA-certified displaced residents can move in with families and friends occupying HUD assisted units on a temporary basis, provided that the host household obtains the landlord's approval.

h. What if I wish to move in with another displaced individual/family, not eligible for Section 8, into a Section 8 unit?

If a current, eligible family chooses to allow a non-eligible, but FEMA-certified individual or family to move into the unit on a short-term basis, the non-eligible family is considered a guest. A multifamily project owner may allow the eligible family to house the guest(s) for a limited period (e.g., 90 days) without interruption of the subsidy. However, the current, eligible family must remain in the home for the continuation of the Section 8 subsidy. As a condition of approval, the guest must sign a lease addendum. Should the eligible family move out, the guest must vacate also.

J. Evictions of Current Tenants

Owners are encouraged not to evict residents who have not returned to their units in the impacted areas after the units have been repaired if the resident has a reasonable basis for not returning (health, loss of income, loss of personal property like furniture, etc.). Once an apartment is repaired and ready for occupancy, Owners may hold the vacant units off the market for a reasonable time as long as the rent is current. Owners must stay in contact with displaced residents and keep them informed of the date they can return to their units. However, if a displaced resident moves from a shelter or from temporary housing to other permanent housing, the owner is free to rent the unit.

K. Use of Community Space

Owners are encouraged to allow community space, kitchens, restrooms and other facilities to be used as shelters or disaster recovery related activities. However, use of these areas should be balanced to not overly disturb current residents or significantly interfere with the use by current residents.

II. 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.² After a 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 home 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. Perform a “door-to-door” or “site” assessment if damage may be less visible and time permits.³

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.⁴

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

²*Orange County issues mandatory evacuation for mobile home residents.* Orlando Weekly. Monivette Cordeiro. Sept. 2017.
<https://www.orlandoweekly.com/Blogs/archives/2017/09/08/orange-county-issues-mandatory-evacuation-for-mobile-home-residents>.

³*Typical Damage and Impact Assessment Methods.* Damage Assessment Operations Manual. FEMA. April 5, 2016. pp. 70-71.
<https://www.fema.gov/media-library-data/1459972926996-a31eb90a2741e86699ef34ce2069663a/PDAManualFinal6.pdf>.

⁴*See Damage Assessment Category Guidelines.* Recovery Guide. FEMA. 2016.
<https://www.floridadisaster.org/globalassets/importedpdfs/damage-assessment-category-guidelines-fema-2016.pdf>

individuals will not be comfortable going there.⁵

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.⁶

5. Advocate for the Right of Return

Regardless of the temporary housing arrangements that are made, be sure to advocate for the rights of mobile home residents to return to their communities. Advocate for “one for one” replacement of mobile homes (see below).⁷

C. Key Legal Issues Facing Mobile Home Residents Post Disaster

The Florida Mobile Home Act, F.S. § 723.002, et seq., protects owners of mobile homes who rent a lot in a mobile home park lot in which 10 or more lots are offered for rent. It does not cover those who live in RVs or rent mobile homes.

The following are answers to some of the questions that often arise after a hurricane:

a. 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.⁸

b. What happens if a client rents the mobile home and the mobile home lot?

That person is covered under the Florida Residential Landlord and Tenant Act.⁹

⁵ See, e.g., *PCPD uses bikes to check on resident post Hurricane Michael*. WJHG Newschannel 7. Megan Bell. Nov. 2018.

<https://www.wjhg.com/content/news/PCPD-turns-to-bikes-to-check-on-residents-post-Hurricane-Michael-500094662.html>.

⁶ See, e.g., *Fact Sheet: FEMA Speaks Your Language*. DR-4280-4283 FL FS 005. FEMA. Nov. 2016. <https://www.fema.gov/disaster/4280-4283/updates/fact-sheet-fema-speaks-your-language>.

⁷ See *Re: Public Comments on the Draft 2018 State of Florida CDBG-DR Action Plan*. Natalie M. Maxwell and Patrice Paldino. May 2018.

<https://static1.squarespace.com/static/54179ca4e4b0b0c7bc710d3d/t/5af0962503ce64b15ce42c6b/1525716517535/HUG+CDBG-DR+Public+Comments.pdf>.

⁸ Fla. Stat. § 723.003(8)

⁹ Fla. Stat. § 723.002(1)

c. If the mobile home is destroyed, does the owner of a mobile home still have to pay lot rent?

If the owner rents the land upon which the mobile home was placed, s/he is obligated to pay rent in order to maintain possession of the lot.¹⁰

d. 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 as follows:

- 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.).¹¹

e. What happens if the mobile home owner is unable to remove 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 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.¹²

However, the one for one replacement program requires collaboration/coordination between the park owner, home owner, 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 park.

f. What kind of benefits will FEMA provide mobile home owners?

After a mobile home owner applies for FEMA benefits, s/he 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 s/he may have regarding the value of his/her

¹⁰See *Mobile Home Natural Disaster in Florida & FEMA*. Florida Anchor & Barrier Company. 2018. <https://floridaanchorandbarrier.com/2018/10/09/mobile-home-natural-disasters-in-florida-fema/>.

¹¹Fla. Stat. § 723.022-.023

¹² 24 CFR § 42.375

losses. These photos and information may be crucial if the mobile home owner needs to file an appeal.¹³

In most cases, the FEMA agent will assess the cost of repairs and provide the mobile homeowner 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.”¹⁴ 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.¹⁵

g. What if the person who resides in the mobile home is leasing the mobile home?

If the resident(s) of the mobile home rents the mobile home, s/he is classified as a renter. The mobile home “tenant” is entitled to receive funds for loss of personal property, rental assistance, and other benefits which may be deemed necessary.¹⁶ When the mobile home is being leased, the owner of the mobile home is not entitled to certain 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 may want to appeal to FEMA to reclassify the mobile home “tenant” as a mobile home owner.

¹³ *Individual Disaster Assistance*. FEMA. April 2019. <https://www.fema.gov/individual-disaster-assistance>.

¹⁴ See *Mobile Home Residents: Frequently Asked Questions After A Natural Disaster*. Legal Services of Greater Miami, Inc. Sept. 2017. <https://static1.squarespace.com/static/54179ca4e4b0b0c7bc710d3d/t/59bc8e8ef14aa122fc66da64/1505529487029/Mobile+Homeowners+FAQ+After+Hurricane+Legal+Services.pdf>.

¹⁵As 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.

¹⁶ See, e.g., *FEMA Benefits for Immigrants and Tenants*. FEMA Benefits for Immigrants and Tenants. North Carolina Justice Center. Sept. 2018. http://www.ncfhp.org/wp-content/uploads/2018/09/FEMA-BENEFITS-FOR-IMMIGRANTS-AND-TENANTS-English-September-20181_0.pdf.

D. Recertification And Long-Term Housing Issues

a. Recertification

Individuals who receive temporary housing in the form of FEMA travel trailers or mobile homes are required to recertify their status typically every 30 days. The recertification process involves verification of their continued eligibility as well as their long-term housing plans. Individuals who fail to recertify on a timely basis are subject to termination of their temporary housing benefits. Advocates should remind FEMA recipients of the need to meet regularly with their FEMA housing workers.¹⁷

b. The FEMA Sales Program

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).¹⁸

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.¹⁹ 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.

¹⁷*Exit Strategy. State Disaster Housing Planning.* Florida Division of Emergency Management. May 2012. <https://www.floridadisaster.org/globalassets/importedpdfs/state-strategy-may-2012-final.pdf>

¹⁸42 U.S.C. 5174(d)(2)(A)

¹⁹ *Disposing of TTHUs through Sales to Occupants and Donations. Individual Assistance Program and Policy Guide.* March 2019. pp.118-121. <https://www.fema.gov/media-library-data/1551713430046-1abf12182d2d5e622d16accb37c4d163/IAPPG.pdf>.

When the one-year period expires, the non-profits are allowed to transfer ownership of the mobile homes directly to the disaster victims.²⁰

E. 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 look out for any proposed change in zoning applications. 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.²¹ 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.

III. 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

a. Definitions

Florida law defines a home solicitation sale as a sale, lease, or rental of consumer goods or services with a purchase price exceeding \$25.00, including all interest, service charges, finance charges, postage, freight, insurance and service or handling charges under single or multiple contracts made pursuant to an installment contract, a loan agreement, other evidence of indebtedness, or a cash transaction in which:

1. The seller or person acting for the seller engages in a personal solicitation of the sale, lease, or rental at a place other than the seller’s fixed location business where goods or services are offered or exhibited for sale, lease, or rental. F.S. § 501.021(1)(a); and
2. The buyer's agreement or offer to purchase is given to the seller and the sale, lease, or rental is consummated at a place other than at the seller's fixed location

²⁰ *Id.* at 123.

²¹ See also *DeFalco v. City of Hallandale Beach*, 18 So.3d 1126 (Fla. 4th DCA 2009) (municipal mobile home park owner could evict residents without conducting a survey of adequate alternative housing when not taking official action such as rezoning, but rather acting in its proprietary capacity.)

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).

The circumstances surrounding a personal solicitation are strictly construed. For example, a lending agreement between a buyer and a lender for the purpose of financing a home improvement or repair contract solicited in-person by a seller, without evidence of conspiracy between the lender and seller, where the lender does not engage in home solicitation, is not subject to the Florida Home Solicitation Sales Act. *Lankhorst v. Independent Sav. Plan Co.*, 39 F.Supp.3d 1359 (M.D. Fla. 2014).

b. 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, pursuant to F.S. § 501.201, *et seq.*; the advocate should examine each case for possible dual violations. F.S. § 501.213; *see, e.g., JDI Holdings, LLC v. Jet Management, Inc.*, 732 F.Supp.2d 1205, 1234 (N.D. Fla. 2010).

c. Checklist

- Did the seller have a permit? F.S. § 501.022(1)(a). Permits are obtained from the Clerk of the Circuit Court. F.S. § 501.022(2).
- Does notice of the buyer's right to cancel appear on every note or other evidence of indebtedness given pursuant to the sale? F. S. § 501.025.
- Is the notice of the buyer's right to cancel conspicuous? F.S. § 501.031(2)(a).
- 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), 501.041.

- 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.
- Did the seller misrepresent the terms and conditions of the sale, lease or rental? F.S. § 501.047(1).
- Did the seller misrepresent an affiliation with the parent company or sponsor? F.S. § 501.047(2).
- 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).
- Did the seller indicate that the agreement to purchase, lease or rent goods or services was non-cancelable? F.S. § 501.047(4).
- What work or goods were actually promised? Are the specifications contained in the contract complete?

d. 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. (Federal holidays are listed at 5 U.S.C. § 6103).

e. Getting the Down Payment Back

Florida law provides the following protections for a buyer who cancels: Within 10 days after a home solicitation sale has been canceled or an offer to purchase revoked, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness. If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement. Until the seller has complied with the obligations imposed by this section, the buyer may retain possession of goods delivered to her or him by the seller and has a lien on the goods in her or his possession or control for any recovery to which she or he is entitled. F.S. § 501.041.

f. If the Seller Does Not Come to Get the Goods

Upon demand, the buyer must return the goods to the seller within a reasonable time. The buyer is not obligated to tender the goods at any place other than the buyer's

residence. If the seller fails to demand possession of the goods within a reasonable time (40 days is considered reasonable), the goods become the property of the buyer without further obligation to pay for them. The buyer must care for the goods for a reasonable time. F.S. § 501.045.

g. 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.

h. Penalties

Violations of the Florida Home Solicitation Sales Act are generally first-degree misdemeanors. A subsequent offense can be considered a third-degree felony. F.S. § 501.055.

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 boldface 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); see *also Donnelly v. Mustang Pools, Inc.*, 374 N.Y.S. 2d 967, 972-3 (1975).
- 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 Sales 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 the buyer's right to cancel. 16 C.F.R. § 429.0(a)(3).
7. There is no private cause of action under the FTC rule. Although, state law not inconsistent with the rule may provide for such a remedy.²²

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.²³

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" (defined under F.S. § 520.61(14)), i.e., any person other than a bona fide employee of the owner who enters into two or more contracts per year for more than \$500, 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

²²See, e.g., *United Consumer Financial Services Co. v. Carbo*, 410 N.J. Super. 280, 306 (N.J. Super. Ct., App. Div. 2009).

²³15 U.S.C. § 1666

6. A home improvement contractor cannot prevail in a foreclosure suit if the contractor fails to obtain a signed completion certificate for repairs. *Gissendaner v. Rich*, 365 So.2d 454 (1st DCA 1978); F.S. § 520.81(1).
7. However, a contract that does not create a security interest does not fall within the purview of the “Home Improvement Sales and Finance Act.” *Goldsten v. Betty Ginsburg Interior Design, Inc.*, 519 So.2d 645 (4th DCA 1987).
8. 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.
9. The FTC Holder in Due Course Rule (16 C.F.R. Part 433) is similar to F.S. § 520.88(4). 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 of 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, 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(c),(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 and must first use any qualifying dispute resolution procedure which the warrantor has established. 15 U.S.C. § 2310(a)(3)(i),(e).
4. Violations of the Act include:

- a. The failure to honor written or implied warranties. 15 U.S.C. § 2304(a)(1),(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),(d) (door-to-door sellers are specifically obligated to comply with this requirement);
 - 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. Costs and attorney's fees may be awarded to a prevailing consumer. 15 U.S.C. § 310(d)(1),(2).

G. Common Law and Other Statutory Claims

1. Additional implied and express warranty claims (quality of work, materials)

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

2. Fraud

Fraud must be proved by clear and convincing evidence of: (a) misrepresentation or omission of material fact made with the intent to deceive and to induce reliance, (b) justifiable reliance; and (c) damages. The remedy is rescission and cancellation of the contract and/or damages. See *Johnson v. Davis*, 480 So.2d 625, 627 (Fla. 1985).

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. *Fotomat Corp. of Florida v. Chanda*, 464 So.2d 626 (Fla. 5th DCA 1985); *Tropical Ford, Inc. v. Major*, 882 So.2d 476, 479 (Fla. 5th DCA 2004). 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. F.S. § 672.302.

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. See *BankAtlantic v. Coast to Coast Contractors, Inc.*, 22 F.Supp.2d 1354, 1358 (S.D. Fla. 1998) (defendants served as principals of home improvement contracting companies that knowingly submitted fraudulent loan applications to plaintiff bank in concert with homeowners and were found liable under RICO).

6. Florida's Civil Remedies for Criminal Practices Act

F.S. §772.11(1) requires clear and convincing proof of a pattern of criminal activity and provides for treble damages, attorney fees and costs. *Haddad v. Cura*, 674 So.2d 168 (Fla. 3d DCA 1996). Chapter 895, Florida Statutes, is Florida's RICO Act, which is applicable to cases involving racketeering and illegal debts, and provides injunctive relief.

7. Fraudulent Practices

The following crimes listed under Chapter 817, Florida Statutes, 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

Chapter 687, Florida Statutes, provides that a loan is usurious when the interest charged exceeds the lawful rate. Under F.S. § 687.02(1), 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," 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 is that 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. *Dixon v. Sharp*, 276 So.2d 817 (Fla. 1973); see also *Growth Leasing, Ltd. V. Gulfview Advertiser, Inc.*, 448 So.2d 1225, 1225 (Fla. 2d DCA 1984) (the substance of a transaction determines whether it is usurious and parol evidence is admissible to determine substance).

Usury is unlawful in Florida, and the interest portion of a usurious contract is unenforceable. Chapter 687, Florida Statutes, et seq. 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 Act (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. See 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 Corp.*, 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”²⁴, then any error with regard to that disclosure, unless within the \$5.00 or \$7.50 tolerance, depending on the size of the

²⁴ 12 C.F.R. 226.23(a)(3) n. 48

transaction and the finance charge²⁵, 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 (Bankr. 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.

IV. Homeowners Insurance

A. Introduction

This section 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, we 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

²⁵ 12 C.F.R. 226.18(e) n. 42

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 provide 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 the student's 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 (often referred to as “all risk policies”), 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.2d 1386 (Fla. 3d DCA 1988) (noting that a jury question existed as to whether human negligence or natural forces was the efficient proximate cause of the collapse of sea wall).
- b. Theft in or from 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. However, although slow leaks are not covered, most policies do cover resulting water damage from a plumbing or other household system, including the cost of tearing out any part of the property necessary to replace the leaking system, but the system itself is not covered.
- 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/lightning.

- 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). Also see *Fla. Windstorm Underwriting v. Gajwani*, 934 So.2d 501 (Fla. 3d DCA 2005) (policy excluded coverage for wind-driven rain damage where rain entered through window and door openings, and there was no evidence of entry of rain through opening in roof or walls caused by the hurricane.).
- 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 574 (Wash. Ct. App. 1979) (sewer backup causing damage is not a covered event). Compare with *Cheetham v. Southern Oak Ins. Co.*, 114 So.3d 257 (Fla. 3d DCA 2013) (broken

pipe which caused water emanating from plumbing system of residence to back up into residence, which was designed to carry waste water away from residence, and located on the premises, was part of the plumbing system, and thus exception to deterioration exclusion for accidental discharge of water from within a plumbing system caused by deterioration applied.).

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 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). Compare with *State Farm Fire and Cas. Co. v. Castillo*, 829 So.2d 242 (Fla. 3d DCA 2002) (damage to walls and floors from blasting was excluded from coverage for "earth movements", even if loss was caused by man-made event; unambiguous language of lead-in clause for earth movements exclusion stated that coverage was excluded regardless of the cause of the excluded event.). An exception to the earth movement exclusion applies where the policy has a sinkhole collapse endorsement, as to losses that are a result of sinkhole activity. See § 627.706 (every insurer shall make available coverage for sinkhole losses.).

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.²⁶ 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 and which emanated from off premises. See *Cheetham, supra*. 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

²⁶Most property insurers will provide ordinance and law coverage by way of a policy endorsement for an additional premium

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). Protecting the property after a loss from further damage, a post-loss obligation discussed below, is a condition precedent to filing suit on the policy, and failure to do so is deemed a material breach, relieving the insurer of its duties under the policy and will bar any supplemental claim for additional damage. *State Farm Florida Insurance Company v. Xirinachs*, 251 So.3d 221 (Fla. 3d DCA 2018).

Note that the insured bears the burden of proving that a claim is covered by the insurance policy; the burden of proving an exclusion to coverage is on the insurer; and if there is an exception to the exclusion, the burden returns to the insured to provide the exception and show coverage. *Divine Motel Grp., LLC v. Rockhill Ins. Co.*, 2015 WL 4095449 (M.D. Fla. July 7, 2015).

3. Causation

Often, damages can result from more than one cause, one of which is excluded in the policy and the other covered. The "Efficient Cause Doctrine" provides that, where there is a concurrence of different perils, the efficient cause, the one that set the other in motion, is the cause to which the loss is attributable for determining coverage. *Jones v. Federated National Ins. Co.*, 235 So.3d 936 (Fla. 4th^h DCA 2018). Conversely, the "Concurrent Cause Doctrine" provides that property insurance coverage may exist where an insured peril constitutes a concurrent cause of the loss even when it is not the prime or efficient cause. *Id.* However, even if there are two concurrent causes acting in concert, if the policy contains an anti-concurrent cause provision, the efficient proximate cause doctrine should be applied. *Jones, supra*, citing *Liberty Mut. Fire Ins. Co. v. Martinez*, 157 So.3d 486 (Fla. 5th DCA 2015) ("An anti-concurrent cause provision in a first party insurance policy that provides that when a covered cause and non-covered cause combine to cause a loss, all losses directly and indirectly caused by those events are excluded from coverage"). Otherwise, the Efficient Cause Doctrine, which provides coverage only if the efficient cause of the loss is covered, should be applied only if the efficient proximate cause can be identified. *Id.* Also see *Hartford Accident and Indem. Co. v. Phelps*, 294 So.2d 362 (Fla. 1st DCA 1974) (when there is a sole proximate cause of the loss that sets forth other intervening causes in motion, courts will look to the efficient proximate cause of the loss and whether it is covered under the policy.).

If damages can be identified as caused by a covered peril, versus different damages excluded under the policy, coverage should be afforded for those damages resulting from the covered peril. *Id.* Causation is generally a question for the jury. *Wallach v.*

Rosenburg, 527 So.2d 1386 (Fla. 3d DCA 1988). However, a jury may find coverage under the policy where a covered event constitutes a concurrent cause of the loss, even where the covered event is not the prime or efficient cause of the loss. *Id.* For purposes of determining the appropriate theory of recovery to apply when two or more perils converge to cause a loss and at least one of the perils is excluded from an insurance policy, and no single cause can be considered the sole or proximate cause, it is appropriate to apply the concurring cause doctrine, rather than the efficient proximate cause doctrine. *Sebo v. American Home Assurance Co., Inc.*, 208 So.3d 694 (Fla. 2016).

H. The Insured's Post-Loss Duties

In addition to establishing that a particular loss is covered, most policies contain a list of post-loss duties with which an insured must comply or potentially risk a forfeiture of coverage. These duties include giving the insurer and/or its agent prompt notice of the loss; notifying the police in case of loss by theft; protecting the property from further loss; preparing an inventory of damaged personal property showing its quantity, description and actual cash value; and submitting a signed, sworn proof of loss. As often as the insurer reasonably requires, the insured will also be required to show damaged property; provide records and documents requested and permit copies to be made; and submit to an Examination Under Oath "(EUO)" while not in the presence of any other insured. An insured's refusal to comply with a demand for a EUO can be considered a material breach of the contract which will preclude an insured from recovery under the policy. *Goldman v. State Farm Fire General Insurance Company*, 660 So.2d 300 (Fla. 4th DCA 1995) and *Stringer v. Fireman's Fund Insurance Co.*, 622 So.2d 145 (Fla. 3d 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, some Florida courts hold that 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 an EUO. *Goldman, supra*. However, the Fifth District rejected this position, stating that *Goldman* ultimately based its holding on a finding of prejudice to the carrier, and prejudice is an issue and the carrier's burden to prove. *State Farm Mut. Auto. Ins. Co. v. Curran*, 83 So.3d 793 (Fla. 5th DCA 2011).

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.

Homeowner's policies provide coverage for direct physical loss to property as a result of a covered peril. *Ocean View Towers Ass'n, Inc. v. QBE Ins. Corp.*, 2011 WL 6754063 (S.D. Fla. Dec. 22, 2011). However, § 626.9744, Florida Statutes, requires a carrier to pay for repairs to undamaged portions of the residence needed to effectuate repairs to the damage portions (i.e. ripping out drywall to repair a broken water line inside the wall). Further, the statute provides that when a loss requires replacement of items which do not match in quality, color or size, coverage shall be afforded to make reasonable repairs or replacement of items in adjoining areas, referred to as the "matching statute." *Ocean View Towers Ass'n, Inc., supra*.

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). However, pursuant to § 627.7011, Florida Statutes, if the policy provides that the replacement cost shall be issued without holdback of any depreciation in value, whether or not the insured replaces or repairs the property, courts have found that no coverage may be held back pending repairs of the property, including costs for a general contractor's overhead and profit when necessary, contingent on the insured's actually repairing or replacing the property. *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433 (Fla. 2013).

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. In the event of a total loss to any building or structure caused by a covered peril, § 627.702, Florida Statutes, provides that the carrier's liability shall be the policy's limits. See *Ceballo v. Citizens Property Ins. Corp.*, 967 So.2d 811 (Fla. 2007) (§ 627.702, Value Policy Law, did not apply to supplemental ordinance or law coverage; insureds who received policy limits under 627.702 were not entitled to supplemental coverage absent showing they actually incurred additional loss due to ordinance or law that provided additional coverage based on percentage of policy limits.). Aside from a total loss, most policies will limit liability for any loss to the lesser of (1) the policy limits, (2) the replacement cost of the part of the property damaged with property of like kind, replacing the property to its pre-loss condition, or (3) the necessary amount actually spent to repair or replace the damaged building. *Trinidad*, 121 So.3d 433, *supra*.

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 *Drew v. Mobile USA Ins. Co.*, 920 So.2d 832 (Fla. 4th DCA 2006).

K. Appraisal

a. Appraisal Clause

Most policies contain an Appraisal Clause, which is a form of alternative dispute resolution. In the event the insured and insurer are unable to agree on the scope and cost of a covered loss, either may invoke or demand that the loss be appraised. 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.

Each party will pay its chosen appraiser, and bear the other expenses of the appraisal and umpire equally.”

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. Once invoked, appraisal is a condition precedent to the right to maintain a breach of contract action on the policy. *Wright Way Emergency Water Removal, LLC v. Mt. Hawley Ins. Co.*, No. 8:16-cv-1163-T-17MAP, 2016 WL 9526569 (M.D. Fla. July 29, 2016); *Preferred Mut. Ins. Co. v. Martinez*, 643 So.2d 1101 (Fla. 3d

DCA 1994)(holding that as with arbitration clauses, appraisal provisions are deemed to be conditions precedent to recovery under insurance policies).

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 or insured has waived their contractual appraisal rights.

b. 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. A challenge of coverage is exclusively a judicial question. *Fla. Ins. Guar. Ass'n v. Lustre*, 163 So.3d 624 (Fla. 2d DCA 2015). “However, when the insurer admits that there is a covered loss, any dispute on the amount of loss suffered is appropriate for appraisal.” *Id.* Further, in evaluating the amount of the loss, an appraiser is necessarily tasked with determining both the extent of covered damage and the amount to be paid for repairs. *Id.* When coverage is admitted but the amount and scope of the loss is disputed, appraisers are to inspect the property and determine how much is to be paid on account of a covered peril; in doing so, they are to exclude payment for a cause not covered, such as normal wear and tear, or various other designated excluded causes. *Gonzalez v. State Farm Fire and Cas. Co.*, 805 So.2d 814 (Fla. 3d DCA 2000). Also see *Levi Holding, LLC v. Scottsdale Ins. Co.*, No. 2:18-cv-361-FtM-99CM, 2018 WL 3575082 (M.D. Fla. July 25, 2018)(stating that because there is no dispute between the parties that the cause of at least some of the damage to the property is covered under the policy, the remaining dispute concerning the scope of the damage is not exclusively a judicial question and may be appropriate for appraisal.).

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. *USF & G v. Romy*, 744 So.2d 467 (Fla. 3d DCA 1999). “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.” *Id.* A corollary to this rule is that an insured must comply with the policy’s post-loss duties prior to attempting to compel appraisal. *Id.* (“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, many policies 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*, 685 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. In other words, if an insured invokes appraisal as to the amount of the loss, an insurer may deny the entire claim for lack of coverage or other policy defenses.

c. 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. 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.

d. Implied Waiver of Appraisal Right

§627.7015 provides 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. *QBE Ins. Corp. v. Dome Condo Ass’n, Inc.*, 577 F.Supp.2d 1256 (S.D.Fla. 2008). Some policies explicitly state that an insured is not required to submit to appraisal if the insurer did not notify them of their right to participate in mediation at the inception of the claim.

A party 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. 3d 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. 3d 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. An effective waiver of the right to appraisal does not require proof of prejudice. *Raymond James Financial Services, Inc. v. Saldukas*, 896 So.2d 707 (Fla. 2005). 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).

e. 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.

f. 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. 3d 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. Though, courts have questioned whether a party's attorney paid via contingency is disinterested. *Florida Ins. Guar. Ass'n v. Branco*, 148 So.3d 488 (Fla. 5th DCA 2014). 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. 3d DCA 1998). However, an appraiser's extenuated ties to a law firm along with financial incentives in relation to the appraisal award can support

disqualification of an appraiser. *Landmark American Ins. Co. v. H. Anton Richardt, DDS, PA*, No. 2:18-cv-600-FtM-29UAM, 2019 WL 2462865 (M.D. Fla. June 13, 2019).

g. Applicability of Arbitration Code

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

h. 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 affecting the merits of the decision upon the issues submitted; and (c) the award is imperfect as a matter of form, not affecting 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 umpires in the course of their 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

Upon the rendition of a judgment against an insurer and in favor of any named or omnibus insured under the policy, the insured is entitled to its reasonable attorney's fees, per §627.428, Florida Statutes. An insured's entitlement to attorney's fees is also applicable when settlement is reached prior to trial. *J.P.F.D. Investment Corp. v. United Specialty Ins. Co.*, 322 F.Supp.3d 1263 (M.D. Fla. 2018)(in order to prevent insurers from necessitating a lawsuit by withholding valid proceeds and then avoiding attorney fees through settlement, Florida courts have incorporated a confession of judgment rule into the statute providing attorney fees to an insured that obtains a judgment against an insurer, and that rule states that payment of a settlement claim is the functional equivalent of a confession of judgment or a verdict in favor of the insured). The spirit of Section 627.428 is to prevent insurers from wrongfully withholding insurance proceeds due the insured, and compelling the insured to file suit. However, the statute cannot be used as a sword, by filing suit when an insurer is attempting to pay the claim, in order to receive attorney's fees.

Likewise, 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, Florida Statutes. *Scottsdale Insurance Company v. DeSalvo*, 748 So.2d 941 (Fla. 1999). 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. Typically, appraisers are prohibited from determining an award of attorney's fees, unless stipulated to by the parties. *Turnberry Associates v. Service Station Aid, Inc.*, 651 So.2d 1173 (Fla. 1995)(parties by agreement may waive entitlement to have court decide entitlement and may confer authority with arbitrator).

M. Assignment of Benefits

In recent years, assignment of benefits (i.e. policy proceeds) executed by an insured homeowner to a contractor or water-remediation company after an insurable loss has become more and more prevalent. In theory, an insured assigns their rights under the claim to the contractor, who moves forward with repairs to prevent further damage, and then bills the insurer directly. Pursuant to longstanding case law, courts have consistently held that an insured is free to assign their post-loss benefits under a policy, and an insurers' attempts to prohibit assignments are invalid. *West Florida Grocery Co. v. Teutonia Fire Ins. Co.*, 77 So. 209 (Fla. 1917). Because of this, the number of assignments, or AOB's as they are commonly referred to, and lawsuits filed by contractors who have been assigned rights under claims has grown exponentially. Due to complaints of abuse of the practice and outright insurance fraud by these third party contractors, along with the increased amount of litigation which ultimately

causes insurance rates to rise, the Florida legislature passed AOB reform in 2019, codified in Sections 627.7152, 627.7153, and 627.422.

The new legislation provides various requirements in order to enforce an AOB, as well as pre-suit notice and demand requirements that third party contractors must comply with before filing suit against an insurer. Further, the legislation affords insurance carriers the ability to provide policies that do prohibit the assignment of benefits. Most importantly, the legislation seeks to protect unknowing homeowners from unscrupulous contractors. For the practitioner, it strongly urged to advise your client not to execute an assignment of benefits to a third party. If they do, the insured loses their rights under the policy and claim with respect to the loss at issue, as well as standing as against the insurer for the rights assigned. Rather, obtaining an estimate for repairs from a qualified, licensed contractor is strongly recommended.

V. Personal Bankruptcy Issues

Under certain circumstances, survivors of a natural disaster may deem it necessary to consider filing for bankruptcy. Below are answers to some of the most commonly asked questions regarding bankruptcy.

A. What is bankruptcy?

Bankruptcy is a legal process for an individual who owes more money than he or she is able to repay. The bankruptcy process generally culminates in the individual (“debtor”) either (1) repaying a portion of the money over time under Chapter 11, 12, or 13, or (2) having the entire debt forgiven, i.e., discharged, under Chapter 7.

B. What is a discharge in bankruptcy?

A “discharge” in bankruptcy means that the debtor is legally free and clear of any obligation to repay certain debts. Put differently, the creditor no longer has any right to collect that debt, and the debtor no longer has any obligation to repay the debt.

C. What steps need to be taken before filing for bankruptcy?

If you plan to file for bankruptcy protection, you must get credit counseling from a government-approved organization within 180 days before you file for bankruptcy. A list of approved credit counseling agencies—organized by state and judicial district—can be found on the Department of Justice’s website.²⁷ Failure to obtain credit counseling prior to filing for bankruptcy will result in dismissal of your bankruptcy case. There are, however, specific exceptions to the credit counseling requirement.²⁸

²⁷U.S. Department of Justice, List of Credit Counseling Agencies Approved Pursuant to 11 U.S.C. § 111, <https://www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111> (last visited May 1, 2019).

²⁸11 U.S.C. § 109(h).

D. What law applies to bankruptcy?

The right to file for bankruptcy is provided by federal law. All bankruptcy cases are handled in federal court. Debtors must comply with the United States Bankruptcy Code (11 U.S.C. §§ 101-1330), the Federal Rules of Bankruptcy Procedure, and the local rules of the judicial district in which the bankruptcy petition is filed.

E. Which courts in Florida handle bankruptcy?

There are three judicial districts in Florida that handle bankruptcy: United States Bankruptcy Court for the Middle District of Florida;²⁹ United States Bankruptcy Court for the Northern District of Florida;³⁰ and United States Bankruptcy Court for the Southern District of Florida.³¹

To locate the judicial district in which your county resides, you may use the following tool on the Department of Justice's website: <https://www.justice.gov/ust/locate-your-judicial-district>.

F. Do I need to be represented by an attorney in a bankruptcy proceeding?

A debtor filing an individual bankruptcy case has a right to represent himself or herself ("pro se"). Because of the complexities of bankruptcy law and the long-term consequences on the debtor and his or her possessions, use of an attorney is strongly recommended. By law, a corporation is required to have an attorney represent it in a bankruptcy proceeding.

G. Are there different types of bankruptcy?

Yes. There are several different types of bankruptcy, the most pertinent to survivors of a natural disaster are Chapters 7, 11, 12, and 13.³²

a. Chapter 7

Chapter 7 is commonly referred to as "liquidation." It requires a debtor to give up assets, which exceed certain limits called "exemptions," so that the property can be sold to pay creditors. Exceptions exist for particular debts, and liens on property may still be enforced after discharge. A debtor must be under income maximums to be eligible for this type of bankruptcy; if a debtor's income is over the eligible amount, the debtor must file bankruptcy under Chapter 13.

²⁹ <http://www.flmb.uscourts.gov/>

³⁰ <http://www.flnb.uscourts.gov/>

³¹ <https://www.flfb.uscourts.gov/>

³² United States Courts, Process – Bankruptcy Basics, <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics> (last visited May 1, 2019).

b. Chapter 11

Chapter 11 is commonly referred to as “reorganization,” and allows corporations, partnerships, and certain individuals who do not qualify under Chapter 13 to reorganize without having to liquidate all assets.

c. Chapter 12

Chapter 12 is a voluntary repayment plan for family farmers or fishermen. It is similar to chapter 13, and permits family farmers and fishermen to repay their debts over a period of time using future earnings and to discharge some debts that are not paid. This type of bankruptcy allows a family farmer or fisherman to continue business operations while this repayment plan is ongoing.

d. Chapter 13

Chapter 13 is called “debt adjustment.” Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a 3-5 year period and to discharge some debts that are not paid. Many times, individuals file a Chapter 13 bankruptcy if they are behind on their mortgage payments and need the structure of a Chapter 13 plan to make payments on the arrearage without going into foreclosure. You are eligible for Chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109.

H. How is a bankruptcy proceeding initiated?

Bankruptcy begins when a petition is filed in the bankruptcy court by an individual, husband and wife as a couple, corporation, or some other type of entity. The petition must be filed in the bankruptcy court located in the geographic area in which the debtor resides or in which the debtor has its principal place of business.

I. What needs to be included with a bankruptcy petition?

In addition to the petition, the debtor will have to file schedules (forms on which the debtor lists his or her property, secured debts, unsecured debts, exemptions, and other information) and a statement of financial affairs that provides personal information. For voluntary Chapter 7, voluntary Chapter 11, Chapter 12, and Chapter 13 cases, an itemization of the required lists, schedules, statements, and fees is available on the United States Bankruptcy Courts’ website.

³³

When filing items with the bankruptcy court, debtors should keep in mind that—unless a request for filing under seal is made—all filings are publicly available. For that reason, it is the debtor’s responsibility to blackout sensitive information such as account numbers (except the

³³United States Bankruptcy Court, Form 2000 – Required Lists, Schedules, Statements, and Fees for Voluntary Chapter 7 Case, Voluntary Chapter 11 Case, Chapter 12 Case and Chapter 13 Case, https://www.uscourts.gov/sites/default/files/form_2000.pdf (last visited May 1, 2019).

last 4 digits), dates of birth (except the year), and social security numbers (except the last 4 digits).

J. What are the filing fees for filing bankruptcy?

Filing fee amounts can change with the passage of time. It is best to consult the United States Bankruptcy Courts' website for up-to-date information regarding bankruptcy filing fees.³⁴

K. Can the court waive the bankruptcy petition filing fee?

A court may waive the filing fee in a case under Chapter 7 if the Court determines that such individual has income less than 150 percent of the income official poverty line applicable to a family of the size involved and is unable to pay that fee in installments.³⁵ For cases under Chapters 7, 11, 12, and 13, debtors may apply to pay the filing fee by installment schedule.³⁶

L. What happens after the petition is filed?

After the petition is filed under Chapter 7, the United States Trustee will appoint a trustee. In a Chapter 11, 12 or 13 bankruptcy, a trustee is not normally assigned. Once a bankruptcy case is filed, the court will issue a Notice of Bankruptcy Case, which is sent to all creditors in the case. The Notice also sets the date, time, and location of the Meeting of Creditors, referred to as a "341 Meeting."

After the petition is filed, creditors must stop all collection efforts against the debtor for a period of time, which is referred to as the "automatic stay." Thus, the automatic stay stops lawsuits, foreclosures, garnishments and all collection activity against you by your creditors for any debt which arose *before* the filing of the bankruptcy.

M. What happens at the Meeting of Creditors?

The debtor(s) must attend the Meeting of Creditors to allow the U.S. Trustee and any creditor to ask questions regarding the debtor's assets and liabilities. A debtor's failure to attend may result in the dismissal of the case.

N. How long does a bankruptcy filing remain on a debtor's credit report?

A bankruptcy case filing may remain on a debtor's credit report for a maximum of ten years under the provisions of the Fair Credit Reporting Act regardless of the disposition of the case.³⁷

The court overseeing the bankruptcy proceeding has no jurisdiction over the credit reporting

³⁴United States Courts, Bankruptcy Court Miscellaneous Fee Schedule, <https://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule> (last visited May 1, 2019).

³⁵ 28 U.S.C. § 1930(f)(1); United States Courts, Form 103B – Application to Have the Chapter 7 Filing Fee Waived, https://www.uscourts.gov/sites/default/files/form_b103b.pdf (last visited May 1, 2019).

³⁶ United States Courts, Form 103A – Application for Individuals to Pay the Filing Fee in Installments https://www.uscourts.gov/sites/default/files/form_b103a.pdf (last visited May 1, 2019).

³⁷ 15 U.S.C. § 1681c(a)(1).

agencies. Accordingly, the debtor must directly contact the credit reporting agencies to discuss information on a credit report.

O. What debts are not discharged in bankruptcy?

For each chapter of bankruptcy, different debts are dischargeable. The Bankruptcy Code is the best source to determine which debts are and are not dischargeable for each particular type of bankruptcy. While there are exceptions, in general, the most common obligations that are not dischargeable include: (1) money owed to a spouse, former spouse, or child of the debtor (*i.e.*, alimony and child support), (2) student/educational loans, (3) damages resulting from debtor's driving under the influence, (4) court-ordered restitution or criminal fines included in the sentence for conviction of a crime, (5) debts incurred by fraud, (6) damages for willful and malicious injury to someone else's person or property, and (7) certain taxes and tax penalties.

³⁸

P. Is student loan debt dischargeable in bankruptcy?

Student loans are dischargeable only upon a showing of "undue hardship."³⁹ However, the "undue hardship" standard is very difficult to meet. To read more about discharging student loans after declaring bankruptcy, visit the Department of Education's website.^{40, 41} To read more about what to do when you cannot repay your student loans, visit the Department of Education's website.^{42, 43}

Q. What impact does bankruptcy have on co-signers?

If someone has co-signed a loan with you and you subsequently file for bankruptcy, the co-signer may have to pay your debt.

R. How do I find an attorney to assist me in filing for bankruptcy?

If you wish to retain an attorney, the Florida Bar Lawyer Referral Service is a public service designed for consumers to connect with trusted, verified attorneys who are licensed to practice law in Florida.⁴⁴

S. Is there a place to get free or inexpensive legal advice prior to filing for bankruptcy?

Below are some resources available for those interested in learning about qualifications for receiving pro bono ("free") or reduced fee legal representation. Some local bar associations

³⁸ 11 U.S.C. § 523.

³⁹ 11 U.S.C. § 523(a)(8).

⁴⁰ Federal Student Aid, an Office of the U.S. Department of Education, Discharge in Bankruptcy, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation/bankruptcy> (last visited May 1, 2019).

⁴¹ Federal Student Aid, an Office of the U.S. Department of Education, Forgiveness, Cancellation and Discharge, <https://studentaid.ed.gov/sa/repay-loans/forgiveness-cancellation> (last visited May 1, 2019).

⁴² Federal Student Aid, an Office of the U.S. Department of Education, Repayment Plans, <https://studentaid.ed.gov/sa/repay-loans/understand/plans> (last visited May 1, 2019).

⁴³ Federal Student Aid, an Office of the U.S. Department of Education, Understanding Delinquency and Default, <https://studentaid.ed.gov/sa/repay-loans/default> (last visited May 1, 2019).

⁴⁴ <https://lrs.floridabar.org/>

sponsor pro se bankruptcy assistance clinics and/or provide reduced fee legal representation. Further information is available at each of the links:

- [Middle District of Florida](#)
- [Jacksonville Pro Se Bankruptcy Clinic](#)⁴⁵
- [Orlando Pro Se Bankruptcy Clinic](#)⁴⁶
- [Tampa Pro Se Bankruptcy Clinic](#)⁴⁷
- [Southern District of Florida](#)^{48, 49}
- [Northern District of Florida](#)⁵⁰

T. What are bankruptcy petition preparers?

Bankruptcy petition preparers are non-attorneys who assist debtors in preparing voluntary bankruptcy petitions and other papers in connection with bankruptcy for a fee. Bankruptcy petition preparers cannot represent you or file documents with the court on your behalf. Importantly, bankruptcy petition preparers are not authorized to practice law and cannot provide legal advice, meaning that, for example, bankruptcy petition preparers cannot tell you (1) which type of bankruptcy to file, (2) which debts or assets to list, or (3) what property to exempt.

VI. 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

⁴⁵United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division, Free Bankruptcy Resources — 2019 For People Filing Their Own Bankruptcy Cases, <http://www.flmb.uscourts.gov/faqs/documents/JacksonvilleProSec.pdf> (last visited May 1, 2019).

⁴⁶ United States Bankruptcy Court for the Middle District of Florida Bankruptcy Pro Se Assistance Clinic, Orlando Division, <http://www.flmb.uscourts.gov/faqs/documents/OrlandoProSec.pdf> (last visited May 1, 2019).

⁴⁷ United States Bankruptcy Court for the Middle District of Florida Bankruptcy Pro Se Clinic, Tampa Division, http://www.flmb.uscourts.gov/faqs/documents/TampaProSec_new.pdf (last visited May 1, 2019).

⁴⁸ United States Bankruptcy Court for the Southern District of Florida, Free Bankruptcy Clinics, <https://www.flsb.uscourts.gov/free-bankruptcy-clinics> (last visited May 1, 2019).

⁴⁹ United States Bankruptcy Court for the Southern District of Florida, Legal Assistance, <https://www.flsb.uscourts.gov/legal-assistance> (last visited May 1, 2019).

⁵⁰ United States Bankruptcy Court for the Northern District of Florida, Obtaining Legal Assistance, http://www.flnb.uscourts.gov/sites/default/files/pro_se/prose_legalassistance.pdf (last visited May 1, 2019).

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:

- a. Sharing the housing of other persons due to loss of housing;
- b. Living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
- c. Living in emergency or transitional shelters, or abandoned in hospitals;
- d. Awaiting foster care placement;
- e. 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;
- f. Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- g. 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 district decides to place the child or youth in 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 liaison⁵¹ must assist

⁵¹ 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).

unaccompanied youths with placement decisions, must consider their views, and must provide them with notice of their right to appeal. 42 U.S.C. § 11432(g)(3)(B)(iii).

2. Enrollment

The school must immediately enroll the child or youth even if s/he lacks records normally required for enrollment, such as proof of residency, medical records, previous academic records or other documentation. 42 U.S.C. § 11432(g)(3)(C)(i). If the child or youth needs to obtain immunizations, or immunization or medical records, the school district's homeless liaison is required to assist them in obtaining these. 42 U.S.C. § 11432(g)(3)(C)(iii). The public school must immediately contact the school last attended to obtain academic and other records. 42 U.S.C. § 11432(g)(3)(C)(ii).

If a dispute arises over school selection or enrollment in school, the child or youth must be immediately admitted to the school in which enrollment is sought, 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.

5. Prohibition Against Segregation

Under the McKinney-Vento Homeless Assistance Act, homelessness alone is not a sufficient reason to separate students from the mainstream school environment. 42 U.S.C. § 11431(3). States may not segregate homeless children or youth in a separate school, or in a separate program within a school, based on their homelessness.

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;
- 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:

- i. Gather reliable, valid and comprehensive information regarding homeless children and youths;
- ii. Develop and carry out the state's plan under the Act;
- iii. Collect and transmit reports to the U.S. Department of Education;
- iv. 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;

- v. Coordinate and collaborate with educators, providers of services to the homeless, local educational agency liaisons, and community organizations and groups representing the homeless; and
- vi. 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>.

3. 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

VII. Long-Term Recovery from Catastrophic Disasters

A. Introduction

In addition to emergency 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. See, e.g., Greater Impact: How Disasters Affect People of Low Socioeconomic Status. SAMHSA. July 2017.⁵² 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 ensuring 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

⁵² https://www.samhsa.gov/sites/default/files/dtac/srb-low-ses_2.pdf

simply disaster-specific applications of much broader legal and policy issues. Each of these issues could merit 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, public housing agencies 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 the multiple hurricanes of the past few decades. As is stressed throughout this part, 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 legal practitioner to the existence of the long-term issues we have historically seen, provide some overview as to identification and response and, finally, to point in the direction of addressing a solution.

B. Affordable Housing Recovery

1. Preservation of Affordable Housing Stock

Without question the most serious and fruitful long-term housing advocacy strategy for low-income households is ensuring 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. 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. See, e.g, *The*

Forecast for Recovery. Susan Milligan. Sept. 2018.⁵³

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 ensure 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 ensure that loss of affordable housing is minimized is to identify 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, affordable housing 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 multiple different sources of subsidy and few centralized databases listing subsidized housing.⁵⁴ 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” (5th ed.), available from the National Housing Law Project.

ii. State

Florida also has state subsidy programs, funded through the State

⁵³<https://www.usnews.com/news/the-report/articles/2018-09-21/hurricanes-hit-everyone-but-the-poor-have-the-hardest-time-recovering> (last visited 9/2/2019)

⁵⁴ See, e.g., <http://flhousingdata.shimberg.ufl.edu/>; <https://lihtc.huduser.gov/>

Housing Strategy Act, F.S. § 420.0001, *et seq.*, and administered by the Florida Housing Finance Corporation. The Corporation administers the principal state-financed rental program, SAIL (see F.S. § 420.5087), in a consolidated funding cycle with federal Low Income Housing Tax Credits and HOME Investment Partnerships Program 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 at Fla. Admin. 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 <http://flhousingdata.shimberg.ufl.edu> and has largely solved the difficult issue of locating preexisting subsidized housing for housing advocates in Florida.

HUD maintains a database of Project-Based Section 8 and HUD assisted multifamily properties.⁵⁵ 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 that 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

⁵⁵ https://www.hud.gov/program_offices/housing/mfh/exp/mfhdiscl

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

Rent rolls list a property's current tenants and the rent they pay. 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 HUD, can be useful in obtaining this information from the owners. Advocates and tenants can similarly apply pressure on local Public Housing Authorities to preserve the rent rolls. Housing Authority rent rolls are public records and can be requested by advocates to ensure 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 to their former communities when all necessary repairs are

completed.⁵⁶ After Hurricane Andrew, HUD issued a directive to property owners, requiring them to recognize the “right of return” of 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 recovery 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 to the status quo, just as it was 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. Experience has shown 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 tenants⁵⁷ 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 ensure that families, who may be in temporary shelters, are informed when their former residences 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

⁵⁶See, e.g., HUD Asset Management Handbook (2009). Chapter 38: Multifamily Disaster Guidance. pp. 7-8. https://www.hud.gov/sites/documents/DOC_24956.doc

⁵⁷ *Id.*

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. Ensuring 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 ensure 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 circumventing the affordable housing restrictions on their units. Owners of Project Based Section 8 developments, for example, who are committed to long-term contracts with 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 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. Advocates should be aware of any previous or ongoing disaster specific legal actions. Advocates must use the same challenges that would be available without a disaster and adapt them 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 (5th ed.).

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. HUD Housing Programs: Tenants' Rights (5th ed.) also provides necessary information regarding the legal tools available to halt attempts by Public Housing Authorities to demolish existing public housing.

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 pursued 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 statewide rebuilding effort was spearheaded by Governor Bush's Hurricane Housing Working Group, working out of the Governor's Office.⁵⁸

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.⁵⁹

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, in addition to the elderly and the disabled. Many of these households are the workforce for vital industries - tourism, agriculture, personal services. Therefore, providing diverse types of housing assistance for these families is a significant challenge in the

⁵⁸*Recommendations to Assist in Florida's Long Term Housing Recovery Efforts*. Hurricane Housing Work Group. Feb. 2005.

https://www.floridahousing.org/docs/default-source/press/newsroom/publications/board-related-publications/hurricane-housing/hurricanehousingworkgroupreportfinal.pdf?sfvrsn=844e3c7b_2

⁵⁹ *Hurricanes hit the poor the hardest*. Eleanor Krause and Richard V. Reeves. The Brookings Institution. Sept. 2017. <https://www.brookings.edu/blog/social-mobility-memos/2017/09/18/hurricanes-hit-the-poor-the-hardest/>

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 for one or two years for the development of new subsidized housing opportunities. The families’ immediate needs must be addressed if they are to take advantage of the long-term programs.

The following are some of the principal types of assistance that can be requested as part of any post-disaster advocacy efforts.⁶⁰

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 financed through HOME or Low Income Housing Tax Credit programs, resulting in rents that are generally unaffordable to extremely low-income households. The Section 8 voucher program 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 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 by design and does not, nor can it, provide the continuous long-term rental assistance that a Section 8 housing voucher program can provide. Remember that many low-income people could not afford their housing before the disaster and are unlikely to ever find

⁶⁰See *Recommendations to Assist in Florida’s Long Term Housing Recovery Efforts*.

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 long-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.⁶¹ 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 arrive at the disaster area, the only interim resources for extremely low-income households will be rent subsidy programs or FEMA Trailers. After Hurricane Andrew, 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.⁶²

3. Prioritization of Funding

a. Targeting Extremely Low-Income Households Is 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 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

⁶¹See, e.g., *FEMA Funds Relocation of Displaced Residents*. [News Release No. 1605-227](https://www.fema.gov/news-release/2007/10/15/fema-funds-relocation-displaced-residents-0). FEMA. <https://www.fema.gov/news-release/2007/10/15/fema-funds-relocation-displaced-residents-0>. (Relocation Assistance was limited to transportation/travel costs incurred due to Hurricane Katrina or Hurricane Rita).

⁶²*Federal Disaster Assistance Approaches \$1 Billion for Hurricane Michael*. [News Release No. R4-DR-4399-FL NR 098](https://www.fema.gov/news-release/2019/03/12/federal-disaster-assistance-approaches-1-billion-hurricane-michael). FEMA. <https://www.fema.gov/news-release/2019/03/12/federal-disaster-assistance-approaches-1-billion-hurricane-michael>. (“Nearly 760 families displaced by [Hurricane] Michael have received the keys to temporary housing units from FEMA, which includes mobile homes, travel trailers, and direct-lease properties.”)

hardest by the hurricanes. That housing cannot be replaced at the same rents without significant subsidies.

b. 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:⁶³

i. Community Land Trust

It has been 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.⁶⁴ 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 disasters, with the displacement of thousands of extremely and very low-income Floridians.⁶⁵

ii. Manufactured Home Loan Guarantee Fund

It has also been suggested that Florida 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

⁶³*Recommendations to Assist in Florida's Long Term Housing Recovery Efforts.*

⁶⁴*Id.* at 18.

⁶⁵See *Community Land Trusts in the Age of Climate Change*. Shelterforce. Hortense Leon. Feb. 2019. <https://shelterforce.org/2019/02/28/community-land-trusts-in-the-age-of-climate-change/>.

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.⁶⁶

iv. Capacity Building among Community-Based Developers

Often a disaster 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 Ensure 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 too is it 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 disasters 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.*, and/or the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

b. Mobile Home Parks

Mobile home parks are frequently one of the least desirable land uses in the wake of a disaster. Often local governments will take action to prevent them from

⁶⁶See also *Multifamily Mortgage Revenue Bonds*. Florida Housing Finance Corporation. <https://www.floridahousing.org/programs/developers-multifamily-programs/multifamily-mortgage-revenue-bonds>.

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 maintaining affordable mobile home parks whenever possible. If there is any evidence that a 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 and/or the Equal Protection Clause. An excellent discussion of law challenging discriminatory zoning and land use decisions can be found in James A. Kushner's "Fair Housing: Discrimination in Real Estate, Community Development and Revitalization."

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 Coalition

A very positive and extremely useful local planning effort is the Unmet Needs Coalition. This is an informal assembly of social service, housing and other local emergency needs providers, each of whom have caseworkers working with storm victims.⁶⁷ 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.

⁶⁷*Establishing an Unmet Needs Coalition*. Volunteer Florida. Oct. 1993.
<https://www.volunteerflorida.org/wp-content/uploads/2013/03/UnmetNeedsCoalition.pdf>.